



Kishau & 2 others (Suing as Officials and on behalf of Ewangan Tourism Culture Center) v National Land Commission (Miscellaneous Case E003 of 2022) [2023] KEELC 15851 (KLR) (1 March 2023) (Judgment)

Neutral citation: [2023] KEELC 15851 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
MISCELLANEOUS CASE E003 OF 2022
JM MUTUNGI, J
MARCH 1, 2023
IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR
JUDICIAL REVIEW BY WAY OF AN ORDER OF MANDAMUS
DIRECTED TO THE CHAIR NATIONAL LANDS COMMISSION**

BETWEEN

**MUTETE OLE KISHAU 1ST APPLICANT
SITONIK KOSIKIR KAETE 2ND APPLICANT
NAIMANTAT KISHAN 3RD APPLICANT
SUING AS OFFICIALS AND ON BEHALF OF EWANGAN TOURISM CULTURE
CENTER**

AND

NATIONAL LAND COMMISSION RESPONDENT

JUDGMENT

1. The applicants on February 8, 2022 were granted leave to institute Judicial Review proceedings for an order of Mandamus directed to the National Land Commission to compel the Commission to satisfy the Decree issued in Naivasha CMCC No. 104 of 2020. Mutete Ole Kishau and 2 others (suing as Officials and on behalf of Ewangan Tourism, Cultural Center) vs National Land Commission and pay the Applicants the sum of Ksh. 13,133,244.00 together with interest of 14% per annum from March 19, 2021 until payment in full.
2. The applicants filed the substantive notice of motion on February 21, 2022 praying for orders:-



- a. That the applicants be granted Judicial Review orders in the nature of an order of Mandamus directed to the National Land Commission compelling the said Commission to satisfy the Decree in Civil Suit Number 104 of 2020 in Mutete Ole Kishau, Sitonik Kosikir Kaete and Naimantat Kishan vs National Land Commission and pay the Applicants the sum of Ksh. 13,133,244/= together with further interest of 14% per Annum from the March 19, 2021 until payment in full.
 - b. That the costs of this application be provided for.
3. The application was premised on the grounds set out on the body of the application as follows:-
 - a. The applicants obtained a judgment against the respondent in Civil Suit Number 104 of 2020, Mutete Ole Kishau and 2 others vs National Land Commission and a Decree was given on the 1 March 9, 2021 and issued on the 5th day of August 2021.
 - b. The respondent despite having been notified of the Decree has refused to comply with the Decree.
 - c. The Respondent is under a Statutory obligation to comply with the decree and satisfy the same.
 4. The application was further supported by the Statutory statement and the affidavit of Sitonik Kosikir Kaete sworn in support of the application for leave dated January 19, 2022.
 5. The National Land Commission, the respondent herein were served with the application and although a Ms Obino advocate appeared for the respondent Virtually on May 30, 2022 and prayed for time to enable the respondent to file their response, the respondent never filed any response nor regularize their appearance on record. The court on July 12, 2022 gave directions that the application be canvassed by way of written submissions. The respondent as at September 22, 2022 when the court reserved the judgment for delivery on notice, given that the court was proceeding on transfer, had not filed any response to the application.

Background

6. The applicants are officials of Ewangan Tourism Cultural Centre a community based organization registered by the State Department of Culture in the Ministry of Sports, Culture and Arts as, “Performing Arts”, under Certificate of Registration No. CBD/3498/20/2016 dated October 29, 2016. The applicants are also registered as a Self Help Group by the Ministry of Labour, Social Security and Services vide Certificate of registration No. 366 2487 issued on July 19, 2016.
7. The applicants established the Ewangan Tourism Cultural Centre to promote the Maasai heritage, through collecting, preserving and making accessible maasai cultural materials in all formats, and selling the same to tourists as a way of income generation, to support its members financially. To achieve their objectives, the applicants developed a cultural village where they constructed Maasai Manyattas, carried out landscaping, installed piped water, planted indigenous trees and set up businesses.
8. In or about 2017, the National Land Commission identified the site developed by the applicants for their activities as a passage for the Standard Gauge Railway (SGR) Phase 2 to Naivasha. The National Land Commission therefore needed to compulsorily acquire the land and pay compensation to the Applicants.
9. The National Land Commission pursuant to the provisions of section 112 of the *Land Act*, 2012 carried out an inquiry with a view of paying compensation to the applicants and made an award after conclusion of the inquiry to compensate the applicants in the sum of Ksh. 12,200,000/=. The



Applicants accepted the award but the National Land Commission failed to pay the compensation promptly as envisioned under Section 115 of the *Land Act*, 2012 prompting the applicants to institute proceedings in court vide Naivasha CMCC No. 104 of 2020 for recovery of the assessed compensation. The court entered judgment against the National Land Commission for Ksh. 12,200,000/= together with costs and interest. Demand for settlement of the decree issued by the court has been made to the National Land Commission who have failed to pay the amount as per the decree which has now precipitated these Judicial Review proceedings for an order of *Mandamus* to issue against the respondent.

10. I have set out the background to this matter. There is no dispute that the applicants were occupying a portion of land where the Standard Gauge Railway (SGR) to Naivasha required to pass. The National Land Commission properly made an inquiry under section 112 of the *Land Act*, 2012 and an award pursuant to section 113(1) of the Act. It is not understandable and/or apparent why from 2019, the National Land Commission has not paid the award, which they themselves prepared and communicated to the Applicants. They have an obligation and a Statutory duty to effect payment where compensation has been determined. The National Land Commission has been mute and it is not possible to understand why after making the award, they never processed the payment. The Commission cannot abdicate its duty and obligation under the Statute. The applicants had a legitimate expectation that the Commission would pay the compensation within a reasonable period to enable them replan and adjust their lives now that their source of livelihood had been interfered with courtesy of development.
11. I find and hold the application has merit and I accordingly enter judgment in favour of the Applicants as prayed in the application save that I decline to award interest at 14% as prayed. The Chief Magistrate Court at Naivasha awarded interest at 12% and I see no reason to change that. The interest shall continue to accrue at 12% as per the decree from 17/11/2021 until payment is made in full.
12. The final order thus is as follows:-
 - (i). That the applicants be and are hereby granted Judicial Review orders in the nature of an order of *Mandamus* directed to the National Land Commission compelling the said Commission to satisfy the Decree in Naivasha CMCC No. 104 of 2020 – Mutete Ole Kishau & 2 others vs National Land Commission and pay the applicants the sum of Ksh. 13,133,244.00 together with further interest of 12% per Annum from 17/11/2021 until payment in full.
 - (ii). The applicants are awarded the costs of the application.

JUDGMENT DATED, SIGNED AND DELIVERED THIS 1ST DAY OF MARCH, 2023.

J.M. MUTUNGI

JUDGE

