



**Gatarakwa Farmers Company Ltd v National Land Commission (Environment & Land Case E001 of 2022) [2023] KEELC 19319 (KLR) (5 July 2023) (Ruling)**

Neutral citation: [2023] KEELC 19319 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NANYUKI  
ENVIRONMENT & LAND CASE E001 OF 2022**

**AK BOR, J**

**JULY 5, 2023**

**BETWEEN**

**GATARAKWA FARMERS COMPANY LTD ..... APPLICANT**

**AND**

**NATIONAL LAND COMMISSION ..... RESPONDENT**

**RULING**

1. Through the application dated 29/3/2022, the applicant sought a temporary injunction to restrain the respondent and the agents under its supervision in Laikipia County from alienating, delimiting and issuing allotment letters or in any manner dealing with the properties known as Ewaso Nyiro/Suguroi Block 6/977, Ewaso Nyiro/Suguroi Block 6/741 and Ewaso Nyiro/Suguroi Block 6/216. The application was made on the grounds that these parcels of land formed part of the properties which the applicant acquired on behalf of its members between 1973 and 1978 but which were illegally misappropriated through the orders of the Late Former President Hon. Daniel Moi and which were eventually registered in the Government's name.
2. The applicant contended that the respondent had conceded that the properties remained private properties which had not been utilised by the Government and gave a long list of properties in Suguroi Blocks 1, 5 and 7 and others in Ilipajeta Sirima Block 1. It claimed that the Respondent had allowed the Laikipia County Government to alienate Ewaso Nyiro/Suguroi Block 6/216, 741 and 977 including the issuance of letters of allotments to members of the public and other unsuspecting entities.
3. The application was supported by the affidavit of Andrew Muchiri Gituku, a director of the plaintiff who deponed that the properties were illegally misappropriated on the direction of the Former President Daniel Arap Moi and were consequently registered in favour of the Government of Kenya. He averred that the Respondent had conceded that the land constituted private property belonging to the applicant who should be allowed to deal with the properties. The letter dated 7/6/2019 which he exhibited made reference to the letter from Kenya Forest Service and indicated that the Respondent did



- not have any objection to the activities being carried out on various parcels of land in Laikipia County while pointing out that the proposed activities should not encroach into public forest land. The letter does not give any parcel numbers for the land in question.
4. He deponed that the applicant had indulged the respondent to retransfer interest in the land to the applicant but the respondent had without sufficient cause delayed the disposition. He observed that through the Laikipia County office, the respondent had curiously allowed the alienation and misappropriation of the suit properties by various entities including the County Government of Laikipia. He relied on the letter written by the applicant's advocate to the County Executive, Lands and Physical Planning of the County Government of Laikipia on 4/3/2022 seeking to stop the activities being carried out on the land. He attached various documents including a report of the Presidential Probe Committee on Gatarakwa Farmers Co. Limited, extracts of titles for several parcels of land including: Ewaso Nyiro/Suguroi Block VI/1550 showing that it was a subdivision of 268 and was reserved for administrative center, whose green card was opened on 27/8/1997; Ewaso Nyiro/Suguroi Block VI/935 with the entry made on 16/6/1987 showing that the land is owned by the Government and is reserved for a polytechnic; Ewaso Nyiro/Suguroi Block VII/319 with entry no. 1 made on 16/6/1987 showing the Government of Kenya was registered as proprietor of the land reserved for afforestation. The other abstracts of titles mainly for Block I, V and VII show the Government as the registered proprietor for land reserved for various public uses including afforestation.
  5. The application was made in relation to three parcels of land and the Applicant exhibited the cards for the three parcels of land amongst the cards for many other parcels of land. The card for Ewaso Nyiro/Suguroi/Block VI/977 shows that it was opened on 16/6/87 when the Government of Kenya was registered as proprietor and was reserved for a market. The card for Ewaso Nyiro/Suguroi/Block VI/741 is barely legible but the court can decipher that it was transferred to Simon Kiboi Nguitu on 16/6/87 and a title was issued to him. The card for Ewaso Nyiro/Block VI/216 was opened on 16/6/87 and a title was issued to Grace Chechichi Maritim the same day.
  6. Andrew Muchiri Gituku also swore the further affidavit which was filed on 14/3/2023. He deponed that there had been previous joint investigations by the Respondent which resulted in the letter written by the respondent. He attached some abstracts of title to his affidavit.
  7. Brian Ikol swore the replying affidavit in opposition and deponed that he was the Director of Legal Affairs and Dispute Resolution of the National Land Commission, the Respondent in the matter. He deponed that the respondent was a constitutional commission established under articles 67 and 62 of the *Constitution* and was operationalised by the *National Land Commission Act*. That in an attempt to resolve the matter amicably pursuant to article 252 (1) (b) of the *Constitution*, the respondent invited the Applicant for a ground status visit and investigations which was slated for 22 to June 28, 2022. He deponed that the joint ground investigation visit revealed that the land known as Ewaso Nyiro/Suguroi Block VI/977 was reserved for the Makutano Trading Centre with various developments including the Chief's Camp, Huduma Centre, Police Station, Bus park and market stores. Ewaso Nyiro/Suguroi Block VI/741 was reserved as a trading centre owned by the County Government of Laikipia and was yet to be planned, developed and put into use. Ewaso Nyiro/Suguroi Block 6/216 constituted private land registered in the name of Grace Chebichii Maritim. He argued that the orders sought by the Applicant should not be granted by the court.
  8. Parties filed submissions. It was worth mentioning that this matter was adjourned on numerous occasions due to the Respondent's failure to comply with the orders of the court in terms of filing its response and submissions. When the matter came up on 18/5/2023, the Respondent's advocate maintained that she had complied with the court's directions. The court pointed out that the preliminary objection, further affidavit and submissions of the Respondent were not in the court file.



9. Brian Ikol swore the respondent's further replying affidavit which was filed in court on 23/5/2023 and deponed that the Respondent was yet to complete its inquiry into the Applicant's complaints of the alleged contravention of its rights and the application for reallocation of the public utility land surrendered for public use. He added that the Applicant had through the firm of Kamau Kuria & Company Advocates filed Nairobi High Petition No. 317 of 2009 alleging contraventions of their right to own property which was transferred and renamed Nanyuki ELC Petition No. 3 of 2021. The respondent was added to that petition as the 13<sup>th</sup> respondent. He averred that that petition raised issues which are similar to the issues raised in this suit. He added that the applicant was prosecuting a constitutional matter through a suit which is barred by the Limitation of Actions Act and craved the court's leave to prosecute the preliminary objection. He attached various documents including the report of the ground visit of Maina Settlement Scheme in Nyahururu and Gatarakwa Farmers Co. Ltd. He also exhibited a copy of the petition showing the orders sought by the Applicant in Nanyuki ELC Petition No. 3 of 2021.
10. The court has considered the parties' submissions. The Applicant submitted that it had made out a prima facie case deserving the grant of injunctive orders pending the hearing of the suit. It argued that the suit properties were not public land and that they were illegally alienated. The applicant relied on article 62 of the Constitution on the role the Respondent plays and the manner in which land can be acquired from private entities. It also relied on section 14 of the National Land Commission Act and the decision in Mrao Limited v First American Bank Limited (2003) eKLR 125 on what constitutes a prima facie case. It submitted that there was reasonable apprehension that if the allocation of the properties was not stopped, there was the risk that the land may be transferred to third parties which would further convolute the process of recovery of that land. The Applicant urged that the Respondent had over the years tried to defeat the recovery of the suit properties by fraudulently allocating the land to private individuals. It urged that there was need to preserve the subject matter of the suit.
11. The Respondent submitted that the parcels of land known as Ewaso Nyiro/Suguroi Block 6/216, 741 and 977 did not belong to the Respondent and further the Applicant had not satisfied the conditions for the grant of injunctive relief. The Respondent submitted that the documents which the Applicant attached to its application revealed that Ewaso Nyiro/Suguroi Block 6/977 and 741 belonged to the County Government of Laikipia while parcel number 216 belonged to private citizen. In the further submissions filed on 23/5/2023, the Respondent took up the point that no cause of action was disclosed against it while pointing out that the Applicant's claim should be directed at the County Government of Laikipia which was registered as the owner and was in possession of the land known as Ewaso Nyiro/Suguroi Block 6/977 and 741 while the suit in relation to parcel 216 should be directed at Duncan Ndungu Nderui, the registered owner. The Respondent added that the parcels of land which the Applicant described were surrendered for public utility pursuant to the Physical Planning Rules under the relevant statutes which were applicable then. It added that the directive made by the late Former President Daniel Moi was actually an executive order which was legal and was extracted showing that due process was followed which resulted in the settlement of members of the applicant on their parcels of land. The Respondent maintained that this action arose 35 years ago and that it had power to investigate the complaint. The Respondent urged that the applicant ought to pursue Nanyuki ELC Petition No 3 of 2021 and submit to the enquiry process for redress.
12. The issue for consideration is whether this court should grant a temporary injunction sought in the application dated 29/3/2022. From the documents exhibited by the Applicant, it is apparent that the three parcels of land which are the subject of this application are not registered in the respondent's name. No evidence was exhibited to show that the respondent is undertaking any allotment of the three parcels of land. The third parties who own parcel numbers 216 and 741 would need to be made



parties in this suit before the court can make orders adverse to their interest. The titles were issued to the third parties way back in 1987.

13. The applicant's apprehension seems to be that the County Government of Laikipia is in the process of allocating plots out of the land which the applicant lays claim to. This is a matter to be determined as between the Applicant and the County Government of Laikipia which is not a party to these proceedings.
14. The upshot of this is that no threat has been disclosed to warrant the grant of the orders the applicant seeks.
15. If indeed this suit relates to the same subject matter as that of Nanyuki ELC Petition No. 3 of 2021 then it ought to be stayed pursuant to section 6 of the *Civil Procedure Act* until that petition is heard and determined.
16. The court did not deal with the Respondent's preliminary objection because it was not in the court file.
17. The court declines to grant the orders sought in the application dated 29/3/2022.

The costs of the application will be in the cause.

**DELIVERED VIRTUALLY AT NANYUKI THIS 5<sup>TH</sup> DAY OF JULY 2023.**

**K. BOR**

**JUDGE**

**In the presence of:**

Mr. Kinyua Maina for the Applicant

Ms. Niuster Bitok for the Respondent

Ms. Stella Gakii – Court Assistant

