



Nineteen Ninety Two Squarters Sacco v Cabinet Secretary, Ministry of Lands, Housing and Urban Development & 4 others (Environment & Land Petition E005 of 2022) [2023] KEELC 19854 (KLR) (20 September 2023) (Judgment)

Neutral citation: [2023] KEELC 19854 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT & LAND PETITION E005 OF 2022
DO OHUNGO, J
SEPTEMBER 20, 2023**

BETWEEN

NINETEEN NINETY TWO SQUARTERS SACCO PETITIONER

AND

THE CABINET SECRETARY, MINISTRY OF LANDS, HOUSING AND URBAN DEVELOPMENT 1ST RESPONDENT

THE NATIONAL LAND COMMISSION 2ND RESPONDENT

THE DIRECTOR, LAND ADJUDICATION AND SETTLEMENT 3RD RESPONDENT

THE COUNTY LAND REGISTRAR, KAKAMEGA 4TH RESPONDENT

THE ATTORNEY GENERAL 5TH RESPONDENT

JUDGMENT

1. Proceedings commenced in this matter through petition dated August 2, 2022, which the petitioner filed on August 3, 2022. The petitioner described itself in the petition as a co-operative society with a membership of over 500 families and registered under the *Co-operative Societies Act*. It further averred that its members and their forefathers were victims of the 1992 tribal clashes and have been squatters in Mautuma Forest Settlement Scheme of Turbo Forest Reserve since 1992 or thereabouts. That the scheme was established in or about 1995 through a presidential decree and ought to have about 9,000 acres hived off Lugari Forest for allocation to persons who were displaced during the 1992 clashes, including the petitioner’s members.
2. The petitioner further averred that the impending allocation has resulted in the area being invaded by land fraudsters which threatens its members’ ownership rights and that there has been a delay in de-



gazettement of the portion of the forest coupled with its members being kept in the dark as regards plans for their settlement. That its members' rights to property have been threatened and violated and that its members' legitimate expectations to be allocated land and issued with title deeds have been thwarted by the respondents' failure to de-gazette the forest land.

3. The petitioner therefore prayed for the following orders:
 - A. That the respondents be and are hereby directed to perform their constitutional duties and forthwith abide by the directives issued in the year 1992 by His Excellency Daniel Arap Moi (deceased) to hive off the suit land from Turbo Forest for settlement of the landless, including the petitioner members, in the area and in so doing to proceed and de-gazette the said suit land for ease of registration of the said interests.
 - B. A declaration that the petitioner's members' rights and fundamental freedoms and in particular the protection to property and/or interest in or right over suit property has been violated and or infringed or is about to be violated and or infringed on by the respondents.
 - C. An order directing the respondents do furnish the applicants with copies of survey maps, degazettement notice, if any, and the arca list intended to be used in the purported exercise and or any other documents of such nature in relation to Mautuma Forest Settlement Scheme of Turbo Forest Reserve and Seregeya-Likuyani Block 1 from Turbo Forest Reserve, Kakamega County.
 - D. Costs of the Petition.
 - E. Any other or further reliefs that this Honourable Court deems it fit and just to grant.
4. The petition is supported by an affidavit sworn by Josamu Wanjala Wasike, who described himself as the current chairman of the petitioner. He deposed that the petitioner was started in 1998 as a self-help group and later registered on June 11, 2018 and has a membership of about 500 families. That members of the petitioner and their forefathers were victims of the 1992 tribal clashes and have been squatters in the Mautuma Forest Settlement Scheme of Turbo Forest Reserve since 1992. He also deposed that the scheme was established around 1995 through a presidential decree with a view to having about 9,000 acres hived off Lugari Forest for allocation to persons who were misplaced during the 1992 clashes, including its members. That the scheme is inhabited by over 3,500 squatters who are yet to receive titles and that due to the delay, the scheme has become a subject of confusion and corruption as fake squatters have invaded it with a view to being allocated land to the detriment of genuine squatters and further threatening the petitioner's members' ownership rights.
5. Mr Wasike also deposed that the processes to have the forest land degazetted to pave way for allocation and issuance of titles should be at an advanced stage, but the petitioner's members have been kept in the dark regarding plans for their settlement despite several requests for information. That on July 15, 2022, the President of the Republic of Kenya directed that squatters who had faced historical injustices be issued with titles and that the processes begun countrywide and some are nearing completion yet the petitioner's members are do not know whether the status of process of allocation and issuance of titles in respect of Mautuma Forest Settlement Scheme and whether they are part of the group to benefit from the presidential decree. He added that if the process is complete then the exercise lacks transparency as strange members have come up while some genuine squatters' names have been omitted from the secret area list since the respondents have been adamant in not providing the petitioner with information related to the exercise. That the petitioner has only been supplied with an Environmental Impact Assessment Report in respect of an assessment that was carried out in the year 2019-2021 and but no report for another assessment that was conducted in the year 2021-2022, despite



several requests. That the petitioner's members fear that the respondents will issue titles clandestinely thus depriving them of their rightful shares.

6. Mr Wasike went on to depose that the petitioner's members have been involved in various fora for public participation in respect of the intended de-gazettement of part of the forest land but have not been provided with information regarding the outcomes despite several requests. That the intended de-gazettement has been debated in parliament without bearing any fruit and further that the exercise has been politicized with the local administration working with land fraudsters to have fake squatters allocated land in place of genuine squatters.
7. The first, third, fourth and fifth respondents reacted to the petition by filing notice of preliminary objection dated September 26, 2022 on the ground that the petitioner lacks capacity to institute and maintain the petition. Directions were given that the preliminary objection be incorporated determined alongside the petition itself. The first, third, fourth and fifth respondents also filed a "reply to petition" in which they denied the averments in the petition and further averred that the petition is an abuse of the court's process in view of pendency of Kakamega ELC Petition No E001 of 2020 Josamu Wanjala Wasike and others (On their own behalf and on behalf of M/s 1992 Squatters Sacco) v The Hon Attorney General and others. They cited Article 24 (1) (d) and averred that the petitioner's member's enjoyment of their rights and fundamental freedoms should not prejudice the rights and fundamental freedoms of others. They therefore urged the court to dismiss the petition with costs.
8. Additionally, the first, third, fourth and fifth respondents filed grounds of opposition in which they averred that the petition falls short of the ratio decidendi in the case of *Anarita Karimi Njeru v Republic* (1976 – 1980) KLR 1272; that the petition is misconceived, an abuse of court process, does not disclose any cause of action against the respondents and does not disclose any constitutional violation or breach by the respondents; that the petitioners failed to follow the laid down procedure as stipulated in the *Access to Information Act* No 31 of 2016 and therefore the court has no jurisdiction to determine the petition; and that the petitioners failed to demonstrate how the respondents violated their Socio-economic rights as envisaged under Article 43 of the *Constitution*.
9. The second respondent only filed a Notice of Appointment of Advocates but did not take any other step in the matter.
10. The petition was canvassed through written submissions which were duly filed by the petitioner and the first, third, fourth and fifth respondents. The petitioner argued that the petition meets the requisite threshold as established in *Anarita Karimi Njeru v Republic* [1979] eKLR and *Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others* [2013] eKLR. Further, relying *inter alia* on *Sirikwa Squatters Group v Commissioner of Lands & 9 others* [2017] eKLR and *Keroche Industries Limited v Kenya Revenue Authority & 5 Others* [2007] eKLR, it argued that its members have a legitimate expectation to be settled and issued with titles in respect of the land in question. They therefore argued that they had established their case and that the reliefs sought ought to issue.
11. In reply, the first, third, fourth and fifth respondents relied on *Commission for Human Rights and Justice v Khandwalla & 3 others* [2021] eKLR and argued that the petitioner failed to comply with procedures stipulated in the *Access to Information Act* and that consequently, the court lacks jurisdiction to determine the petition. They further argued that the petitioner's members have not established that they own the property so as to claim any infringement of the right to property. They therefore urged the court find that the petitioner failed to establish its case and to consequently dismiss it.



12. I have considered the parties' pleadings, the supporting affidavit, and the written submissions. The issues that arise for determination are whether the petition is an abuse of court process and whether the reliefs sought should issue.
13. In *Muchanga Investments Ltd v Safaris Unlimited (Africa) Ltd & 2 Others* [2009] eKLR, the Court of Appeal had occasion to discuss the meaning of the term abuse of court process. The court held as follows:

The term abuse of court process has the same meaning as abuse of judicial process. The employment of judicial process is regarded as an abuse when a party uses the judicial process to the irritation and annoyance of his opponent and the efficient and effective administration of justice. ... Its one feature is the improper use of the judicial powers by a party in litigation to interfere with the administration of justice.

14. It is not in dispute that another petition, being Kakamega ELC Petition No E001 of 2020 Josamu Wanjala Wasike and others (On their own behalf and on behalf of M/s 1992 Squatters Sacco) v The Hon Attorney General and others was filed on November 4, 2020 and is scheduled for judgment before me today. The petition was filed by Josamu Wanjala Wasike, Alexander Amukune and Jackson Okumu Namunyu on their own behalf and on behalf of 1992 Squatters Sacco. More particularly, Josamu Wanjala Wasike described himself in the supporting affidavit as the chairman of 1992 Squatters Sacco, an entity that he described as a Self-Help Group that was formed to rally and organize squatters who were beneficiaries of a resettlement programme in Mautuma Central Settlement Scheme which was to see 9,000 acres of land hived off Lugari Forest within Turbo Forest Reserve, a gazetted Forest Zone. The same Josamu Wanjala Wasike swore the supporting affidavit in respect of this petition and described himself therein as the chairman of the petitioner.
15. I have no doubt in my mind that the parties litigating as petitioners in Kakamega ELC Petition No E001 of 2020 are for all intents and purposes the petitioners in the present matter. The reliefs sought in this petition are a replica of those sought in Kakamega ELC Petition No E001 of 2020. Equally, the facts presented by the petitioner in support of the petition are essentially a reproduction of those in Kakamega ELC Petition No E001 of 2020. Filing of multiple cases on the same cause of action amounts to using the judicial process to the detriment of efficiency and efficacy in the administration of justice and is therefore abuse of court process. I find that this petition amounts to abuse of court process and is therefore for dismissal. For that reason, the remedies sought are not available.
16. In the result, I dismiss the petition. Considering that I have found that the petition amounts to abuse of court process, the petitioner shall pay costs to the first, third, fourth and fifth respondents.

DATED, SIGNED, AND DELIVERED AT KAKAMEGA THIS 20TH DAY OF SEPTEMBER 2023.

D. O. OHUNGO

JUDGE

Delivered in open court in the presence of:

Mr Mbaka for the petitioners

Mr Juma for the respondents

Court Assistant: E. Juma

