



**Dena v Dingwanga & 3 others (Environment & Land Petition
30 of 2021) [2023] KEELC 20367 (KLR) (5 October 2023) (Judgment)**

Neutral citation: [2023] KEELC 20367 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MALINDI

ENVIRONMENT & LAND PETITION 30 OF 2021

MAO ODENY, J

OCTOBER 5, 2023

IN THE MATTER OF: ARTICLES 2, 10, 19, 22(1), 23(3), 40, 47, 48,50(1), 64 & 258

OF THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF: THE BREACH OF THE RIGHT TO PRIVATE PROPERTY

CONTRARY TO ARTICLE 40 OF THE CONSTITUTION OF

KENYA, 2010

AND

IN THE MATTER OF: SECTION 29 & 30 OF THE LAND ADJUDICATION ACT

CAP 284 LAWS OF KENYA.

AND

IN THE MATTER OF: SECTION 13 OF THE ENVIRONMENT AND LAND COURT

ACT NO. 19 OF 2011

BETWEEN

BEATRICE KAMENE DENA PETITIONER

AND

NICHOLAS NDEGWA DINGWANGA 1ST RESPONDENT

**THE CABINET SECRETARY MINISTRY OF LANDS, HOUSING AND URBAN
DEVELOPMENT 2ND RESPONDENT**

THE LAND REGISTRAR- KILIFI 3RD RESPONDENT

THE HON. ATTORNEY GENERAL 4TH RESPONDENT



JUDGMENT

1. By a Petition dated October 5, 2021, the Petitioner herein sought the following orders:
 - a. A declaration that the Petitioner is the lawful owner of the suit property being Kaliangombe/ Jimba/69.
 - b. A declaration that the 2nd Respondent's decision in appeal case no. 174 of 2016 was unfair and unconstitutional and in contravention of the Petitioner's rights to property and to fair administrative action contrary to Article 40 (1) and Article 47 of the Constitution of Kenya, 2010.
 - c. A permanent injunction restraining the 1st Respondent and his servants, agents, employees, representatives, relatives and/or whomsoever claiming or acting for, on behalf of or through him from entering into, assuming actual possession, user, cultivation and/or effecting any form of developments on any portion of, and/or whatsoever interfering with the petitioner's quiet, peaceful, undisturbed and uninterrupted actual possession, occupation, cultivation, user, development and enjoyment of the suit land being Kaliangombe/ Jimba/ 69.
 - d. An order directing the 3rd Respondent to cancel any title issued in the name of the 1st Respondent and a title be issued in the name of the Petitioner herein over the suit land being Kaliangombe/ Jimba/69.
2. The Petitioner averred that she purchased Kaliangombe/ Jimba/ 69 formerly known as Plot No. 69 from two brothers being Mr. Nyonga and Mr. Ndume who are now deceased vide a written agreement dated December 29, 1993 together with coconut trees, cashew nuts and mango trees and further developed the suit property having resided on the suit land for over 20 years.
3. It was the Petitioner's case that upon the demise of the vendors, the 1st Respondent started creating havoc implying that the suit property belonged to him having inherited the same from his late father.
4. She also averred that during the demarcation and adjudication process, the 1st Respondent alleged to be the owner of the suit property yet he neither made any claims over the suit property nor presented any letters of administration to substantiate the fact that there was the existence of any succession proceedings in which the suit property was mentioned as forming part of the estate of the 1st Respondent's deceased father.
5. Further, that the Petitioner and the 1st Respondent exhausted the four tiers of the adjudication process as provided under Cap 284 Laws of Kenya and notably at the Committee stage, a decision was delivered as against the Petitioner by the Chief who is a relative of the 1st Respondent. That the decision was later referred to the Arbitration Board and thereafter at the objection stage, a decision was made in her favour.
6. She contended that the 1st Respondent appealed subject to Section 29 of the Land Adjudication Act and that the decision on appeal was to have the suit property registered under the name of the 1st Respondent derogating her private property rights.

2nd 3rd and 4th Respondents' Response.

7. The 2nd, 3rd and 4th Respondents filed a Relying Affidavit sworn by J. B. Oketch, the Land Registrar Kilifi on the June 7, 2022. He deponed that the adjudication record held in Kilifi Lands Office indicates



that the property was originally in the name of Nicholas Ndegwa Dingwanga, however, through objection number 98, the parcel was transferred to Beatrice K. K. V. Dena and the only record held at the Kilifi Lands office is an adjudication record only.

Petitioner's Submissions

8. Counsel submitted that despite service of the pleadings and supporting documents upon the 1st Respondent, he neglected, ignored and/or refused to put in a reply to the petition. That the 2nd, 3rd and 4th Respondents filed a replying affidavit jointly and were duly represented by the office of the Attorney General.
9. It was counsel's further submission that the petition is unopposed and that the response by the 2nd, 3rd, and 4th Defendants confirms the grievance of the Petitioner with a further confirmation that she is the registered owner of Kalingombe/Jimba/69 hereinafter referred to as the suit property.
10. Counsel stated that the 1st Respondent has violated and infringed on the Petitioner's rights. Further that the Respondents have failed to consider that the Petitioner lawfully acquired the suit property and therefore the 1st Respondent's acts are simply infringing on her rights.
11. According to counsel, the actions of the Respondents were manifestly unconstitutional and unlawful, prejudicial to the rights and fundamental freedoms of the Petitioner and ought to be remedied in the manner sought in the petition herein.
12. It was his further submission that the actions of the Respondents were manifestly unconstitutional and unlawful, were prejudicial to the rights and fundamental freedoms of the Petitioner, and ought to be remedied in the manner sought in this Petition.
13. Counsel elaborated on the infringement of the fundamental rights of the Petitioner under Article 47 (1) which guarantees that every person has a right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.
14. Counsel relied on the cases of *Republic vs Special District Commissioner & Another* Machakos Civil Miscellaneous 124 of 2004 (2006) cited in *Kimwele Kithoka & 26 others v Deputy County Commissioner Kyuso Sub- County & 7 others* (2022) eKLR and *Kenya Human Rights Commission & Another vs Non-Governmental Organizations Co-ordination Board & Another* (2018) eKLR and urged the court to allow the Petition as prayed.

Analysis And Determination.

15. The issue for determination is whether the Petitioner has met the of a constitutional petition and whether the Petitioner is entitled to the orers sought
16. The Petitioner herein contends that the Respondents have denied, violated or infringed, or have threatened to deny, violate or infringe and further contravened or threatened her right to private property, which is enshrined in Article 40 of the *Constitution* of Kenya.
17. This is a constitutional petition in which the petitioner alleges violation of her rights under Articles 2, 10, 19, 22(1), 23(3), 40, 47, 48, 50(1), 64 and 258 of the Constitution and in accordance with the principles enunciated in the cases of *Anarita Karimi Njeru vs The Republic* (1976-1980) KLR 1272 and *Trusted Society of Human Rights Alliance vs Mumo Matemu and Another* High Court Petition No. 229 of 2012, the petitioner has an obligation to demonstrate, with a reasonable degree of precision, the constitutional provisions violated, and the manner of violation with respect to her..



18. The Petitioner also emphasized the infringement of her right to property under Article 40 of the Constitution which guarantees the right to property. In the case of *R vs Chief Immigration Officer* (1976) 3 AER 843 Lord Denning stated as following regarding the guarantee of the right in the Universal Declaration of Human Rights:

“... Among the important rights which individuals traditionally have enjoyed is the right to own property. This right is recognised in the Universal Declaration of Human Rights (1948). Article 17(1) which states that everyone has the right to own property and Article 17(2) guarantees that "no one shall be deprived of his property" The contention of the State counsel negates this right. An intention to provide for arbitrary infringement of human rights cannot be attributed to the legislature unless such intention is unequivocally manifest. When Parliament is enacting a statute, the court will assume that it had regard to the Universal Declaration of Human Rights and intended to make the enactment accord with the Declaration and will interpret it accordingly...”

19. The Petitioner has in her Petition narrated how her rights have been violated under the above quoted provisions of the Constitution particularly under Article 47 (1) which guarantees that every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.

20. The 1st respondent was served with the Petition but neither filed any papers nor attended the hearing of the case. Essentially this Petition is unopposed and the 2nd 3rd and 4th Respondents are in support of the petition.

21. The 2nd 3rd and 4th Respondents filed a Replying affidavit sworn by the Land Registrar who deponed that the records in the Land Registry indicate that the suit parcel was originally in the name of Nicholas Ndegwa Dingwanga and through an objection No 98 the parcel was transferred to Beartice K. K.V Dena .

22. Counsel (State Counsel) for the 2nd 3rd and 4th respondents informed the court on March 7, 2023 that they were not opposed to the petition as they concur with what the petitioner alleges. He stated that they will rely on the Replying affidavit by the Land Registrar who confirmed that the land is register indicates that the Petitioner is the registered owner.

23. I have considered the Petition, the submissions by counsel and the replying affidavit by the Land Registrar on behalf of the 2nd 3rd and 4th defendants and find that the Petition has merit. I therefor grant the following specific orders:

- a. A declaration is hereby issued that the Petitioner is the lawful owner of the suit property being Kaliangombe/ Jimba/69.
- b. A permanent injunction is hereby issued restraining the 1st Respondent and his servants, agents, employees, representatives, relatives and/or whomsoever claiming or acting for, on behalf of or through him from entering into, assuming actual possession, user, cultivation and/ or effecting any form of developments on any portion of, and/ or whatsoever interfering with the petitioner’s quiet, peaceful, undisturbed and uninterrupted actual possession, occupation, cultivation, user, development and enjoyment of the suit land being Kaliangombe/ Jimba/ 69.
- c. An order is hereby issued directing the 3rd Respondent to cancel any title issued in the name of the 1st Respondent and a title be issued in the name of the Petitioner herein over the suit land being Kaliangombe/ Jimba/69.
- d. Costs of the Petition be paid by the 1st Respondent



DATED, SIGNED AND DELIVERED AT MALINDI THIS 5TH DAY OF OCTOBER, 2023.

M.A. ODENY

JUDGE

