



**Sacapheso International Limited v National Land Commission & 4 others;  
Eversweet Bakery (K) Limited (Interested Party) (Environment & Land  
Petition 7 of 2019) [2023] KEELC 20662 (KLR) (12 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 20662 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISII  
ENVIRONMENT & LAND PETITION 7 OF 2019**

**M SILA, J**

**OCTOBER 12, 2023**

**BETWEEN**

**SACAPHESO INTERNATIONAL LIMITED ..... PETITIONER**

**AND**

**NATIONAL LAND COMMISSION ..... 1<sup>ST</sup> RESPONDENT**

**CHIEF LAND REGISTRAR ..... 2<sup>ND</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT**

**KISII COUNTY GOVERNMENT ..... 4<sup>TH</sup> RESPONDENT**

**PACIFICA MWANGO (SUED AS THE LEGAL ADMINISTRATOR OF THE  
ESTATE OF SIMON KEGESA -DECEASED) ..... 5<sup>TH</sup> RESPONDENT**

**AND**

**EVERSWEET BAKERY (K) LIMITED ..... INTERESTED PARTY**

**RULING**

1. The application before me is that dated February 20, 2023 filed by Eversweet Bakery (K) Limited, which application seeks the following orders:-
  - i. Spent (certification of urgency).
  - ii. That the applicant be joined as interested party.
  - iii. That the court be pleased to find that the petitioner has no *locus standi* in relation to the land parcel Kisii Municipality/Block III/289.



- iv. That the court be pleased to adopt the judgment in Judicial Review No 3 of 2017 (Republic v The Chairman, National Land Commission & 4 others, ex parte Aboko John Samuel Kumenda & another in favour of the applicant.
  - v. That the court be pleased to restore title to the land parcel Kisii Municipality/Block III/289 that was illegally revoked by the 1<sup>st</sup> and 2<sup>nd</sup> respondents and have it registered in the name of the applicant.
2. The application is opposed by the petitioner.
  3. To put matters into perspective, this suit was commenced through a petition filed on November 4, 2019. In the petition, the petitioner avers to be the rightful proprietor of the land parcel Kisii Municipality/Block III/289 under a leasehold title. It is pleaded that in July 2017, the 5<sup>th</sup> respondent (Pacifica Mwangi) lodged a complaint with the 1<sup>st</sup> respondent (National Land Commission) contending that the suit property comprised of the free property of the estate of Simon Kegesa (deceased). It is averred that the 1<sup>st</sup> respondent proceeded to conduct an investigation without giving a hearing to the petitioner and proceeded to revoke and/or nullify the petitioner's title to the suit property through a gazette notice No 6862 published on July 17, 2017. In the petition, the petitioner inter alia seeks an order to quash this gazette notice and for a declaration that the decision of the 1<sup>st</sup> respondent was illegal, null and void.
  4. In this application the applicant also contends to hold title to the suit property. Among the grounds raised to support the application is that this court differently constituted (Mutungi J) in judicial review No 3 of 2017, quashed the proceedings and processes that culminated in the decision conveyed in gazette notice No 6862 of July 17, 2017 which led to the cancellation of the title that belongs to the applicant. In this application, the applicant asserts to be the rightful owner of the suit property. In the supporting affidavit sworn by Harriet Kemunto Onsongo, a director of the applicant, it is deposed that the petitioner has no right to the suit land because it was established in the case Kisii criminal case No 1056 of 2014 that the title was a forgery.
  5. The petitioner filed grounds of opposition to oppose the application. It *inter alia* contends that the application offends order 1 of the Civil Procedure Rules on joinder of a party and that it does not disclose any reasonable cause of action.
  6. I have considered the application. It will be observed that there are several prayers which are sought. I have no problem with the prayer for joinder as interested party since the applicant has displayed title to the same land which is in dispute herein. The fact that the applicant also holds a title means that she may be directly affected by the ultimate decision of the court, and if she is not joined, such decision will be made without having given the applicant the benefit of a hearing.
  7. I cannot however allow prayer (iii) which seeks orders that the petitioner has no *locus standi*. The petitioner does have locus to file this petition since her title was nullified by the 1<sup>st</sup> respondent in the impugned gazette notice. I don't see how it can be argued that she has no locus standi and there is really no need of saying more on that issue.
  8. Prayer (iv) seeks adoption of the judgment in the suit Kisii ELC Judicial Review No 3 of 2017. I have gone through that judgment which was delivered on July 5, 2019. The ex-parte applicants therein were Aboko John Samuel Kumenda and Florence Waithegeni Gatune. They also sought the quashing, by a writ of certiorari, of Gazette Notice No 6882 of July 17, 2017, for reason that it quashed their title to the land parcel Kisii Municipality/Block III/301. I cannot import that judgment into this suit because the title in issue in the judicial review suit is different from the title in issue in this petition.



9. I cannot allow prayer (v) which seeks title to be reinstated to the applicant. To do so will be to proceed to summarily make a decision on who has a better title without subjecting that question to a full hearing. Indeed, I am aware that the applicant and the petitioner herein have an on-going dispute, i.e Kisii ELC No 439 of 2013, where the question of who between the two has a good title is what is in issue. I will say no more on this prayer.
10. It will be observed from the foregoing that the only prayer I have allowed is the prayer for joinder of the applicant as interested party. I will give further directions on the participation of the applicant after delivery of this ruling.
11. I make no orders as to costs.
12. Orders accordingly.

DATED AND DELIVERED AT KISII THIS 12 DAY OF OCTOBER 2023

**JUSTICE MUNYAO SILA**

**JUDGE, ENVIRONMENT AND LAND COURT**

**AT KISII**

Page 2 | 2

