



**Oguku & 2 others v Speaker of the County Assembly Kisii County & 3 others (Environment & Land Petition E002 of 2023) [2023] KEELC 21312 (KLR) (7 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21312 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISII  
ENVIRONMENT & LAND PETITION E002 OF 2023**

**M SILA, J**

**NOVEMBER 7, 2023**

**BETWEEN**

**JOSEPH NYAKWEBA OGUKU ..... 1<sup>ST</sup> PETITIONER**

**JOSEPH MAUTI KENYANYA ..... 2<sup>ND</sup> PETITIONER**

**ELIJAH MACHONI MOCHAMA ..... 3<sup>RD</sup> PETITIONER**

**AND**

**SPEAKER OF THE COUNTY ASSEMBLY KISII COUNTY .... 1<sup>ST</sup> RESPONDENT**

**HON. PAUL OKOMBO AYIEMBA, MEMBER OF COUNTY ASSEMBLY  
BOIKANGA WARD, KISII COUNTY ..... 2<sup>ND</sup> RESPONDENT**

**COUNTY ASSEMBLY OF KISII COUNTY ..... 3<sup>RD</sup> RESPONDENT**

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

**RULING**

(Application for injunction; petitioners claiming that a development for office of a Member of County Assembly is inter alia being undertaken in land set aside for a market; no response received to the petition; application allowed)

1. The application before me seeks the following substantive orders which are prayers (3) and (5) of the application, being :-
  - (3) That pending the hearing and determination of this petition, an order of temporary injunction do issue restraining the respondents from continuing the construction work of Boikanga Ward Offices on an unapproved parcel of land.
  - (5) That pending the hearing and determination of this petition, a conservatory order of injunction do issue to restrain the respondents from establishing and constructing Boikanga



Ward offices without prior compliance with public participation requirements under Part VI of the *Environment Management and Coordination Act*, 1999, the *Fair Administrative Action Act*, 2015, and *the Constitution* of Kenya.

2. Despite being served, the respondents have filed nothing to oppose the petition.
3. To put matters into context, this application was filed contemporaneously with the petition on 23 July 2023. The petitioners aver that they have filed this petition in the public interest. They have sued the Speaker of Kisii County Assembly, the Member of County Assembly of Boikanga, in Kisii County, the County Assembly of Kisii, and the County Government of Kisii. They aver that they are residents of Boikanga Ward and that they bring the petition in the interest of the residents thereof, in respect of the construction of Boikanga Ward offices. They plead that the construction is on an unapproved parcel of land and that there was no effective public participation carried out. They aver that there is no evidence of the residents of Boikanga Ward being given a reasonable opportunity to express their views regarding the establishment of the MCA's offices yet they are part of the stakeholders in the Ward.
4. The application herein is supported by the affidavit of Elijah Machoni Mochama. He has deposed that the residents of Boikanga Ward, vide a meeting, unanimously agreed and approved that the offices of the MCA was to be constructed on the land parcel South Mugirango/Boikanga/239 measuring 10 acres which he states is neutrally located between the two main clans that form part of Boikanga Ward and that it is also centrally located and ideal for delivery of services to residents of the ward. He avers that there are other social amenities that have been commissioned, approved and constructed on the said land. He has deposed that the County Assembly of Kisii has commissioned construction on a piece of land allocated exclusively for the market without seeking approval of the community and that it also lacks centrality.
5. I have considered the above.
6. As I mentioned earlier, this application is not opposed by any of the respondents. In essence, I have nothing before me to dispute the facts as depicted by the applicants. It is apparent that the complaint of the applicant is on the location of the offices of the MCA. I doubt if it is the business of the court to direct the County Government where to build particular offices, but that is an issue that can be addressed at the hearing of the petition, and I will say no more on it. However, if there is insinuation that a construction is not in conformity with a Physical Plan of an area, that may invite the Court's intervention, since development must follow the physical plan.
7. In our case, the applicants aver that the impugned development is being done in land designated as a market. If that is the case, then there is legitimate concern that the development may not be in conformity with the physical plan. I am thus of persuasion that the applicants have demonstrated a *prima facie* case with a probability of success based on the contention that the development is being made on land that has been set aside for a market. I am further persuaded that if the development is allowed to proceed to completion, then the public may suffer irreparable loss for being denied access to land that has been set aside for a market. I am not in doubt, but if I was, the balance of probabilities would be in favour of the applicants since if the development is completed, there may never be a market developed on the land despite that land being set aside for that purpose.
8. It is for the above reasons that I allow the application dated 11 July 2023. I hereby order the respondents to immediately halt the on-going construction of the designated MCA's office of Boikanga Ward until this suit is fully heard and determined.
9. The costs of this application will be costs in the cause.
10. Orders accordingly.



**DATED AND DELIVERED AT KISII THIS 7 DAY OF NOVEMBER 2023**

**JUSTICE MUNYAO SILA**

**JUDGE, ENVIRONMENT AND LAND COURT**

**AT KISII**

In the presence of: -

Mr. Marita for the petitioners/applicants

No Appearance for the respondents

