



THE JUDICIARY



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANG'A
ELCL PETITION NO E002 OF 2023

IN THE MATTER OF: ARTICLE 22(1) OF THE CONSTITUTION OF THE REPUBLIC OF KENYA
AND
IN THE MATTER OF: ARTICLES 1,2,3,10,19,20,21,22,23,25,27,35,40,6,47,48,50,60,64
667,93,118,124,159,162(2) (b), 165,248,249,254 AND 258 OF THE
CONSTITUTION OF THE REPUBLIC OF KENYA AND IN THE
MATTER OF: THE NATIONAL LAND COMMISSION ACT
NUMBER 5 OF 2012 OF THE LAWS OF KENYA
AND
IN THE MATTER OF: THE NATIONAL ASSEMBLY STANDING ORDERS, 6TH EDITION
AND
IN THE MATTER OF : CONTRAVENTION AND THREATENED CONTRAVENTION OF
FUNDAMENTAL RIGHTS AND FREEDOMS UNDER
ARTICLES
1,2,10,19,20,21,22,23,24,25,27,28,35,40,47,48,50,60 AND 67 OF THE
CONSTITUTION OF THE REPUBLIC OF KENYA
BETWEEN

DEL MONTE KENYA LIMITED.....PETITIONER
AND
SPEAKER OF THE NATIONAL ASSEMBLY.....1ST RESPONDENT
NATIONAL LAND COMMISSION.....2ND RESPONDENT
MINISTRY OF LANDS, PUBLIC WORKS, HOUSING
AND URBAN DEVELOPMENT.....3RD RESPONDENT
THE ATTORNEY GENERAL.....4TH RESPONDENT
AND
KANDARA RESIDENCE ASSOCIATION OTHERWISE KNOWN AS
KANDARA RESIDENTS' ASSOCIATION.....1ST INTERESTED PARTY
CYRUS NJOROGE MUTHONI & 130 OTHERS.....2ND INTERESTED PARTY

JUDGMENT

- 1) In the amended petition dated 27/3/2024, the Petitioner seeks the following orders.
2. A declaration do issue that the proceedings conducted by the National Assembly's Department Committee on land and select committee on implementation in relation to the petition by Kandara Residents Association which petition was reported by the speaker to the National Assembly on 11/6/2019, infringe or threaten infringement of the following fundamental and other rights guaranteed to the Petitioner by the constitution of Kenya:-
 - a) **Articles 24 and 25 which forbid any limitation to the rights to a fair trial,**

- b) **Article 27 on equality and freedom from discrimination,**
 - c) **Article 40 relating to protection of the right to acquire and own property,**
 - d) **Article 47 of Fair Administrative Action Act,**
 - e) **Article 50 (1) which guarantees the right to a fair hearing,**
 - f) **Article 60 as regards principles of land policy in Kenya.**
3. A declaration do issue that the proceedings conducted by the National Assembly's Department Committee on Lands and select committed the implementation in relation to the petition by the Kandara Residents Association which petition was reported by the speaker to the National Assembly on 11/6/2019, violate or threaten violation of, inter alia, the following Articles of the constitution:-
- a) **Article 1 as regards exercise of sovereign powers.**
 - b) **Article 2 which forbids exercise of state power except as authorized under the constitution,**
 - c) **Article 10 as regards National values and principles of governance which had the respondents herein.**
 - d) **Article 15 a and 162 (2) (b) which vest judicial authority to determine land disputes in the Environment and Land courts,**
 - e) **Article 249(2) which provides that the Constitutional Commissions, and independent and are not subject to control or direction by any person or authority.**
4. An order of certiorari be and is hereby issued quashing the report dated 19/11/2019 made by the National Assembly's Departmental Committee on lands in respect of the petition lodged by Mr. Philip Njuguna on behalf of Kandara Residents Association.
5. An order of certiorari be and is hereby issued quashing the report dated 10/12/2021 made by the National Assembly's select committee an implementation in so far as the same relates to LR No. 12158 and any resultant subdivision thereof or any other parcel of land which is owned or occupied by the Petitioner.
6. An order of certiorari be and is hereby issued quashing the report dated 5/10/2023 made by the National Assembly's Departmental committee on land in so far as the same relates to LR No. 12157 and 12158 and any resultant subdivisions thereof or any other parcel of land which is owned or occupied by the Petitioner.

7. An order of certiorari quashing the proceedings conducted by the National Assembly's Departmental committee on land and select committee on implementation relating to L.R. Nos.12157 and 12158 and any resultant subdivisions thereof or any other parcel of land which is owned or occupied by the Petitioner.
8. An order of prohibition do issue forbidding and/or restraining the respondents, or any of them, from implementing the recommendations in the report dated 19/11/2019 made by the National Assembly Departmental Committee on land in respect of the petition lodged by Mr Philip Njuguna on behalf of Kandara Residents Association.
9. An order of prohibition do issue forbidding and/or restraining the respondents, or any of them, from implementing the recommendation in the report dated 10/12/2021 made by the National Assembly's select committee on implementation in so far as the same relates to LR No. 12158 and any resultant subdivisions thereof or any other parcel of land which is owned or occupied by the Petitioner.
10. An order of prohibition do issue forbidding and/or restraining the respondents or any of them, from implementing the recommendation in the report dated 5/10/2023 made by the National Assembly's Departmental Committee on lands in so far as the same violates to LR Nos.12157 and 12158 and any resultant subdivisions thereof or any other parcel of land which is owned or occupied by the Petitioner.
11. An order of prohibition restraining the 2nd and 3rd respondents whether by themselves, their agents, servants, employees or any person claiming under them from taking any action to repossess, interfere, alter or cancel the Petitioner's title to LR Nos 12157 and 12158 and any resultant subdivisions thereof or any other parcel of land which is owned or occupied by the Petitioner.
12. This court do issue such orders and give such directions as it may deem just and appropriate in the circumstances of this matter.
13. The costs of this petition be awarded to the Petitioner.

2) The petition is supported by an affidavit sworn by Wayne cook, a director of the Petitioner. The affidavit which is dated 3/11/2023 has eleven (11) annexures. In brief, the Petitioner's case is as follows:

One, the Petitioner engages in the business of production of premium quality foods, fresh and processed pineapples and fruit juice beverages. It is Kenya's largest exporter of the above mentioned products. It is a major contributor to the national economy with a workforce of over 6500. It has big investments on the land it occupies which include factories, office complex, dams, irrigation infrastructure, housing units, clinics, schools, sports grounds, roads and many more.

Two, for the purpose of its business, the Petitioner acquired the following parcels of land in Murang'a and Kiambu counties in the 1960 and 1970s.

<u>LR. No.</u>	<u>County</u>	<u>Size in Ha</u>
12157	Murang'a	3938.4
12157/2	“	40.87
12157/3	“	2.987
12157/4	“	2.311
12157/5	“	5.677
13289	“	22.84
12158	Murang'a and Kiambu	2972.8
12203/1	Kiambu	2101
12203/2	Kiambu	56.57

This petition involves LR. Nos 12157 and 12158 only, the suit parcels.

The suit land is currently under pineapple production. Three, pursuant to a historical injustice complaint filed by the interested party, the 2nd Respondent made a determination dated 7/2/2019. The determination made the following recommendations.

1. **The land held or occupied by the Petitioner should be resurveyed to establish if Petitioner is in possession of land it is not the registered owner thereof.**
2. **The surplus land, if any, to be given/surrendered to the claimants for resettlement and the County government for public purpose in the ratio of 70:30 respectively.**
3. **In the alternative, where no surplus land is found, the County Government of Murang'a should retain adequate amounts of land for settlement of the claimants and public purpose upon expiry of leases.**

4. The Petitioner to surrender all public utilities within the land to the relevant National and County Government agencies whether the leases have expired or not.

Dissatisfied with this determination the Petitioner filed Murang'a ELC Petition 3 of 2020 which quashed the determination dated 7/2/2019 in a judgment dated 28/4/2022. Four, in June 2019, the Interested Party presented a petition to parliament seeking the implementation of the determination dated 7/2/2019. Parliament's departmental committee on lands proceeded to entertain the petition by the Interested Party even though the petition raised issues which were then pending in court. This fact of pending suits was brought to the attention the committee by the Petitioner and the 2nd respondent.

The Petitioner appeared before the committee on 8/9/2019 and objected to its proceeding with the matter.

The committee adjourned to seek guidance on the way forward. It promised to revert to the Petitioner. This did not happen. Instead, the committee proceeded to finalize its report without hearing the Petitioner on the merits and without informing it that a decision would be made despite the objection.

On 19/11/2019, the committee issued its report which was approved for tabling before the National Assembly on 21/11/2019.

The Assembly made two recommendations.

- a) **The Director of survey to resurvey the land held by the Petitioner in Murang'a and Kiambu counties within 90 days of the tabling of the report.**
- b) **The National Land Commission to investigate the circumstances under which LR. Nos 10862, 10741,11312 AND 11146 said to have been surrendered by the companies namely Sassa Coffee and Rappit B. Limited were later acquired by the Petitioner, within 90 days of tabling of the report.**

The 1st Respondent did not notify the Petitioner of the issuance of the report dated 19/11/2019.

On 10/12/2021, the National Assembly's Select Committee on implementation issued a report of the same date which was approved for tabling before the National Assembly, on 21/12/2021. The report gave two recommendations as follows:

- (a) **The lease for LR. No. 12158 which resulted from the amalgamation of L.R. Nos. 0741,10862,11146,11312 and 2953 should be reverted to the Government of Kenya and declared as public land and allocated to Kandara Residents Association for their settlement, within 60 days of the adoption of the report failure to which the committee shall enforce appropriate sanctions pursuant to Standing Order 209(3) of the National Assembly Standing Orders.**

- (b) In consultation with the National Land Commission, the Ministry of Lands and Physical Planning should allocate the land excised from the Petitioner to Kandara Residents Association and the County Governments of Murang'a and Kiambu in the ratio of 70:30 respectively, as per the National Land Commissions Gazette Notice No. 1995 of 2019, within 60 days of the adoption of the report failure to which the committee shall enforce appropriate sanctions pursuant to Standing Order 209(3) of the National Assemble Standing Orders.**

Again, the 1st respondent did not notify the Petitioner of the issuance of the report dated 10/12/2021. The committee on implementation invited the interested party, the 2nd and 3rd respondents for a hearing and considered their submissions but failed to invite the Petitioner. The committee ignored the fact that the matters before then were being actively litigated in courts. On 5/10/2023 the National Assembly's Department Committee on Lands issued a report of the same date which was approved for tabling before the National Assembly on 5/10/2023. The said report gave the following recommendations.

- (e) Within thirty days of tabling this report, the Ministry of Lands and Physical Planning and the National Land Commission implements the recommendations of the National Assembly Implementation committee of the 12th parliament dated 26/5/2022 (sic) providing that:**

- i. The lease for LR. NO. 12158, which resulted from the amalgamation of LR Nos 11312, 2593 be returned to the Government of Kenya and declared as public land and allocated to Kandara Residents Association for their settlement within 60 days of the adoption of the report.**
- ii. In consultation with the National Land Commission, the Ministry of Lands and Physical Planning, allocates excised land from Delmonte Kenya Limited to Kandara Residents Association and the County Governments of Murang'a and Kiambu in the ratio of 70:30 respectively as per the National Land Commission's gazette notice no. 1995 of 2019, within (60) days of the adoption of this report.**

- (f) Within sixty (60) days from the date of tabling of this report in the National Assembly, the National Land Commission allocates land to 1,930 victims of historical injustice from seven villages including Matharau (220 victims), Makenji (100 victims), Maragwa (200 victims), Upper Gatanga (230 victims), Lower Gatanga (400 victims), Gachongi (600 victims) and Umoja (200 victims) in accordance with the list tabled on 17/8/2023 and annexed to this report.**

- (g) The lease for LR Nos 12157 and 13169 comprising 1,000 acres should be returned to the government of Kenya and declared as public land and**

allocated to 131 families for their settlement by the National Land Commission, within 60 days of tabling of this report.

Five, the Petitioner does not own LR.No. 13169 which was been made the subject of the report dated 5/10/2023. The said land is owned by Ananas Holdings Ltd and the title number is Thika Municipality/Block/14/102. It was the subject of a case **Thika ELC No. 37 of 2020, Kandara Residence Association and another VS Ananas Holdings Ltd and 4 Others** which was determined in favour of Ananas Holdings Ltd.

Yet again, the 1st respondent did not notify the Petitioner of the issuance of the report date dated 5/10/2023. The Departmental Committee on lands invited the Interested Party, the 2nd and 3rd Respondents for a hearing but failed to invite the Petitioner. Moreover, in a show of extreme bad faith, the committee visited the suit land without informing the Petitioner. The Petitioners legal officer Harry Odoni rushed to the scene of the site visited but he was denied audience. The Committee ignored the fact that there were suits before courts over the suit parcels. They acted as if the court had not quashed the determination of the National Land Commission. This is the determination that the committees of the 1st Respondents were relying on. The Respondents Committee on lands purported to adjudicate land disputes and to make for reaching decisions styled as recommendations which included purported revocation of title and right to use and occupy land.

The action of the 1st respondent purport to expropriate the Petitioners property without any regard to its rights enshrined in the Constitution.

Finally, it is only fair that the Petitioner be granted a fair opportunity to present its case before this court as it is the one with the constitutional mandate to protect and safeguard those constitutional rights. It is therefore neither fair nor just to allow the implementation of the subject reports or allow them to stand. There are internal wrangles as to who are the right office bearers of the Interested parties which make it difficult to implement the reports.

- 3) The Petitioner lists the following Constitutional violations by the Respondents. Firstly, the National Assembly has overstepped its mandate and purported to carry out judicial functions which are vested in this court by **Article 162(2) (b) of the constitution**. Secondly, the National Assembly is bound to observe and comply with the National values and principles of governance in Article 10 of the Constitution as it interprets the constitution, any law of makes or implements public policy. It has failed to adhere to the

said values and ended up violating the Petitioners rights as demonstrated in this petition. Thirdly, by excluding the Petitioner from its proceedings, the 1st respondent has contravened the Petitioners rights to equal protection and equal benefit of the law as guaranteed by article 27(1) of the constitution. Fourthly, by purporting to deprive the Petitioner of the suit land without complying with Article 40(3) (b) of the constitution as regards full a prompt compensation and access to a court of law, the 1st respondent has violated the Petitioners right or protection to property. Fifthly, by conducting proceedings affecting the suit parcels in the absence of the Petitioner, the 1st respondent has violated the fair Administrative Action law both in the constitution and in the statute.

Sixthly, by failing to serve the Petitioner with the petition filed by the Interested Party, failing to give it an opportunity to make representations among other failures, the 1st respondents violated the Petitioners input a fair hearing enshrined in **Article 50 (1) of the Constitution**. Seventhly by purporting to take away the suit parcels from the Petitioner, that 1st respondent contravened the principles of land policy as enshrined in Article 60 of the Constitution which guarantees security of land rights, sustainable and productive management of land resources, equitable access to land among others.

For the above and other reasons, the Petitioner prays for the orders sought in this petition.

- 4) The petition is opposed by the 1st respondent and in this regard, Samuel Njoroge, the clerk of the National Assembly has sworn a replying affidavit dated 26/1/2024 in which he replies as follows: Firstly, the National Assembly derives its authority to exercise oversight of state organs from Article 95 of the constitution. Secondly, there is authority conferred on the National Assembly to consider public petition submitted to it pursuant to Article 119 of the Constitution which provides for the right of any person to petition Parliament to consider any matter within its authority.

Among the ways of achieving these functions is through establishment of committees of the house as provided under Article 124 of the Constitution. Thirdly, in June 2019, Mr Philip Njuguna, representing the Kandara Residents submitted a petition to the National Assembly alleging irregularities in the renewal of leases held by the Petitioner. The association claimed that the County Government of Murang'a had irregularly renewed a lease to the Petitioner. It sought the National Assembly's intervention.

Fourthly, the committee was informed of the existence of various court cases pending before the court at the time the petition to parliament this being considered. These suits included ELC No. 53 of 2018 at Murang'a. High court Constitutional Petition NO. 48 of 2019 at

Nairobi and ELC Judicial Review NO. 1 of 2019 at Murang'a. The Managing Director of the Petitioner informed the committee that it was not opposed to the recommendation made by the National Land Commission that the land it held should be restored to establish if it was in possession of more land that is registered in its name. This is confirmed by the minutes of 8/8/2019 and contrary to the Petitioners allegations ample opportunity was provided for the petitioner to present its case during the consideration of the petition by the Committee on Lands. The acquiescence of the Petitioner to the resurvey and the authority of the National Assembly to refer to such matters meant that the existence of active court cases could not deter the National Assembly from proceeding the way it did. Fifthly, the select committee on implementation invited the Cabinet Secretary for Lands and Physical Planning and the chairperson to its meetings in the years 2020 and 2021. It also received written submissions by the cabinet secretary for lands and Kandara Residents Association. It was submitted by the Ministry of Lands that a survey of the land legally held Delmonte in Murang'a and Kiambu counties had been carried out. However the two counties had not approved the subdivisions and the extension or renewal of the leases.

In conclusions, the 1st respondent justifies its action of making the recommendation complained of by the Petitioner. The justification is to be found in the authority of the National Assembly derived from Articles 95(2), 95(5) (b), 119 and 125 of the constitution of Kenya.

- 5) I did not see any affidavits by the 2nd, 3rd and 4th respondents.
- 6) The 1st Interested party filed a replying affidavit dated 15/4/2024 and sworn by Karira Kimara who says that he is the chairman of the Interested Party. The 1st Interested Party opposes the petition on the same grounds as the 1st respondent. I need not repeat what the 1st interested party said.
- 7) The issued raised by the 2nd Interested Party in the notice of motion dated 11/11/2024 that this petition is moot has already been dealt with in the ruling dated 2/4/202.
- 8) The Petitioner's director, Wayne Cook, swore a supplementary affidavit dated 18/6/2024 in which he raises the following new material. Firstly, the replying affidavit by the 1st interested party is incurably defective having been sworn by Karira Kimara who is not authorized to swear the same on behalf of the interested party because in civil suit no. E275 of 2021 vide a ruling dated 8/12/2022, he was restrained from assuming any office in the ranks of the Interested Party. Secondly, the Petitioner denies, ever expressing its

willingness to cede land to the 1st Interested Party or any other alleged victim of historical land injustice.

Thirdly, the Petitioner has ceded substantial land to the County government of Murang'a and Kiambu and the 1st Interested party's claim for settlement should be directed to the two County Governments. Fourthly, since the determination by the 2nd respondent was quashed by this court vide a judgment dated 28/4/2022 in ELC petition No. 3 of 2020 allowing the implementation of the three parliamentary reports would be tantamount to this court overriding its own decision, a mandate conferred on the Court of Appeal only. Fifthly, this petition does not relate to the issue pending in Nyeri Civil Appeal No. E163 of 2022 which relates to the quashing of the 2nd Respondents determination dated 7/2/2019. Instead this petition seeks the quashing of the three parliamentary reports tabled by the 1st respondent.

- 9) The only parties which filed written submissions were three, namely the 1st Interested Party, the 1st respondent and the Petitioner. The said submissions are dated 17/9/2024, 23/12/2024 and 25/9/2024 respectively.

The issues for determination identification by the 1st respondent are as follows.

- a) **Whether the National Assembly can consider petitions made under Article 119 of the constitution relating to land dispute.**
- b) **Whether the petition to parliament was barred by the doctrine of *subjudice*.**
- c) **Whether the Petitioner's constitution reports were violated.**

The 1st interested party identified five issues as follows:-

- a. **Whether Karira Kimara is duly authorized to swear the affidavit on behalf of the 1st Interested Party.**
- b. **whether the Petitioner has any proprietary reports over the subject properties.**
- c. **Whether parliament acted unlawfully in hearing and determining the 1st interested party's petitions before it.**
- d. **Whether the issues raised by the Petitioner herein violate the doctrine of *subjudice*.**
- e. **Whether the proceedings of the respective parliamentary committees violates the doctrine of *subjudice*.**

Finally, the Petitioner identified two issues which are:

- a. **Whether the 1st interested party's petition before the National Assembly offends the doctrine of *sub judice*.**

b. Whether the National Assembly committee proceedings violated the Petitioners constitutional rights.

10) I have carefully considered the petition in its entirety including the grounds, the affidavits by all the parties, the annexures, the written submissions and the law cited therein. I find that I should only confine myself to the issues raised by the Petitioner and the 1st respondent.

This is because these two are the main parties in this dispute and the findings on the issues will affect the 1st respondent and the 1st interested party in the same way. In effect, I will only determine the three (3) issues identified by the 1st respondent.

11) On the 1st of the 1st respondents issues, I find that the National Assembly can consider petitions relating to land disputes in exercise of its authority under Article provides as follows:

119(1) “Every person has a right to petition parliament to consider any matter within its authority, including to enact, amend or repeal any legislation.

2) Parliament shall make provision for the procedure for the exercise of this right”

Under **Article 95(20 of the constitution** under the role of the National Assembly it is provided as follows:

“ The National Assembly deliberates on and resolves issues of concern to the people”

It is clear from the two provisions of the constitution that the authority of the National Assembly to deliberate and resolve issues of concern to the people is unlimited and it includes resolution of land disputes.

12) As regards the second issue, I find that the petitions by the Interested Party were not subjudice. The said petitions were concerned with the extension of leases to the Petitioners and also ascertaining whether the Petitioner was in occupation of land that exceeded the land registered to it among other considerations.

Under **Section 13 of the Land Act, (Act No. 6 of 2012)** and the Land (Extension and Renewal of leases) rules 2017, it is the National and County Governments and the National Land Commission that have the mandate in renewal of leases. The judiciary has no role in this regard. The best that the Petitioner could do was to make his objections,

wait for the outcome and if that outcome violated any of its fundamental rights, then it could come to court.

Neither the National Assembly nor the National and County government could be restrained in the exercise of their constitutional and statutory mandate of considering government leases due for extension.

Secondly, under section 18(2) of the Land Registration Act and regulations 40 of the Land Registration (general) Regulations 2017, it is only the Land Registrar of the area where land in dispute is situated who has jurisdiction to determine a boundary dispute the allegation that the Petitioner occupied land in excess of the size registered to it could only be dealt with by Ministry of lands and after the determination, the dispute could come to this court as an appeal under regulation 40 (6) of the 2017 Regulations.

From the above, it is clear that 2nd respondent did not offend the doctrine of *sub judice*.

13) On the third and final it is not easy to decide on the credibility of the affidavits sworn by the parties. The absence of a trial and the fact that the evidence of key witnesses is only by affidavit and it was not subjected to cross examination means that the accuracy, veracity and credibility of this evidence cannot be tested. Yet, on the one hand we have the report of a committee of the National Assembly saying that the Petitioners director acquiesced to the suit land being surveyed and on the other hand, we have the same director implying that the survey exercise was an ambush on him and he did not consent to it. The burden of proof was on the Petitioner to prove that the violation of its constitutional rights happened. Without corroboration of its affidavit and in view of the denial by the clerk of the National Assembly in the replying affidavit on records, I find this burden on the Petitioner not discharged to the standard of balance of probabilities.

14) For the above stated reasons I find no merit in the amended petition dated 27-3-2024. I **dismiss** the amended petition with costs to the 1st interested party.

It is so ordered.

Dated, Signed and Delivered virtually at Murang'a this 30th day of September , 2025.

M.N. GICHERU

JUDGE.

Delivered online in the presence of; -

Court Assistant – Mwangi Njonjo

Petitioners Counsel – Mr Oduor and Mr Thuo

1st Respondents Counsel – Miss Akama

2nd Respondent's Counsel -

3rd Respondents Counsel

4th Respondents Counsel

1st Interested Party's counsel – Mr Kilonzo holding brief

2nd Interested Party's counsel – Miss Wairimu holding brief.