



REPUBLIC OF KENYA



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Endarasha Farmers Cooperative Society Limited v Commissioner for Co-operative Development & 11 others (Environment and Land Constitutional Petition E002 of 2023) [2025] KEELC 5654 (KLR) (31 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5654 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NYERI

ENVIRONMENT AND LAND CONSTITUTIONAL PETITION E002 OF 2023

JO OLOLA, J

JULY 31, 2025

BETWEEN

ENDARASHA FARMERS COOPERATIVE SOCIETY LIMITED ... PETITIONER

AND

**THE COMMISSIONER FOR CO-OPERATIVE DEVELOPMENT 1ST
RESPONDENT**

THE HONOURABLE ATTORNEY GENERAL 2ND RESPONDENT

THE NATIONAL LAND COMMISSION 3RD RESPONDENT

**ENDARASHA 591 PLOTS HOUSING AND INVESTMENT CO-OPERATIVE
SOCIETY LIMITED 4TH RESPONDENT**

**THE CABINET SECRETARY MINISTRY OF COOPERATIVE
DEVELOPMENT 5TH RESPONDENT**

THE CHIEF LAND REGISTRAR 6TH RESPONDENT

COUNTY GOVERNMENT OF NYERI 7TH RESPONDENT

JOHN KINGORI NDUMIA 8TH RESPONDENT

DAVID KAMAU 9TH RESPONDENT

LUCAS MWANGI MAINA 10TH RESPONDENT

JAMES WACHIRA 11TH RESPONDENT

NEPHAT MAINA GACHIIRI 12TH RESPONDENT



RULING

1. By the Notice of Motion dated 23rd June, 2023, Endarasha Farmers Co-Operative Society Limited (the Petitioner/Applicant) prays for orders as follows:
 1. Spent;
 2. Spent;
 3. That pending the hearing and determination of this application the 4th and 8th Respondents by themselves through their agents, servants or assigns be restrained from trespassing, constructing, developing, selling, offering for sale, transferring, leasing, charging or in any way interfering with plot Nos 147, 119, 378, 594, 379 and 386 or any part thereof and from harassing, threatening, intimidating or in any way causing disharmony of the Applicant and its members;
 4. That pending the hearing and determination of this application, the Honourable Court be pleased to order all tenants to pay their monthly rent to the Petitioner/Applicant;
 5. That owing to the security threat arising from the 4th Respondent, Police Officer Commanding Station (OCS) Endarasha Police Station to be ordered to supervise the enforcement of this order issued herein; and
 6. That the costs of this Application be provided for.
2. The Motion is supported by an Affidavit sworn by one Simon Chege who describes himself as a member and elected official of the Petitioner. It is premised on some 31 grounds listed on the face of the motion.
3. Endarasha 591 Plots Housing and Investment Co-Operative Society Limited (the 4th Respondent) as well as the County Government of Nyeri (the 7th Respondent) are opposed to the application. In their joint Grounds of Opposition dated 20th July, 2023, the said Respondents oppose the application on some five (5) grounds listed as follows:
 1. The Application is misconceived and incompetent;
 2. The Application is bad in law, a gross abuse of the process of the Court and untenable;
 3. The Application is fatally and incurably defective;
 4. The Application is frivolous and vexatious; and
 5. The Application is otherwise without merit and should be dismissed with costs.
4. In addition to the Grounds of Opposition the 7th Respondent has through its Legal Officer Fransisca N. Ndirangu filed a Replying Affidavit wherein she avers that it is not the role of the County Government to issue leases and that the Petitioner had failed to demonstrate that the County Government played any role in transferring or issuing leases. In addition, the 7th Respondent avers that the court lacks jurisdiction to entertain this suit as it is a commercial dispute disguised as a constitutional issue.



5. I have carefully perused and considered the application by the Petitioner as well as the response thereto by the 4th and 7th Respondents. I have similarly perused and considered the submissions and authorities placed before me by the Learned Advocate representing the said parties.
6. By its application before the court, the Petitioner prays for an order that the 4th and 8th Respondents be restrained from trespassing, constructing, developing, selling, transferring, leasing, charging or in any manner interfering with certain properties described as Plot Nos. 147, 119, 378, 594, 379 and 386. In addition, they pray for an order directing all tenants presumably in the said properties to pay their monthly rent to the Petitioner pending the hearing and determination of this application.
7. In their Petition as filed herein the Petitioner takes issue with a Separation Report dated 30th September, 2002 prepared by the Commissioner for Co-operative Development (the 1st Respondent) and urges the court to declare it unconstitutional. The Petitioner has urged the court to issue an order of certiorari quashing the said Report and an order of Mandamus compelling the National Land Commission (the 3rd Respondent) to nullify the transfer of the said Plots Nos. 159, 147, 378, 379 and 386 and to revert the same to the Petitioner as well as an order of prohibition prohibiting the 4th and 8th Respondents from dealing with the said properties.
8. From my perusal of the application and the entire Petition, it was evident that the acts complained about arose from the Separation Report dated 30th September, 2002. That being the case it was evident that the claim arose some twenty one (21) years before this Petition was filed on 23rd June, 2023.
9. As the Court of Appeal stated in the case of *James Kanyita Nderitu -vs- Attorney General & Another* (2019) eKLR:

“A constitutional petition, or for that matter judicial review proceedings, is not meant to circumvent the law on limitation of actions. Consequently, constitutional petitions filed in delay alleging violation of the Bill of Rights is to be considered on a case by case basis taking into account the explanation and merits of delay.”
10. In *Popat and Kotecha Property -vs- State Bank of India Staff Association* (2005) 7 SCC 510, the Supreme Court of India held as follows:

“.....the period of limitation is founded on public policy, its aim being to secure the quiet of the community, to suppress fraud and perjury, to quicken diligence and to prevent oppression. The statute i.e Limitation Act is founded on the most salutary principle of general and public policy and incorporates a principle of general and public policy and incorporates a principle of great benefit to the community. It has, with great propriety, been termed a statute of repose, peace and justice. The statute discourages litigation by burying in one common receptacle all the accumulations of the past times which are unexplained and have not from lapse of time become inexplicable. It has been said by John Voet, with singular felicity, that controversies are limited to a fixed period of time, lest they should be immortal while men are mortal..... Rules of limitation are not meant to destroy rights of parties..... They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly..... the law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipublicae ut sit finis litium (it is for general welfare that a period be put to litigation)”
11. In the matter before me, the Petition has been filed some 21 years from the time the alleged cause of action arose. The Petitioner alleges that the Separation Report dated 30th September 2002 was done



contrary to the laid down procedures and that the same led to violation of its constitutional rights to own property and hence necessitating the orders sought in the Petition and the application before me.

12. The Petitioner has not bothered to give any plausible reason why the Petition has arrived 21 years after its rights were infringed as alleged. It has not bothered to explain any difficulty or limitation it encountered in instituting the claim.
13. In my considered view, a period of 21 years is an inordinate delay that ought to be explained. A litigant cannot claim violation of its constitutional rights that occurred 21 years earlier and suddenly seek recourse to the court seeking interim orders.
14. In the premises, I find no merit in the Motion dated 23rd June, 2023. I dismiss the same with costs to the 4th and 7th Respondents.

RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT MOMBASA THIS 31ST DAY OF JULY, 2025

.....

J.O. OLOLA

JUDGE

In the presence of:

- a. Ms. Firdaus Court Assistant.
- b. Mr. Orina representing the Petitioner/Applicant
- c. Ms. Njuguna holding brief for W. Gikonyo Advocate for the Respondents.

