

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT NYERI

ELC CONSTITUTIONAL PETITION NO 1 OF 2023

**IN THE MATTER OF: ARTICLES 2, 3, 19, 21, 22, 23, 40, 47,
62, 174 & 258 OF THE CONSTITUTION
OF KENYA 2010**

AND

**IN THE MATTER OF: ALLEGED CONTRAVENTION OF
ARTICLES 35, 40, 47, 60, 174 & 232
OF THE CONSTITUTION OF KENYA,
2010**

AND

**IN THE MATTER OF: INTENDED ALIENATION OF PUBLIC
LAND COMPRISED OF KIAMWANGI
COLONIAL VILLAGE
BETWEEN**

SAMUEL NDUGIRE MWANGI PETITIONER

VERSUS

COUNTY GOVERNMENT OF NYERI 1ST RESPONDENT

NATIONAL LAND COMMISSION 2ND RESPONDENT

JUDGMENT

Background

1. By the Petition dated 7th June 2023 as filed on 12th June 2023, Samuel Ndugire Mwangi (the Petitioner) prays for the following:

- a) A declaration that the Petitioner's rights, individually or in association with others, to access information held by the Respondents and information held by other persons and required for the exercise or protection of any right or fundamental freedom guaranteed by Article 35 of the Constitution have been contravened;**
- b) A declaration the actions of the Respondents jointly and/or severally are a violation of the petitioner's rights protected under the Constitution of Kenya Articles 10, 35(1) and (2), 40,47 and 60;**
- c) A declaration that any alienation of the land forming Kiamwangi Colonial Village without the participation of and disclosures of information to the Petitioner and other bonafide residents of the village is unconstitutional;**
- d) A declaration that any alienation of the land forming Kiamwangi Colonial Village to persons other than the bona fide residents of the Village is unconstitutional;**
- e) An order of mandamus directing the Respondent jointly and/or severally their agents, assigns,**

employees or servants to disclose to the petitioner and other interested persons the intended beneficiaries of alienation of the land forming Kiamwangi Colonial Village;

- f) An order of prohibition restraining the Respondents jointly and/or severally their agents, assigns, employees or servants from alienating any part of the land forming Kiamwangi Colonial Village to other persons other than the bonafide residents of the village;**
- g) An order quashing any alienation of the land forming Kiamwangi Colonial Village to the strangers if already done and cancellation of any title deeds issued to strangers and the land do revert back to the 1st Respondents for proper alienation; and**
- h) Costs and interest.**

2. Those prayers arise from the Petitioner's contention that the 1st Respondent is registered to hold L. R. No. Iriaini/Kairia/1576 in trust for the Petitioner and 35 other residents of Kiamwangi Colonial Village and that following directives made by the President in 2017 that members of the Colonial Villages be

issued with title deeds for the plots they occupy, the 2nd Respondent and the local administration demarcated the village and commenced the process of alienating the land.

3. It is the Petitioner's case that the Respondents have allocated portions of the village plots to strangers and that they have allocated the residents plots where they do not occupy. The Petitioner further avers that the process of allocation is shrouded in secrecy and that the Respondents are conducting it in an opaque manner without involving the Petitioner and other residents of the village and that the same violates their social and economic rights as provided for under Article 43 of the Constitution. It is further the Petitioner's case that the Respondents did not conduct proper public participation before alienating the land.
4. The Petitioner accuses the Respondents of failing, refusing and/or ignoring to involve the affected persons in decision making in relation to the alienation of the land in contravention of Articles 10, 35(1), (2), 40 47 and 60 of the Constitution.
5. The County Government of Nyeri (the 1st Respondent) is opposed to the grant of the orders sought. In a Replying

Affidavit sworn on its behalf by its Senior Assistant Director of Physical Planning Joseph Njomo, the 1st Respondent avers that the land parcels involved are Iriaini/Kiaria/743 and Iriaini/Kiaria/759 which form the market and the village.

6. While admitting that the resettlement of the squatters in the colonial villages was as a result of a directive from the President, the 1st Respondent avers that the exercise became challenging due to overlap between some squatters and plot owners on L.R. No. Iriaini/Kiaria/743 and that as such, the plot owners were requested to give the 1st Respondent time to first resettle squatters on L.R. No. Iriaini/Kiaria/759.
7. The 1st Respondent avers that contrary to the Petitioner's allegations that the process of alienation was not subject to public participation, the planning and surveying has all along been participatory and consultative and that the local administration and the local political leadership have been engaged up to the approval of the County Assembly of Nyeri.
8. The 1st Respondent avers further that the consultant is yet to compile the final list of squatters to be issued with title deeds at Kiamwangi village and that the delay has been occasioned by the expiry of his contract and budget constraints faced by

the 1st Respondent which endeavours to extend his contract and fast track his payments.

9. It is the 1st Respondent's case that the Petitioner has filed the Petition prematurely and that he is underserving of the orders sought.
10. I have carefully perused and considered the Petition as well as the response thereto. I have similarly perused the submissions and authorities placed before me by the Learned Advocates representing the parties herein.
11. By his Petition before the court, the Petitioner who describes himself as the Chairman of Kiamwangi Colonial Village residents asserts that he has brought this Petition on his own behalf and on behalf of 35 other residents of the said village. It is the Petitioner's case that the parcel of land in which they live and which he describes as L.R. No. Iriaini/Kairia/1576 is registered in the name of the 1st Respondent County Government in trust for the said residents.
12. The Petitioner further asserts that sometime in the year 2017, the then President of the Republic of Kenya issued an executive directive that all the residents of the Colonial Village be issued with title deeds for the respective plots under their

occupation. The Petitioner avers that following the said directive, the Respondents had together with the local administration demarcated the land in question and commenced the process of alienating the land.

13. It is the Petitioner's case that the Respondents have allocated portions of the land in question to strangers and that some of the residents had been allocated plots of land at places that they do not occupy. The Petitioner complains that the said process of alienation has been shrouded in secrecy and that the Respondents are conducting the exercise in an opaque manner and without the participation of the public.
14. The Petitioner submits that the said acts and/or omissions of the Respondents infringe and violate the provisions of the constitution and hence the orders they seek by this Petition.
15. While admitting that there was some Presidential directive requiring them to resettle the residents of Kiamwangi village, the 1st Respondent avers that the parcels of land involved were not the one mentioned by the Petitioner but that the exercise involved two parcels of land being LR No. Iriaini/Kairia/743 and Iriaini/Kairia/759 which form the market and the village.

16. The 1st Respondent avers that the exercise became challenging due to an overlap between some squatters and plot owners on L.R. No. Iriaini/Kairia/743 and that as such the plot owners were requested to give the 1st Respondent time to first resettle the squatters on L.R. No. Iriaini/Kairia/759.
17. The 1st Respondent denies that the exercise was carried out without public participation. On the contrary, the 1st Respondent asserts that the planning and survey exercise has all along been participatory and consultative. It is their case that the consultant is yet to compile the final list of those to be issued with title deeds due to budgetary constraints facing the 1st Respondent.
18. Where there are allegations of violation of the Bill of Rights, this court is bound to adopt the interpretation that most favours the enforcement of those rights. Article 2(1) of the Constitution provides that the Constitution is the Supreme Law of the Republic and binds all persons.
19. Article 259 of the Constitution enjoins the court to interpret the Constitution in a manner that promotes its purposes, values and principles, advances the rule of law, human rights,

and fundamental freedoms in the Bill of Rights, and in a manner that contributes to good governance.

20. In the matter herein, the Petitioner craves a declaration that the manner in which the Respondents have alienated and allocated the land in question contravenes Articles 10, 35(1), (2), 40, 47, and 60 of the Constitution. The substratum of the Petition lies in the conduct of the Respondents who are said to have alienated the suit land secretly and without proper public participation of the residents of Kiamwangi Colonial Village.
21. In support of his case, the Petitioner avers that there was a Presidential directive that they be issued with title deeds for the respective portions of the land under their occupation and he accuses the Respondents of secretly issuing portions of the land to those he describes as strangers. It was also the Petitioner's case that some of the residents had been issued with plots in different sections other than those they occupy.
22. As it turned out the alleged Presidential directive was not exhibited in the Petition and it was unclear to me whether it referred to the parcel of land that the Petitioner refers to as Iriaini/Kairia/1576 or the two parcels that the 1st Respondent refers to as Iriaini/Kairia/743 and Iriaini/Kairia/759. It was also

unclear to me under what provisions of the law the directions had been issued and whether or not the same was legally binding on the Respondents.

23. While the Petitioner has annexed to the Supporting Affidavit a list of some three (3) people said to be the strangers that had been allocated the plots in Kiamwangi village, there was no evidence of any allocation attached or for the portions they had occupied or any titles issued to them. It was clear from a perusal of the Annexure marked as "SNM 3", that that was just a mere piece of paper where one had chosen to print the 3 names.
24. In addition, the Petitioner has not produced any iota of evidence from which this court can make the deduction that some of the residents of the said Kiamwangi village have been allocated parcels of land separate from the sections they currently occupy. From the material placed before the court, it was apparent that though the 1st Respondent had planned and surveyed the area, no such allocations had been done as the exercise was yet to be completed.

25. That being the case, I am in agreement with the 1st Respondent that this Petition is misconceived and premature. I do not find any merit therein and I hereby dismiss the same.

26. Each party shall bear their own costs.

Judgement dated, signed and delivered in open court and virtually at Mombasa this 13th day of November, 2025

.....
J.O. OLOLA
JUDGE

In the presence of:

- a) Ms. Firdaus Court Assistant.
- b) Ms. Ngugi holding brief for Kahiga Advocate for the Petitioners
- c) Ms. Swaka Advocate for the 1st Respondents
- d) No appearance for the 2nd Respondent