

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KAJIADO

ELCLC E126 OF 2024

WAGITHUKU WAINAINA.....PLAINTIFF

VERSUS

GOVERNOR, KAJIADO COUNTY1ST

DEFENDANT

CEC MEMBER LANDS,

PHYSICAL PLANNING & URBAN DEVELOPMENT2ND DEFENDANT

JUDGMENT

Introduction

1. As I write this judgement, I am reminded of the words of Jesus of Nazareth in the book of **Luke 14: 28-30 (NIV)**, when he used the analogy of a person who intends to build a house in the following words;

“Suppose one of you wants to build a tower. Won’t you first sit down and estimate the cost to see if you have enough money to complete

it? For if you lay the foundation and are not able to finish it, everyone who sees it will ridicule you, saying, ‘This person began to build and wasn’t able to finish.’”

2. The Plaintiff’s claim is premised on allegation that he is the registered bona fide owner of Plot No. 69/Business-Kisamis Trading Centre (B56) located at Kisamis Trading Centre in Kajiado County having purchased it from its original owner Kuntai Parmesa Ntagito. Following the conclusion of the transaction, the plot was registered and transferred to him on 14th March, 1997 by Olkejuado County Council. He states that he paid the requisite transfer fee of Kshs. 2,500/=. The Plaintiff claims that he has been paying land rates for the plot since then and even commenced development thereon after approval by the County Government of Kajiado.
3. According to the Plaintiff, the Plot was validated as B56 on 9th October, 2023 following a validation exercise by the Defendants on 7th September, 2023. However, the Plaintiff asserts that he was not issued with its new certificate as he was entitled to on allegations that there existed an ownership dispute in respect to the plot that needed to be resolved first.
4. The Plaintiff claims that although he attended a dispute resolution hearing on 28th March, 2024, before the Dispute Resolution Committee constituted

by the County Government of Kajiado, he has never received the verdict despite repeated enquiries. On 8th October, 2024, the Plaintiff demanded issuance of the verdict from the County Government of Kajiado County and its Dispute Resolution Committee within 14 days but no response was forthcoming. He asserts that he was prompted to institute this suit by the lack of response to his notice signifying his intention to institute legal proceedings against the Defendants.

5. The Plaintiff contends that Defendants' adamant withholding of information contravenes his rights under Articles 35 and 50 of the Constitution yet they are fully aware of his plot ownership details.
6. The Plaintiff instituted these legal proceedings against the Defendants through a Plaint dated 8th November, 2024 seeking for the following orders;
 - a) *An order of Mandamus does issue compelling the Defendants to release the verdict of a Dispute Resolution Committee and issue a certificate of ownership to Plot No. 69/Business (56)- Kisamis Trading Centre.*

- b) *An order of Prohibition does issue prohibiting the Defendants from disposing, transferring or re-allocating Plot No. 69/Business (B56)-Kisamis Trading Centre to the prejudice of the Plaintiff.*
- c) *A permanent injunction restraining the Defendants or any of them by themselves, their servants, employees and/or agents from dispossessing the Plaintiff of the suit property, entering into, occupying, evicting Plaintiffs agents, employees and/or servants, constructing, fencing, selling, leasing, disposing any interest of and/or undertaking any development or in any way interfering with the property and/or the Plaintiff's quiet possession and enjoyment of the suit property known as Plot B56-Kisamis Trading Centre._*
- d) *A declaration that the Plaintiff is the bona fide owner of Plot B56-Kisamis Trading Centre.*
- e) *Costs of this suit and interest thereon.*
- f) *Any other or further relief this honourable court may deem fit.*
7. The question of the competence of the Plaintiff's suit prominently glares at me for the reasons I will explain here below.

8. A litigant who wishes to file a suit, just like a person who wishes to construct a house, ought to first sit down and consider a number of questions. The following six (6) questions are critical before institution of any suit;
- i. **What is my complaint/cause of action?**
 - ii. **Against whom should my complaint/cause of action be directed to?**
 - iii. **What remedies/reliefs do I intend to seek?**
 - iv. **Which court/tribunal has the jurisdiction to consider and determine my complaint/cause of action and grant me the remedies/reliefs?**
 - v. **Are there any legal barriers to my intended action?**
 - vi. **Considering the nature of my action and the remedies/reliefs I intend to seek, in what manner should I institute my suit?**

9. I will say it this way;

‘Suppose one wants to file a suit. He must first sit down and assess, if, his cause is actionable and allowable in law; enforceable against the person he intends to sue; whether the remedies he seeks are available and the manner and form in which he ought to present it to the appropriate forum. Otherwise, he may initiate a suit that he cannot sustain to its logical conclusion and end up wasting his time and money.’

10. Upon evaluating the Plaintiff's suit against the above six (6) questions, it is obvious that the Plaintiff sued non-legal entities incapable of suing or being sued. The Plaintiff's suit is against the Governor of Kajiado County and the CEC in charge of Lands, Physical Planning & Urban Development. Under section 6 of the County Governments Act, it is the County Government that is a body corporate with perpetual succession capable of suing and being sued. It is the County Government that ought to be sued in case of a complaint against any of its officers, or its organs as in this case, the dispute resolution committee, unless the officers are being sued in their personal capacities.

11. The Plaintiff further seeks judicial review orders of mandamus and prohibition. Obviously, these are not orders that may be granted in an ordinary civil suit. Order 53 of the Civil Procedure Rules stipulates the procedure and manner for seeking judicial review orders. Alternatively, the Plaintiff should have considered a constitutional petition under article 22 of the Constitution of Kenya that allows the court under article 23 to grant amongst other orders, judicial review orders.

12. The Supreme Court of Kenya in the case of *Isaac Aluoch Polo Aluochier vs IEBC & 17 others, Pet No. 20 (E023) of 2023*, had this to say on judicial review;

“Judicial review is a special jurisdiction. In so far as no rules have been made under article 47 of the Constitution, there can be no vacuum in law. A party approaching court for judicial review orders of certiorari, mandamus and prohibition must comply with the procedure under Order 53 of the Civil Procedure Rules.”

13. The Plaintiff further seeks for a declaration that he is the bona fide owner of the suit property and for an order of permanent injunction at the same time seeking to compel the release of the verdict of the dispute resolution committee. What if the verdict is to the effect that the Plaintiff is not the owner of the suit property? The orders sought are premature and preemptive. They cannot issue before the Plaintiff establishes that he is the legal owner of the suit property.

14. From the foregoing, the Plaintiffs suit as presented is incompetent and the same must be struck out, which the court hereby does. The court makes no orders as to costs considering that the Defendants did not enter appearance or participate in these proceedings.

It is so ordered.

Dated Signed and Delivered at Kajiado Virtually this 5th Day of March 2026.

M.D. MWANGI
JUDGE

In the virtual presence of:

Mr. Njuguna for the Plaintiff

N/A by the Defendants

Court Assistant: Mpoye

M.D. MWANGI
JUDGE