



Republic v National Land Commission; Thiru & another (Interested Parties) (Joined as Chairman and Secretary of Mbari ya Thiru Welfare Group) (Environment and Land Judicial Review Miscellaneous Application E025 of 2022) [2024] KEELC 379 (KLR) (25 January 2024) (Judgment)

Neutral citation: [2024] KEELC 379 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND JUDICIAL REVIEW
MISCELLANEOUS APPLICATION E025 OF 2022**

LN MBUGUA, J

JANUARY 25, 2024

BETWEEN

REPUBLIC APPLICANT

AND

NATIONAL LAND COMMISSION RESPONDENT

AND

PERMINUS KANGETHE THIRU INTERESTED PARTY

ELIUD NG'ANG'A THIRU INTERESTED PARTY

JOINED AS CHAIRMAN AND SECRETARY OF MBARI YA THIRU WELFARE GROUP

JUDGMENT

1. The Exparte Applicant claims to be the registered owner of land parcels L.R. No. 1159/340 (original 1149/112/3) and Title No.94978. Its grievances stems from the fact that the interested party had lodged a complaint with the National Land Commission (NLC) on the basis of historical land injustices.

Case for the Exparte Applicant

2. Leave was granted to the Exparte Applicant on 6.12.2022 to institute the Judicial Review proceedings of which the substantive motion was filed on 13.12.2022 where the Exparte Applicant seeks the following orders;



- i. That Orders of Certiorari to call, remove, deliver up to this Honourable Court and quash the proceedings, directions/orders, notices by the Respondent directing or admitting, entertaining, hearing, inquiry or review of grant, dispositions of or title to private land known as LR. No. 1159/340 (original 1149/112/3) and Title No. 94978 registered in the name of Ex-parte Applicant – Talaki Limited – pursuant to the Complaint No. NLC/HLI/3665/202 dated and lodged on 1st and 20th September 2021 by the Mbari Ya Thiru Welfare Group or anyone on alleged historical injustices.
 - ii. That Orders of Prohibition against the Respondent, either by itself or through any officer, commissioners acting through or under it from admitting, entertaining, proceeding, conducting an inquiry, presiding over a hearing, inquiry for review of and or in any manner interfere with the grant, dispositions of or title to or affecting private land known as LR. No. 1159/340 (original 1149/112/3) and Title No. 94978 registered in the name of Ex-parte Applicant-Talaki Limited – pursuant to the Complaint No. NLC/HLI/3665/202 dated and lodged on 1st and 20th September 2021 by the Mbari ya Thiru Welfare Group and or any such complaint and review based on any such alleged historical injustices.
 - iii. That this Honourable Court do grant any other or further relief that it may deem fit to grant.
3. The main ground in support of the case of the Exparte Applicant as set out in the statutory statement is that on 20/9/2021, the Interested Party by a letter dated 1st September 2021 lodged a claim for land arising out of alleged historical injustices namely claim 25, L.O 191 for about 161 acres south of Nairobi River Dagoretti to the Respondent-comprising the suit property – for review under Article 67 (2) (e) of *the Constitution* of Kenya and section 15 of the *National Land Commission Act* as read together with section 38 of the Land Laws (Amendment) Act 2016 laws of Kenya.
 4. The Exparte Applicant contends that the claim of the Interested Party was statute barred by dint of Section 15(3) (e) of the National Land Commission (NLC) and Section 38 of the Land Laws Amendment Act of 2016, hence the Commission had no jurisdiction to hear the matter.
 5. In its submissions dated 10.8.2023, the exparte Applicant reiterated the averments set out in its statutory statement, emphasizing that it had filed a Preliminary Objection dated 25.11.2022 on account of jurisdiction of NLC but the Preliminary Objection was dismissed by the Respondent.
 6. In support of its case, the Exparte Applicant cited the cases of Mwai Kibaki vs. Daniel Toroitich Arap Moi (1999) eKLR, Republic vs. Kenyatta University Exparte Gladys Nyambura Njogu (2009) eKLR and IEBC vs. National Super Alliance (NASA) Kenya & 6 Others (2017) EKLR.

Case for the Respondent

7. The Respondent opposed the suit vide the Replying Affidavit of one Edmond Gichuru, who is a Deputy Director legal affairs of the respondent sworn on 19.6.2023. He avers that NLC dismissed the Preliminary Objection of the Exparte Applicant on the basis that Section 15 of NLC Act no. 5 of 2012 has its commencement date as 21.9.2016 and not 2.5.2012 as set out in the Principle Act.
8. In their submissions dated 11.10.2023, the respondent reiterated the same arguments, the ones set out in their replying affidavit.

Case for the interested party

9. The Interested Parties opposed the suit vide the Replying Affidavit sworn by one Perminus Kangethe Thiru on 16.6.2023. He identifies himself as the Chairman of the Interested Parties. He contends



that they lodged their claim on 20.9.2021 with NLC basing the same on historical land injustices. He avers that their claim was properly vetted under Section 15 (3) and (4) of NLC Act in view of the amendments brought about by Section 38 of the Land Laws Amendment Act of 2016.

10. In their rather lengthy submissions dated 1.9.2023, the interested parties argued that NLC had powers to entertain the complaint. Some of the relevant decisions relied upon by the Interested Parties include Mutuma Angaine vs. National Land Commission & 3 others (2021) eKLR, Mwai Kibaki vs. Daniel Moi (1999) eKLR as well as Henry Wambega & 733 others v Attorney General & 9 others [2020] eKLR.

Determination

11. Upon review of the pleadings and submissions of the parties herein, I find that the single question falling for determination before this court is whether the Respondent had jurisdiction to entertain the complaint lodged by the Interested Parties. There is no controversy that the said complaint was lodged with NLC on 20.9.2021, was registered as NCL/HLI/3665/2021 and it was based on historical land injustices. The Ex parte Applicant avers that the claim was statute barred.

12. The provisions of Section 38 of the Land Laws Amendment Act brought about amendments to Section 15 of the [National Land Commission Act](#) in the following words;

“(1) Pursuant to Article 67 (3) of [the Constitution](#), the Commission shall receive, admit and investigate all historical land injustice complaints and recommend appropriate redress.

3. A historical land claim may only be admitted, registered and processed by the Commission if it meets the following criteria.....

it is brought within five years from the date of commencement of this Act”.

13. The Act in question is the Land Laws Amendment Act of 2016 which commenced on 21.9.2016. The lapse of 5 years would fall on 21.9.2021.

14. In the case of Republic v National Land Commission & 4 others Ex parte Mutuma Angaine & 4 others; Ontulili Mt. Kenya Forest Squatters & 3 others Interested Parties [2021] eKLR, I stated as follows on a similar issue;

“I find it necessary to point out that limitation on claims lodged before NLC starts to run from 21st September 2016 going by the provisions of Section 38 of The Land Laws Amendment Act of 2016.”

15. In the above cited case, the court went ahead to cite the case of Chief Land Registrar & 4 Others vs. Nathan Tirop Koech & 4 Others, where the Court of Appeal stated that;

“[The Constitution](#) does not define what historical injustice is. However, Section 15 (2) of the [National Land Commission Act](#) as amended by Section 38 of the Land Laws (Amendment) Act No. 28 of 2016 defines historical injustice. The commencement date of the Land Laws (Amendment) Act is 21st September 2016. Section 15 (3) (e) of the [National Land Commission Act](#) as amended introduces a limitation period of five years for claims relating to historical land injustice. A claim on historical injustice shall not be entertained after a period of five years from the date of commencement of the Land Laws (Amendment) Act. Emphasize added”.



16. The legal position is plainly clear and I need not belabour on the issue, save to state that the claim of the Interested Party was lodged within time that is on 20.9.2021. It follows that NLC had jurisdiction to entertain the complaint of the Interested Party. The upshot of the findings herein is that the claim of the Exparte Applicant is not merited, the suit is hereby dismissed with costs to the respondent and the interested party.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 25TH DAY OF JANUARY, 2024
THROUGH MICROSOFT TEAMS.**

LUCY N. MBUGUA

JUDGE

In the presence of:-

Mr. Olala holding brief for Mr. Litoro for the Ex Parte – Applicant

Mr. Mwaura for the Interested Parties

Court Assistant: Eddel

