



**M'ringera v Attorney General & 3 others (Petition 2 of 2022)
[2024] KEELC 3239 (KLR) (22 February 2024) (Judgment)**

Neutral citation: [2024] KEELC 3239 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
PETITION 2 OF 2022
CK YANO, J
FEBRUARY 22, 2024**

**IN THE MATTER OF THE ALLEGED CONTRAVENTION OF
ARTICLES 40,43,45 & 47 OF THE CONSTITUTION OF KENYA,2010.**

BETWEEN

DAVID KINYUA M'RINGERA PETITIONER

AND

THE HON. ATTORNEY GENERAL 1ST RESPONDENT

THE COMMISSIONER OF LANDS 2ND RESPONDENT

THE NATIONAL LANDS COMMISSION 3RD RESPONDENT

THE COUNTY GOVERNMENT OF MERU 4TH RESPONDENT

JUDGMENT

1. By a petition dated 10th May, 2021, the petitioner is seeking the following orders: -
 - a. An order do issue restraining any purported demolition and forceful eviction of the Petitioner by the 4th Respondent, by themselves, their agents, servants or assignee from LR No Ntima/Takira 1512 amended to LR Ntima/Takira 3915.
 - b. A declaration do issue declaring that any forceful eviction and demolition of the structural development on LR No Ntima/Takira 1512 amended to LR No Ntima/Takira 3915 is illegal, unprocedural and contrary to Articles 40, 43 & 47 of the Constitution of Kenya, 2010 and is therefore null and void.
 - c. A declaration do issue declaring the amendment at the land Registry records in Meru County creating LR No Ntima/Takira 3915 is illegal, unprocedural and contrary to Articles 60, 61, 62, 64 & 67 of the Constitution of Kenya, 2010 and is therefore null and void.



- d. That this Honourable Court do make, issue and give such further, other and consequential orders, writs and directions as it may consider appropriate.
- e. Costs of this petition.

The Petitioner's Case.

2. The petition is supported by an affidavit sworn by David Kinyua M'ringera the Petitioner on 11th May 2021 and the annexures thereto. The Petitioner avers that he is the son of the late M'ringera Kamanga and has been in lawful and quiet occupation of plot No Ntima/Takira 1512 from 8th November, 1961. He has annexed minute 29/69 of the African District Council of Meru held on the 12th to 13th December, 1961 marked DKM-01.
3. The petitioner states that his father paid for sale of plot Application form on 10th February, 1969 to the Urban Council of Meru and was allocated LR No Ntima/Takira 1512. He has annexed a copy of a receipt marked KM-02.
4. The Petitioner avers that the ward Administrator-Ntima West of County Government of Meru issued him with a notice in September 2020 in respect to the said plot. A copy of the notice to vacate has been annexed and marked DKM-03.
5. The petitioner avers that the said ward Administrator has also issued him with a letter dated 29th January 2021 which is annexed and marked DKM-04.
6. The petitioner states that on 24th March 2021 he presented a copy of the minute 29/61 of the African District Council of Meru held on the 12th to 13th December 1961 approving M'ringera Kamanga's application on LR No Ntima/Takira 1512 at a meeting which was chaired by the Assistant County Commissioner Miiiriga Mieru West Meru County. That thereafter after the said meeting, The Assistant Chief Kirugua sub-location physically and violently denied him and the Meru County Chief-surveyor access to determine the beacons to LR No Ntima/Takira 1512.
7. The Petitioner states that he did an official Land Registration search at the Land Registry in Meru County on 5th May 2021 and established that LR No Ntima/Takira 1512 was amended to read LR No Ntima/Takira 3915 on the 7th of March 2017 without notice, consultation or consent of the petitioner. A copy of the official Land Registration search marked DKM-05 has been annexed.
8. It is the petitioner's contention that the amendment of 7th March 2017 at the land registry in Meru County creating LR No Ntima/Takira 3915 and subsequent registration of Meru County Council as the proprietor is an infringement of his Constitutional right to ownership of property. That the Ministry of Lands has trampled on his Constitutional rights by fraudulently amending land registry records of the said plot.
9. The Petitioner avers that the officers of the County Government of Meru, the Ministry of Interior and Co-ordination of National Government and the Ministry of Lands have threatened demolition of structural developments on LR No Ntima/Takira 1512 which is a gross threat to his Constitutional rights.
10. The petitioner further avers that he has brought the petition on his own behalf and that of his Mother Marion Kaguri and all his brothers and sisters.

1st Respondent's Case

11. The 1st Respondent filed grounds of opposition dated 21st September 2023 on the following grounds:-



1. That there are no orders sought against the Attorney General and as such ought to be struck off the proceedings
 2. That the petition as presented does not disclose any cause of action against the Attorney General
 3. That the petition is fatally defective and badly drawn and should therefore be struck out in limine.
12. The 1st respondent prays that the Petition be dismissed.
 13. The other respondents did not file any responses to the petition
 14. The Petition was canvassed by way of Written Submissions.

Petitioners Submission

15. In his submissions dated 15th January, 2024 filed through the firm of C.M. Kimathi & Co. Advocates, the Petitioner gave a background of the petition and identified two issues for determination being, who owned LR Ntima/Ntakira 1512 or the subsequent LR No Ntima/Ntakira 3915, and whether the process of acquiring LR Ntima/Ntakira 1512/3915 from the petitioner was procedural or Constitutional.
16. On the first issue, the Petitioner's counsel submitted that LR Ntima/Ntakira 1512/3915 belonged to the Petitioner's father in the year 1961 as per the minutes of the African District Council. Learned Counsel submitted that in determining a land question in Kenya, you have to consider the historical context of the land in question. The petitioner relied on an Advisory Opinion No 2 of 2014 *In The Matter of the National Land Commission* (2015)eKLR, where the Supreme court stated as follows:-

“Land as a factor in social and economic activity in Kenya, has been a subject of constant interest and of controversy, especially from a political stand point. Thus the special importance of Chapter five of the *Constitution*. Consequently, such a background is relevant as an informative dimension in interpretation. Indeed, this court has previously underlined the need for a historical and cultural perspective when interpreting the *Constitution*”.
17. The Petitioner submitted that it is not in dispute that the land was allotted to one late M'ringera and that though he did not have a certificate of Title, he had letters and the minutes to confirm ownership as required by Law.
18. The petitioner's counsel submitted that courts have held that allotment letters confers the same rights as titles and relied on the case of *Wreck Motor Enterprises v The Commissioner of Lands and 3 others* Nairobi Civil Appeal No 71 of 1997 (Unreported); *Joseph Arap Ng'ok v Justice Moijo Ole Keiwua* NAI Civil Application No 60 of 1997 and the case of *Rukaya Ali Mohamed v David Gikonyo Nambacha & another* Kisumu HCCA No 9 of 2004.
19. It is the petitioner's submission that in the above decisions, it is to be noted that even though the Petitioner did not hold title to the suit land, given that he had met the conditions of the allotment, including payment of consideration, the letter of allotment conferred absolute right of ownership or proprietorship through which he acquired an interest in the suit land, Subject to the determination on its proprietary or otherwise. That right of ownership is afforded due protection of the law under Section 75 of the old Constitution and under Article 40 of the *Constitution* 2010 and further that Article 40 (6) does not protect title that is tainted with impropriety.



20. As regards the second issue, learned counsel for the Petitioner submitted that the documents on record demonstrated that the actions by the 4th respondent were arbitrary and did not involve any consultations as required by Law. It is submitted that the 4th respondent bestowed himself rights and powers that were not in their custody or within their mandate. Counsel for the petitioner submitted that the County Government or even the Land Registrar cannot cancel any land allotment as such powers are only vested in the Courts. It is the petitioner's submission that the estate of the late Ringera has never been sued in any courts of Law regarding the matter. The petitioner's counsel cited provisions of section 60 and 61 of the Registration of Titles Act (repealed) and the case of *Satima Enterprises Ltd v Registrar of Titles & 2 others* (2012) eKLR. It is submitted that there is no evidence on record to show that the respondents accorded the Petitioner the right to be heard before taking the action to revoke the letter of allotment as they did. The petitioner further submitted that that action violated the right to fair administrative action guaranteed to the petitioner by the *Constitution* and Common Law.
21. Learned counsel for the petitioner submitted that the petitioner's rights of ownership of property under Article 40 of the *Constitution* were infringed by the respondents and urged the court to grant the orders sought in the Petition.

1ST Respondent's Submission

22. The Honourable Attorney General through Ms. Mbaikyatta Darlive, Senior Litigation Counsel filed submissions dated 15th December, 2023 wherein they gave a background of the case. The 1st respondent identified the issue for determination to be whether there is any cause of action against the 1st respondent and submitted that the same is in the negative. That there is no right to relief that there exists as against the 1st respondent. The 1st respondent cited the provisions of Order 1 rule 3 and 10(2) of the Civil Procedure Rules and submitted that the petitioner having failed to disclose any cause of action against the 1st respondent, the same ought to be struck off the suit. The 1st respondent relied on the case of *Simion Ogada Andiwo v Safaricom PLC & 15 others* (2021)eKLR.
23. The 1st respondent pointed out that it does not represent any of the other respondents in the suit and cited Article 156 (4) of the *Constitution* of Kenya and section 12 of the *Government Proceedings Act* Cap.40 Laws of Kenya. Learned counsel for the 1st respondent submitted that the petition as is does not disclose any cause of action against the Government. That the National Lands Commission is an independent Constitutional Commission established under Article 67 (1) of the *Constitution* of Kenya and as such is not represented by the 1st respondent. Additionally, that the office of the Commissioner of land is defunct office having been replaced by the National Lands Commission and the parties whom action has been brought against are not represented by the Office of the Attorney General. The 1st respondent relied in the case of *Commissioner of Lands & another v Kitbinji Murugu M'agere* (2014)eKLR.
24. It is the 1st respondent's submission that the Petition ought to be struck out as it does not disclose any cause of action and it is fatally defective. The 1st respondent cited the provisions of Order 2 rule 15 of the *Civil Procedure Rules* and submitted that the petition is scandalous, frivolous and vexatious as it discloses no reasonable cause of action against the 1st respondent. The 1st respondent relied on the case of *DT Dobie & Co (K) v Muchina* (1982)KLR.
25. It is also the 1st respondent's submission that the Petitioner has not raised sufficient facts that support the prayer as against the 1st respondent and that the Petition as is does not justify any legal remedy against the 1st respondent and has failed to demonstrate any legal basis as to why the 1st respondent has been dragged into the suit.



26. The 1st respondent urged the court to find that the suit is a non-starter, frivolous, vexatious and an abuse of the court process and should be dismissed.

Determination

27. This Petition has been brought by the Petitioner, David Kinyua M'Ringer who has stated that he is the son of the late M'Ringer Kamanga who is said to have paid for sale of Plot application form on 10th February, 1969 to the Urban Council of Meru and was allocated LR No Ntima/Ntakira 1512. The petitioner states that he has brought the petition on his own behalf and that of his mother, Marion Kaguri and all his brothers and sisters. Having considered the pleadings, the evidence and submissions, the issues I find call for determination are whether the Petitioner has the locus standi to bring this suit and if so whether the orders sought can issue.
27. From the documents annexed to the affidavit in support of the Petition, the suit property known as LR No Ntima/Ntakira 1512 is in the name of the late M'Ringer Kamanga (deceased). My reading and understanding of the petition is that the same is brought by the petitioner on behalf of the beneficiaries of the estate of the deceased. These beneficiaries are the widow and children of the deceased. It is trite law that the estate of deceased persons can only be represented in any legal proceedings by a person who is authorized to do so on behalf of the estate. Only a person who has been issued grant of letters of administration has the capacity to represent the estate of a deceased person.
28. The powers of personal representatives are set out under Section 82 of the *Law of Succession Act*, Cap 160 Laws of Kenya which provides as follows:-
- 82 Personal representatives shall subject only to any limitation imposed by their grant, have the following powers:-
- a. To enforce, by suit or otherwise, all causes of action which by virtue of any law, survive the deceased or arising out of his death for his personal representatives,
 - b. To sell or otherwise turn to account, so far as seems necessary or desirable in the execution of their duties, all or any part of the assets vested in them as they think best:-
 - i. Any purchase by them of any such assets shall be voidable at the instance of any person interested in the asset so purchased, and
 - ii. No immovable property shall be sold before confirmation of the grant;
 - c. To assert, at any time after confirmation of the grant to the vesting of a specific legacy in the legatee thereof;
 - (d)...
29. Section 80(2) of the same Act provides that:-
- 80(2) A grant of letters of administration, with or without the will annexed shall take effect only as from the date of such grant.
30. Under Section 80(2) above the granted letters of administration take effect from the date when it is issued. Where a suit is commenced without letters of administration in respect of a deceased's estate, such a suit is null and void ab initio and cannot be cured by a party subsequently obtaining the letters of administration.



31. In this case, the petitioner has not exhibited any letters of administration in respect of the estate of late M'ringera Kamanga (deceased). Since the Petitioner has not obtained a full Grant or even Limited Grant of Letters of Administration Ad Litem, it is my opinion that he lacked the legal capacity or the requisite locus standi to institute and maintain the suit. The result is that the suit is incompetent and is null and void ab inito and cannot be sustained.
32. In the case of *Otieno v Ougo & another* (1982 – 1988) KAR 1048, the court of Appeal stated as follows:-
- “..An administrator is not entitled to bring any action as administrator before he has taken out letters of administration, if he does, the action is incompetent as of the date of inception... to say that a person has no cause of action is not necessarily tantamount to shutting the person out of the court but to say he has no locus means he cannot be heard even on whether or not he had a case worth listening to”
33. Guided by the above clear provision of the law and the decision of the Court of appeal which is binding on me, I accordingly order that the suit by the petitioner initiated by the Petition dated 11th May, 2021 struck out in its entirety.
34. I order that each party bears their own costs of the suit.
35. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MERU THIS 22TH FEBRUARY, 2024

HON. C. YANO

ELC - JUDGE

In the presence of

Court Assistant: Tupet & Bernice

Kimathi for Petitioner

Ms Kendi holding brief for Ms. Mbaikyatta for 1st respondent

No appearance for the 2nd, 3rd, and 4th respondents

