



**Lonyala & 26 others v Cabinet Secretary Ministry of Lands and Settlement
& 11 others; Lodio & 11 others (Interested Parties) (Environment & Land
Petition 2 of 2014) [2024] KEELC 857 (KLR) (21 February 2024) (Ruling)**

Neutral citation: [2024] KEELC 857 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT & LAND PETITION 2 OF 2014
FO NYAGAKA, J
FEBRUARY 21, 2024**

BETWEEN

CHRISTOPHER KURUTYON LONYALA & 26 OTHERS PETITIONER

AND

**CABINET SECRETARY MINISTRY OF LANDS AND SETTLEMENT & 11
OTHERS RESPONDENT**

AND

EKTELA EKAI LODIO & 11 OTHERS INTERESTED PARTY

RULING

1. The 11 Interested Party filed a Notice of Motion dated 23/12/2023. He brought it under the *Constitution (Protection of Rights and Fundamental Freedoms) Practice* & Pro, Legal Notice 117 of 2013, Order 40 Rules 1, 2, 3, 4, 5, 8 & 10, Order 51 Rule 1 of the *Civil Procedure Rules* 2010, Sections 1B, 3, 3A and 63(e) of the *Civil Procedure Act*, 2010, Article 22 as read with Articles 1, 2, 3, 10, 19, 21, 23, 23, 25, 27, 28, 29, 31, 32, 33, 35, 36, 37, 39, 40, 43, 47, 48, 50, 75, 159 (1), 165, 258, 259 and 260 of the *Constitution*, 2010, Section 6 of the *Judicature Act* Chapter 8 of the Laws of Kenya and all other enabling provisions of the laws. He sought the following orders:-
 - a. ...spent
 - b. That this Honorable Court be pleased to consolidate the application dated 23/12/2022 with application dated 31/01/2023 and grant leave for the instant application for setting aside of the two (2) unconstitutional rulings of Hon. Dr. Iur Fred Nyagaka Judge, of the ELC Kitale dated 10th August, 2023 in respect of the interested parties' notice of motion application dated 23/12/2022 and the Petitioners' notice of motion dated 31/01/2023.



- c. That an Order do issue to remove into court for the purpose of being set aside, discharged, varied or quashed the unconstitutional ruling decisions of Hon. Dr. Iur Fred Nyagaka Judge, of the ELC Kitale dated 10th August, 2023 in respect of the interested parties' notice of motion application dated 23/12/2022 and the petitioners' notice of motion dated 31/01/2023 signed and delivered at Kitale via Electronic Mail on 10th August, 2023 which order dismissed the interested parties application and the Petitioners application hereinabove stated based on the provisions of Rule 23 of the [Constitution \(Protection of Rights and Fundamental Freedoms\) Practice and Procedure Rules](#), 2013 as provided in Legal Notice No. 117 of 2013 as read with Part II - Procedure For Instituting Court Proceedings under the provisions of Rule 4 (1) & (2) of the [Constitution \(Contravention of Rights and Fundamental Freedoms\)](#).
- d. That In The Alternative:
- An Order do issue to remove into court for the purpose of being granted a declaratory order declaring the whole rulings and orders of Hon Dr. Iur Fred Nyagaka, Judge of The ELC Kitale invalid by consolidating the Rulings and Orders issued on 10/08/2023 in respect of Notice of Motion Applications dated 23/12/2022 and 30/01/2023 respectively filed by the 11th interested party and the 1st Petitioner herein for being inconsistent with the provisions of Article 22 as read with Articles 1, 2, 3, 10, 19,20, 21, 23, 24, 25, 27, 28, 29, 31, 32, 33, 35, 36, 37, 39, 40, 43, 47, 48, 49, 50, 75, 159(1), 165, 258, 259 & 260 of the [Constitution](#) of Kenya, 2010 and that the said rulings and orders be set aside and vacated forthwith for threatening, violating, infringing or denying the rights and Fundamental Freedoms in the Bill of Rights of the genuine squatters and very need cases illegally evicted without court order from Chepchoina Phases II & III Chepchoina Settlement Scheme which action challenges the supremacy of the [Constitution](#) and is not justified under Article 24 of the [Constitution](#) and appropriate reliefs be granted including;
- i) A declaration of rights of the genuine squatters and needy cases illegally evicted without court orders from Chepchoina Settlement Scheme phases II & III in breach of the terms of reference of the committees for the said phases II & III dated 25/01/2011 and 17/09/2012 respectively;
 - ii) An injunction;
 - iii) Conservatory order;
 - iv) An order for compensation.
- e. That an order do issue compelling Hon. Dr. Iur Fred Nyagaka Judge of the Elc Kitale To recues (sic) himself from handling any Chepchoina Settlement Scheme suits for having demonstrated conflicted personal self- interest and showing discrimination and hatred against one Wilfred Ogotu the 11th Interested Party herein by unconstitutionally prohibiting him from instituting any suits in regard to the subject matter Chepchoina Settlement Scheme which court decision is biased, skewed towards the respondents with whom he has fallen in love and which action limits the Rights and Fundamental Freedoms of the 11th Interested Party which action is not justified under Article 24 of the [Constitution](#) is considered null and void ab initio.
- f. That the officer commanding Endebess Police Station be ordered to ensure the enforcement and compliance of this Honorable Court's Orders.
- g. That the Orders granted in prayers (b) to (d) hereinabove do operate until further Orders.



- h. That cost of this application be costs in the cause.
2. The Application was based on a number of grounds. There were that the Applicant was the 11th Interested Party and the 1st Petitioner had given him authority to plead and swear an affidavit in his behalf in the matter. The Respondents were not decree holders in the judgment of this Court delivered on 29/05/2020. The judgment was a “negative decree” (sic) and without a vesting eviction Order the Respondent had no legal capacity to execute illegal eviction in Phase II of Chepchoina Settlement Scheme. The Respondents had without any color of right unlawfully trespassed to the settlers suit land and illegally evicted them without a vesting Court Order and denied the settlers access and use of their lands yet their title to the land were indefeasible. The negative decree subsisting on Chepchoina Settlement Scheme Phase II should not be misused by the Respondents.
 3. That two disjunctive Rulings issued by this Court on 10th of August, 2023 do not meet the threshold of the standard set out in the *Constitution (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules*, 2013 as provided in the Legal Notice No. 117 of 2013 demanded by the ends of justice and was therefore mischievous, obnoxious, frivolous, scandalous, vexatious, baseless, expediencituous (sic), useless, and did not disclose any lawful or reasonable or sound grounds and were an abuse of the due process of the court, impartial, skewed, biased, discriminative, compromised, prejudicial and a threat to the supremacy of the *Constitution*, inconsistent with the *Constitution*, null and void ab initio and were good for being treated with the contempt they deserved and the orders sought herein granted.
 4. That the 11th Interested Party was a civil rights defender and the Executive Director of a Non - Governmental Organization known as Centre For Social Welfare, Justice & Governance with Headquarters in Siaya but operating in Trans Nzoia, Busia, Teso, Kisumu, Butere, Mumias, Bondo and Nairobi. That any attempt by the learned judge under Article 22 of the *Constitution* as read with the all the other Articles cited above was null and void ab initio.
 5. His other ground was the explanation of the land adjudication process and the resolution of appeals arising from it and the import of Sections 26 and 29 of the *Land Adjudication Act* hence this Court needs not to repeat it. He also gave the import of Section 7 (1) (ii) of the *Act* in regard to where land lies on/or near the boundary of a district and claimants are residents of different districts and how the Minister may appoint the special arbitration board consisting to deal with a dispute among them.
 6. That the Respondents continued to breach the law. That the decree of 29/05/2020 was largely misunderstood, misinterpreted and misconstrued by the Respondents. Further that priority was to be given to registration of land or interest in land and not execution of land.
 7. Then he included a number of other grounds which constitute the evidence or facts which were in issue in the Petition herein, already determined. Again, that the eviction of bona fide settlers in Phase II of Chepchoina Settlement Schemes was discriminatory inhuman and inconsistent with the title of the settlers and contravened the *Constitution*. That the Respondent continued to misunderstand the provisions of the Land and Adjudication Act. The settlers stood to suffer irreparable injury, harm, damage not capable of compensation unless the orders of debarring, restraining and/or prohibiting them from their continuing illegal evictions were granted.
 8. A further ground was that the learned judge now handing this matter is known to have once worked as an Advocate in private practice within the proximity of Chepchoina Settlement Scheme in Kitale town and was not best placed to handle the matters on the disputed land since it was believed he was one of the beneficiaries who was bidding (sic) for land cartels. That the judge had conflict of interest, having been compromised by top state and public officers represented to the ground by trusted proxies one of whom was a Peter Barasa Chakali, the Chepchoina MCA. That the said MCA was the point man of the



judge who was fond of issuing unconstitutional personal expediency orders which were inconsistent with the *constitution*. That for that reason the judge ought to have recused himself forthwith from handling Chepchoina land matters. That the applicant had a prima facie case with high chances of success on balance of probabilities and justice demanded the grant of the orders.

9. The Application was supported by a document purportedly titled as an Affidavit sworn on 23/12/2023. This Court has carefully used the words purportedly” for reasons to be explained below. The content of the alleged Affidavit mirrored the grounds in support of the Application save that to it was annexed a copy of a letter marked WOO-1. Interestingly it was not marked and signed by the Commissioner for Oaths as the law requires. I will not reproduce the depositions which were similar to the content of the grounds in support of the Application.
10. Attached to the Application or filed alongside the Application were documents dated the same date as the Application. They were, the “Applicant’s List of Witnesses” who were named as the 1st Petitioner and the 11th Interested Party, and the “Applicant’s List of Documents” which contained copies of eight (8) documents.
11. First, it is worth noting that although the Applicant swore to the effect that the 1st Petitioner had given him authority to swear the Affidavit on his behalf there was no written authority to that effect attached to the Application. That was none either that had been filed before. The Court notes further that the Petitioner and the 11th Respondent and indeed all others were on the same side of the matter. Therefore, even if the Petitioner purported to donate the authority it would be unprocedural and unlawful since that Interested Party cannot be on the same divide of the case as the Petitioner, unless these parties had been working all along in cahoots to mislead the Court that they had different interests in the matter yet they all aimed at getting the same interest. Actually, it now seems to be the case. I dismiss that assertion by the 11th Interested Party.
12. Before the Application could be canvassed, by way of written submissions as the Court intended to direct, the Court, while perusing, and reading it noticed that some of the content in it touched on an earlier application for which Ruling the Court delivered on 10/08/2023. Actually, the instant application was dated the same date as the previous application except changes some respects. It was also supported by an Affidavit purported to be sworn by the Applicant on the same date as the one of the previous one dated 23/12/2023 filed on 03/01/2023. But as all and sundry should note, although the Application was dated almost ten months earlier it was filed on 03/10/2023. Moreover, the signature of the deponent and stamp of the Commissioner for Oaths though being on the document purported to be scanned appeared to be a superimposition on it. Strangely, for a reason or other, the rubber stamp for the Commissioner for Oaths and the signature of the purported Advocate were not in their original form. It was strange that a scanned document would appear as copies in the respective parts where other than the print from a machine they were to be affixed manually and therefore in the original.
13. Thus, the Court called upon the Applicant to personally attend Court and testify on oath as to what he knew about the preparation and presentation or filing of the instant application. He attended Court on 04/12/2023. What he testified to in Court was appalling, shocking and mind-boggling, leave alone depressing to the Court. He stated that he did not personally prepare the application. That the Application was prepared and filed, under his instructions, by a lady in a certain cyber. He vehemently refused to disclose of both the lady and the cyber. At first, he wanted to “remain silent” and insisted so but the Court cautioned him that he was on oath and under obligation to speak the truth. Then he poured our more appalling information.



14. He stated that he was being compelled to make incriminating admissions yet the Constitution provided otherwise and further that he was a layman. That the application was made under his guidance. He declined to testify further and the Court gave him time to return on 07/12/2023 to either testify or receive further directions. He stated that he was a director of the NGO that he referred to in his Affidavit. Then he gave the history of the instant Petition. He repeated how in 2020 they had moved the Court and the Application was dismissed. The dismissal was unsatisfactory.
15. He stated that he intended to file the application but one had a mistake since it was incomplete. Therefore, to him, there were two applications before the Court. That he sent the incomplete one for assessment and so that they would ascertain the fees and prepare a final one for filing. That he paid for the Application and kept the receipts for a long time. He admitted that in the first Application he had no authority to swear the Affidavit on behalf of the 1st Petitioner but he had it in the 2nd one.
16. Regarding the preparation of the Application he gave a sensational puzzling and shocking revelation. That in most cases they “we” prepare signatures and stamps and place them on documents. That one cannot sign on a document that is a word version or soft copy. That he prepared the Application in good faith and with clean hands.
17. Upon cross-examination by the learned State Counsel, he admitted that the Application intended to be filed was one dated 03/10/2023. Upon being shown by way of projector the ‘original’ of the document he filed on 03/10/2023 he stated that he did not know whether that was the Application the Court had. He insisted that the application filed on 03/10/2023 was for withdrawal and or setting aside the rulings this Court had made. He refused to answer a question put to him about whether the reliefs were similar with the previous decided one. The Court read to him the prayers he sought in the latter application and he said they were similar with those decided by the Ruling of 10/08/2023.
18. As for the signing of the signature on the Application he filed he admitted on oath that the signature was made before the documents were prepared and sent. He admitted further that the cyber person prepared the document for him. That the cyber person made the signatures and even the commissioner’s stamp to be place on the document he filed. That for him (Applicant) he was not computer compliant. He stated that he signed on a signature earlier on a paper that was scanned and it was the one that was pasted on the document.
19. He decided to lie on oath at first that he appeared before the Commissioner for Oaths, one Moses Kiprop. When asked whether he appeared before him on 23/12/2023 as the Affidavit indicated, he stated that it was not possible. He explained that the date on the document was not on the stamp. He indicated further that the stamp was “detachable” from that date. That the date was when the document was prepared but it was erroneous. He stated further that the error was committed by the person who prepared the document. That it was not possible for the swearing to be in on 23/12/2022 while the ruling it referred to was delivered on 10/08/2023. He insisted he appeared before the Commissioner for Oaths in Eldoret two or so days before 03/10/2023.
20. Later he admitted that what he meant was that all the signatures and stamps on the documents were scanned and pasted on it.
21. At the end of the testimony the Applicant submitted that since the person who prepared the document was a lay person the Court had jurisdiction to direct that the application be withdrawn and a proper one be filed. The State Counsel left it to Court.



Analysis and Determination

22. I have considered the Application, the oral testimony on it by the Applicant, and the submissions he made on it. It is clear beyond peradventure that the Application is a non-starter. The Applicant himself admitted and pleaded that it be withdrawn. However, the manner in which the document was prepared and filed speaks volumes of possible crimes that were committed in the process, particularly under the *Computer Misuse and Cybercrimes Act*. There are possible offences committed under the *Oaths and Statutory Declarations Act*, Chapter 15 of the Laws of Kenya, the *Penal Code* and the *Non-Government Coordination Act*. This conduct has been replicated by the said Applicant not once but about three time before in other matters which have been placed before me. And this Court has on all those occasions directed and ordered that the Directorate of Criminal Investigation be served by the Deputy Registrar of this Court with the rulings of this Court and takes up the matter and apprehends the suspect and charges him in a Court. Does it mean the office has never been served? It appears the more this Court makes the directions and the DCI does not act the Applicant gets emboldened by the day to do more. Where is the DCI? Where are the offices of this country which are charged with investigations on possible crimes to act in this and the related matters? Is this Applicant above the law or untouchable?
23. For instance when such a person swears to or makes such wild allegations that the judge in this matter has connections with the suit land and the like and even to the extent that the judge used to handle matters near the suit land when he practiced as an Advocate or that there are proxies he uses to further interest in the suit lands in the Settlement Scheme in question, can the DCI not take up the matter and find the truth of this and punish some over such malicious and outrageous allegations? When ever did the judge practice near Chepchoina Phase II (or even I or III) leave alone Kitale precincts except only one time and in one matter that involved a parcel of land which was within the proximity of the Kitale Town and it about 22 years ago when he was an Associate in a law firm in Eldoret? The DCI needs to take up the matter of the criminal conduct of the Applicant regarding the instant application. The Deputy Registrar of this Court should transmit a copy of this Ruling to the DCI Offices in Kitale for further action.
24. That said, I find the Application extremely mischievous, an abuse of the process of the Court, a design and device aimed at maligning the judge herein, it is incompetent and improperly before the Court. I dismiss it with costs to the Respondents.
25. Orders accordingly.

RULING DATED, SIGNED AND DELIVERED AT KITALE VIA ELECTRONIC MAIL ON THIS 21ST DAY OF FEBRUARY, 2024.

HON. DR.IUR FRED NYAGAKA,

JUDGE, ELC JUDGE

