



**Mwongera v Agricultural Development Corporation & another (Constitutional
Petition 29 of 2021) [2024] KEELC 1685 (KLR) (20 March 2024) (Ruling)**

Neutral citation: [2024] KEELC 1685 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
CONSTITUTIONAL PETITION 29 OF 2021
FM NJOROGE, J
MARCH 20, 2024**

BETWEEN

FRANK KAMUNDE MWONGERA PETITIONER

AND

AGRICULTURAL DEVELOPMENT CORPORATION 1ST RESPONDENT

ATTORNEY GENERAL 2ND RESPONDENT

RULING

1. The Petitioner's Notice of Motion dated 26th January 2024 is seeking the following orders:
 1. That the petition herein be heard by way of viva voce evidence
 2. That the costs of this application be provided for.
2. The application is premised on the grounds set out on its face and the supporting affidavit of Dr. Frank Kamunde Mwongera the petitioner who deponed that he bought the suit property from the 1st respondent pursuant to an express offer to sell to him the suit property. He further stated that he paid for the full purchase price, legal costs and other incidentals for the purchase of the suit property and he was issued with a receipt. It was his statement that by a letter dated 30th November 1995, the 1st Respondent wrote and informed him that the deed plans for the 2 plots he had purchased were ready and inquired what names were to be used on the title documents; that titles were duly issued in respect of the two properties. He further stated that sometime in the year 2018 he wrote to the 1st respondent informing them that he intended to take possession of the property with a view to fencing them. The said letter was not responded to and sometime in 2018 he fenced the properties with a stone wall. Dr. Mwongera further stated that sometime in January 2019 a certain Mr. Mulopi an employee of the 1st Respondent vandalized and destroyed his fence and stole all his fencing materials which matter he reported to Malindi Police station. He stated that in view of the fact that he is the



registered proprietor of the suit property and has been denied possession and occupation by the 1st respondent it is imperative he be allowed to tender *viva voce* evidence in support of his petition.

3. The 2nd Respondent filed grounds of opposition raised on the following grounds;
 1. That whereas the petitioner is seeking to proceed by way of *viva voce* evidence he has failed to annex any statement from a witness herein to support the issuance of orders sought;
 2. The application is devoid of merit by dint of Rule 20 (3) of the *Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules* a person has to demonstrate by an application that there is need for oral evidence which the applicant has failed to do;
 3. That the Applicant has not met the threshold for granting of orders sought in the instant application;
 4. Pursuant to Rule 20 (1) (a) of the *Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules* affidavit evidence is legally admissible in a court of law and occupies the same place as any other evidence that is admissible in a court of law;
 5. That there is no exceptional circumstances to warrant issuance of the orders sought for the court to exercise its discretion.

Disposition

4. On 1st February 2024, the court issued directions that the application be disposed of by way of written submissions. Neither party filed submissions despite the courts directions that parties exchange submissions within 21 days from 1st February 2024. In the absence of compliance with the court's directions, it is apparent that the Petitioner seems not keen on prosecuting the application. Where the court has ordered an application to be heard by way of written submissions and issued no other alternative directions as to other manner of disposal, failure to file submissions, especially on the applicant's part, is a signal of disinterest. The application dated 26th January 2024 has thus not been prosecuted, and it is hereby dismissed for want of prosecution with costs to the respondents.

DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 20TH DAY OF MARCH 2024.

MWANGI NJOROGE

JUDGE, ELC, MALINDI

