



**Sacapheso International Limited v National Land Commission & 4 others;
Eversweet Bakery Limited (Interested Party) (Environment & Land Petition
7 of 2019) [2025] KEELC 898 (KLR) (27 February 2025) (Judgment)**

Neutral citation: [2025] KEELC 898 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII
ENVIRONMENT & LAND PETITION 7 OF 2019
M SILA, J
FEBRUARY 27, 2025**

BETWEEN

SACAPHESO INTERNATIONAL LIMITED PETITIONER

AND

THE NATIONAL LAND COMMISSION 1ST RESPONDENT

THE CHIEF LAND REGISTRAR 2ND RESPONDENT

THE HONOURABLE ATTORNEY GENERAL 3RD RESPONDENT

KISII COUNTY GOVERNMENT 4TH RESPONDENT

**PACIFICA MWANGO (SUED AS THE LEGAL ADMINISTRATIX OF THE
ESTATE OF SIMON KEGESA - DECEASED) 5TH RESPONDENT**

AND

EVERSWEET BAKERY LIMITED INTERESTED PARTY

JUDGMENT

1. The National Land Commission, through Gazette Notice No. 6862, published on 17 July 2017, adverted that it has revoked the title of the petitioner and vested the land in the name of one Pacifica Mwango as administrator of the estate of Simon Kegesa (deceased). This prompted the petitioner to commence this suit vide a petition filed on 4 November 2019, respectively against the National Land Commission, The Chief Land Registrar, the Honourable Attorney General, the Kisii County Government and Pacifica Mwango (sued as Legal Representative of the estate of Simon Kegesa deceased) as the 1st TO 5th respondents.
2. In this petition, the petitioner seeks the following orders (slightly paraphrased for brevity) :



- (a) Declaration that the decision of the 1st respondent in Gazette Notice No. 6862 of 17 July 2017 touching on the land parcel Kisii Municipality/Block III/289 was irregular, illegal, unlawful and void.
 - (b) Declaration that the revocation of the petitioner's title in respect of the land parcel Kisii Municipality/Block III/289 was ultra vires the provisions of Section 14 (2) & (7) of the National Land Commission Act, 2012, Section 7 of the Fair Administrative Actions Act, 2015, and the Land Registration Act, No. 3 of 2012.
 - (c) Certiorari to quash the Gazette Notice No. 6862 of 17 July 2017 in particular the portion in respect of the land parcel Kisii Municipality/Block III/289.
 - (d) Prohibition to prohibit the 1st respondent from conducting any further proceedings concerning review of the lease in respect of Kisii Municipality/Block III/289.
 - (e) Permanent injunction to restrain the 5th respondent from entering or dealing with the suit property.
 - (f) Costs.
 - (g) Any other orders that the court may deem fit and expedient.
3. Subsequently, Eversweet Bakery Limited were joined in the petition as interested party, as she also displayed title to the suit property. She also had an ongoing dispute with the petitioner over their two competing titles in the case Kisii ELC No. 439 of 2013.
 4. The Attorney General filed Grounds of Opposition on behalf of the 2nd & 3rd respondents. It was urged that the 1st respondent is constitutionally empowered, pursuant to Article 67 of the Constitution and Section 14 of the National Land Commission Act, to undertake independent investigations on complaints lodged against any person in respect of the legality of any grant issued. It was further urged that there are no constitutional issues raised against the 2nd & 3rd respondents and they are being unnecessarily dragged into the legal tussle. It was also raised that the petition does not set out with a degree of precision the right complained of, the provisions of the constitution infringed, and the manner in which the 2nd & 3rd respondents have breached those rights.
 5. The County Government of Kisii, responded to the petition through a replying affidavit sworn by Kennedy Chweya Onsembe. In it he deposed that revocation of title was not the purview of the County Government of Kisii.
 6. The interested party filed grounds of opposition and averred that she had a suit with the petitioner over ownership of the suit land which was subject to the suit Kisii ELC No. 439 of 2013.
 7. Nothing was filed by the 5th respondent.
 8. There was no appearance for the petitioner when the case was listed for hearing on 19 November 2024 alongside the sister suit, Kisii ELC No. 439 of 2013. In this other suit, the petitioner had sued the interested party, as defendant, asserting to be the holder of the good title to the suit property and seeking orders for cancellation of the title held by the interested party. The interested party filed a counterclaim to be declared the rightful proprietor of the disputed land i.e Kisii Municipality/Block III/289.
 9. I have delivered judgment in that matter earlier today. In my judgment I found that between the petitioner and the interested party, it is the interested party with the better title, and I ordered for the



cancellation of the title of the petitioner. It means therefore that the petitioner has no title to protect through this petition.

10. Nevertheless, it will be observed that what the Gazette Notice did was to vest title in the hands of the 5th respondent. In fact the impugned Gazette Notice, in one swoop vested upon the 5th respondent, the titles to the land parcels Kisii Municipality/Block III/599, 600, 601, 602, 603, 604, 606, 157, 331, 300, 301, 637 and the suit land i.e Kisii Municipality/Block III/289. That Gazette Notice was subject of various suits including the suit Kisii ELC Judicial Review No. 3 of 2017, R vs The Chairman National Land Commission & Others ex party Aboko John Samuel Kumenda & Another, and Kisii ELC Judicial Review No. 9 of 2016, Republic vs National Land Commission & Others ex party Dr. Anil Ratilal Tailor, in respect of the land parcels Kisii Municipality/Block III/301 and 330. The suits were successful, with Mutungi J quashing the Gazette Notice in respect of the properties that were subject to the suits. The learned judge was of opinion that there was violation of the right to fair administrative action.
11. As I have mentioned above, I have, in the suit Kisii ELC No. 439 of 2015, found that the interested party has a better title than the petitioner to the suit land. The subject Gazette Notice vested title in name of the 5th respondent but it was on a complaint raised regarding the title of the petitioner herein. It follows that the title of the interested party was not interrogated by the National Land Commission. In light of that I cannot allow the Gazette Notice vesting title in the suit land to the 5th respondent to stand and I proceed to quash the said Gazette Notice. If the 5th respondent feels that she has good title to the suit land, then she will need to file suit against the interested party herein.
12. Therefore, this petition succeeds to that extent that the Gazette Notice No. 6862 of 17 July 2027 is quashed by an order of certiorari in respect of the land parcel Kisii Municipality/Block III/289. The petitioner is however not entitled to any of the other prayers as it has already been held in the suit Kisii ELC No. 439 of 2015 that the petitioner has no good title to the suit land.
13. There will be no orders as to costs.
14. Judgment accordingly.

DATED AND DELIVERED THIS 27 DAY OF FEBRUARY 2025

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT KISII

Delivered in presence of:

Mr. Ndiritu for the 2nd & 3rd respondents

Mr. Kasaya for the interested party

No appearance for the petitioner

No appearance for the 1st respondent

No appearance for the 5th respondent

Court Assistant – Michael Oyuko

