



**Korir v Medical Officer of Health, Uasin Gishu & 2 others (Environment & Land
Petition E001 of 2023) [2024] KEELC 3441 (KLR) (29 April 2024) (Judgment)**

Neutral citation: [2024] KEELC 3441 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND PETITION E001 OF 2023**

**EO OBAGA, J
APRIL 29, 2024**

BETWEEN

LONAH CHEPCHUMBA KORIR PETITIONER

AND

MEDICAL OFFICER OF HEALTH, UASIN GISHU 1ST RESPONDENT

PUBLIC HEALTH OFFICER, UASIN GISHU 2ND RESPONDENT

UASIN GISHU COUNTY GOVERNMENT 3RD RESPONDENT

JUDGMENT

1. The Petitioner filed a constitutional Petition on 10.8.2023 in which she sought the following reliefs against the Respondents.
 - a. That an order in the nature of certiorari to issue to remove unto the court and quash the decision and/or Recommendation of the Respondents herein and in particular, the Respondent contained vide notice dated 2nd /08/2023 ordering the removal and relocation of piggery, pigs and piglets from the petitioner's land.
 - b. An order in the nature of prohibition to issue prohibiting the Respondents whether jointly and or severally from issuing any further notice for removal and relocation of piggery, pigs and piglets from the petitioner's land.
 - c. Cost of this application be borne by the Respondents jointly and severally.

Background;

2. The petitioner has established a hog or piggery on LR. No. Kaptagat Block 1 (Uasin Gishu)/413 which belongs to her husband. On 2.8.2023, the County Government of Uasin Gishu through the Department of Health Services issued her a statutory notice pursuant to section 118 (1) (f)(g)(h) and



- (i) of the [Public Health Act](#) Cap 242 Laws of Kenya. The notice required her to remove and relocate her pigs and piglets from the area which is a residential area to another area so that the animals cannot be a nuisance.
3. The petitioner was advised to see the Public Health Officer Urban of the county government of Uasin Gishu in case she wanted advice in relation to the notice which gave her 14 days to abate or prevent the nuisance. Before the expiry of the 14 days' notice given, the petitioner moved to this court and filed this petition. She contemporaneously filed a notice of motion in which she sought conservatory orders.
 4. On 11.8.2023, the Petitioner was granted conservatory orders suspending the statutory notice until inter-parties hearing of the application on 21.9.2023. Come 21.9.2023, the Respondents who had been duly served with the petition, notice of motion and the orders of 11.8.2023 had neither filed any response to the notice of motion nor were they present in court. The conservatory orders were confirmed pending hearing and determination of the petition.

Petitioner's contention;

5. The petitioner contends that she and her husband are legal proprietors of LR. No. Kaptagat/Kaptagat Block 1 (Uasin Gishu)/413 which is situated at Kipkorgot area which is an agricultural area. She has established a hog house or piggery which runs into millions of shillings. On 2.8.2023, the 1st Respondent served her with demand notice requiring her to relocate the piggery and the pigs to another location claiming that the same was a nuisance.
6. The petitioner contends that the notice does not point out how the piggery or pigs are a nuisance or how the pigs are injurious to life or health and therefore does not fall under the purview of section 118 of the [Public Health Act](#) Cap 242 Laws of Kenya. The Petitioner further contends that the Respondents have acted in excess of their jurisdiction in that the notice is defective and does not disclose any offence under section 115 and 118 of the [Public Health Act](#).
7. The petitioner argues that the notice was issued without affording her an opportunity to be heard which is in violation of her right to Fair Administrative Actions Act. She contends that the notice was given discriminatively in that there are several other farmers who are her neighbours who also keep animals in their farms. She therefore contends that her rights to equal protection of the law has been violated in the sense that the area is still an agricultural zone and there has been no conversion or change of user.
8. The petitioner further contends that the Respondents' action has been brought about by her competitors as far as her business is concerned and that in any case her neighbours have embraced her business and have been accommodative of her business. She consequently states that her right under Articles 40(1) and 47 of [the Constitution](#) have been violated.

Respondents' contention;

9. The Respondents opposed the petitioner's petition based on a replying affidavit sworn on 20.11.2023. The Respondents state that sometime on 30.11.2022 they received complaints from residents of Upper Hill in Kipkorgot area that there were pigs in the area which were a nuisance. A Public health officer was sent to the area who educated the pig owners on how to mitigate the nuisance or relocate to other areas. The pig owners were verbally told to cease the nuisance. Some pig owners relocated their pigs and others stopped their business.
10. The Petitioner did not heed the verbal advice. It turned out that on 28.10.2019 the petitioner had been served with a statutory notice to remove the pigs or relocate the same to another area. This notice was



not acted upon. When the residents kept on complaining, they served her with a statutory notice which required her to relocate her pigs. Instead of relocating the pigs, she filed this Constitutional Petition.

11. The Respondents contend that the pigs are a nuisance because there is a pungent smell coming from that pigsty and that the pigs make a lot of noise both during the day and night. There are flies all over the place and wherever the pigs droppings are removed in gunny bags, some drop on the way and that this is a health hazard.
12. There is accumulation of waste and dirty water seeps into neighbouring plots. Dead pigs are buried on the ¼ of an acre plot which the petitioner uses to rear the pigs and this is a health hazard. The deponent of the replying affidavit states that she is not interested in the land where the petitioner keeps her pigs and that her only concern is to enforce the provisions of the [Public Health Act](#).

Submissions of the parties;

13. The parties agreed to dispose of the petition by way of written submissions. This was on 20.11.2023. The petitioner was given 14 days within which to file and serve written submissions. The Respondents were given 14 days within which to file their submissions upon being served. A mention date was set for 16.1.2024. Come 16.1.2024, only the Respondents had filed their submissions. As at the time of writing this judgment, the petitioner had not filed submissions.

Respondents submissions;

14. The Respondents submitted that the fourth schedule to [the Constitution](#) of Kenya outlines the powers of the County Governments. Under part 2 clause 2 and 3 of the sixth schedule, a county government has a duty to control air and noise pollution as well as other public nuisance. They relied on the Court of Appeal decision in the case of Elizabeth Kure Heir & another – Vs- County Government of Kilifi & 4 others (2020) eKLR.
15. The Respondents further submitted that it is the duty of the County Government under the [Public Health Act](#) cap 242 to regulate and address nuisances and conditions that are injurious of dangerous to health such as stench emanating from a pig farm.

Analysis and determination;

16. I have carefully considered the petitioner's petition, the opposition to the same by the Respondents as well and the submissions by the Respondents. The issues which emerge for determination are as follows: -
 1. Whether the statutory notice issued by the Respondents was in compliance with the provisions of the [Public Health Act](#) Cap 242.
 2. Whether the petitioner was deprived of her property rights under Article 40 of [the constitution](#).
 3. Whether the Respondents exceeded their jurisdiction in issuing the statutory notice to the petitioner.
 4. Whether the petitioner was given a fair hearing.
 5. Whether the petitioner was discriminated against.



Whether the statutory notice issued by the Respondents was in compliance with the provisions of the Public Health Act Cap 242;

17. The statutory notice which was issued to the petitioner was issued pursuant to section 118(1)(f), (g), (h) and (s). In general section 118 of the Public Health Act defines what constitutes nuisance. Under each of the subsections, the petitioner was informed of her wrong doing which constituted nuisance.
18. Section 118(1)(f) provides that any premises used for keeping of animals which is so used or kept as to be offensive or which is injurious or dangerous to health is a nuisance. The petitioner does not deny that she is keeping pigs in LR. No. Kaptagat/Kaptagat Block 1 (Uasin Gishu)/413. As a result of keeping pigs, there is accumulation of deposits which is offensive or injurious to health. The residents of Kipkorgot had complained that when the pigs' refuse is ferried from the hog house, it spills and is a health hazard and has a bad stench.
19. The pigs make a lot of noise at night which disturbs the neighbours. The dirty water emanating from the piggery seeps through to the neighbours. It is therefore clear that when the petitioner was asked to relocate the piggery, the Respondents were acting in strict compliance with the provisions of the Public Health Act.

Whether the petitioner was deprived of her property rights under Article 40 of the constitution;

20. Article 40 deals with protection of right to property. Article 40(1) provides that any person has a right, either individually or in association with others to acquire and own property of any description and in any part of Kenya. The Article further provides that the state shall not enact any law which will deprive any individual of his or her property.
21. In the instant case, though the land where the pigs are being kept is registered in the name of Wilson Kipchumba Bett, there is no contention that it is the petitioner who is running the business of keeping pigs. She is wife to Wilson Kipchumba Bett. The Respondents are not laying any claim to the land. Their concern is nuisance created by the pigs. The petitioner was only asked to re-locate the pigs to another land. she cannot therefore claim that her right to property under Article 40 has been violated.

Whether the Respondents exceeded their jurisdiction in issuing the statutory notice;

22. The Petitioner is contending that he Respondents exceeded their jurisdiction in that they served her notice which does not disclose any offence under sections 115 and 118. As I have stated hereinabove, section 118 defines what constitutes a nuisance. Section 115 prohibits persons from causing nuisance or suffering to exist a nuisance. The Respondents issued a notice which clearly pointed out the particulars of nuisance. It is within their mandate to ensure that people within their jurisdiction enjoy a clean and health environment. That is why they issued notice to the petitioner to prevent the nuisance. The petitioners having failed to comply, the Respondents are at liberty to move against her as provided in law. The Respondents therefore did not exceed their jurisdiction.

Whether the petitioner was given a fair hearing;

23. The petitioner is contending that she was not given a fair hearing. I notice from the replying affidavit of the Respondents that the petitioner was issued with a statutory notice on 28.10.2019 to abate the nuisance. There was nothing done. Again in 2022 she was asked to abate the nuisance. She did nothing. On 2.8.2023, she was issued with a statutory notice detailing the particulars of nuisance. She was given 14 days to abate the nuisance. The notice went ahead to advise her to check on the Public Health Officer Urban for any advice. The petitioner did not comply or even go for advice as advised in the notice.



24. The petitioner cannot therefore claim that she was not given a fair hearing. She had been given 14 days within which to abate the nuisance. Besides this 14 days, she was advised to go for free advice. She cannot therefore claim that her rights to fair administrative action was violated contrary to Article 47 of *the Constitution* of Kenya.

Whether the petitioner was discriminated against;

25. The Petitioner contends that she was the only person who was given notice to re-locate her pigs yet there were other pig farmers within the area who keep pigs and were not given notice. The petitioner did not give any example of any person who keeps pigs in the area who was not given notice. The Respondents stated that during a verbal notice to pig farmers in the area, some relocated their pigs and some ceased to keep pigs. If there was any truth in what the petitioner is alleging, she could have even given the names of those keeping pigs in the area and or even ask the court to visit the so called pig farmers who were not issued with statutory notice.

Disposition;

26. From the above analysis, I find that the petitioner's petition is without merit. The same is dismissed with costs to the Respondents.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 29TH DAY OF APRIL, 2024.

E. O. OBAGA

JUDGE

In the virtual presence of;

Mr. Kibet for Respondent

Court Assistant –Laban

E. O. OBAGA

JUDGE

29TH APRIL, 2024

