



**Machira v Mbugua & 3 others (Environment & Land Case  
E005 of 2023) [2024] KEELC 4311 (KLR) (23 May 2024) (Ruling)**

Neutral citation: [2024] KEELC 4311 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA  
ENVIRONMENT & LAND CASE E005 OF 2023**

**YM ANGIMA, J**

**MAY 23, 2024**

**BETWEEN**

**JACOB KIMARU MACHIRA ..... PLAINTIFF**

**AND**

**SAMUEL KORIO MBUGUA ..... 1<sup>ST</sup> DEFENDANT**

**NATIONAL LAND COMMISSION ..... 2<sup>ND</sup> DEFENDANT**

**LAND REGISTRAR, NYANDARUA COUNTY ..... 3<sup>RD</sup> DEFENDANT**

**DIRECTOR LAND ADJUDICATION & SETTLEMENT ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

**A. Introduction and Background**

1. By a plaint dated 27.10.2023 the Plaintiff sued the Defendants seeking the following reliefs:
  - a. A declaration that the 2<sup>nd</sup> Defendant's recommendations made on the 07.02.2018 and 06.04.2023 and published in both Gazette Notice No. 1995 of 01.03.2019 and Gazette Notice No. 4512 of 06.04.2023, in complaint No. NLC/HLI/483/2018 in relation to Title No. Nyandarua/Ol Joro Orok Salient/2403 were without jurisdiction, unconstitutional, illegal and therefore null and void ab initio and of no legal effect nor consequence.
  - b. An order of permanent injunction restraining the 4<sup>th</sup> Defendant its officers, agents, servants, employees and/or anyone acting in or under its name from in anyway whatsoever effecting the recommendations made by the 2<sup>nd</sup> Defendant in complaint No.NLC/HLI/483/2018 in relation to Title No. Nyandarua/Ol Joro Orok Salient/2403.



- c. An order directing the 3<sup>rd</sup> Defendant to remove and or discharge the caution registered by the 1<sup>st</sup> Defendant and from in anyway whatsoever from restricting the free dealing with the suit land except with the directions of this honourable court.
  - d. Any other or further relief that this honorable court may deem it fit and just to grant.
  - e. Costs of this suit and interest thereof.
2. The Plaintiff pleaded that was the registered proprietor of Title No. Nyandarua/Ol Joro Orok/2403 (the suit property), which he acquired through a land exchange with the previous owner thereof, the late Kipkering Arap Rop (the deceased) in 1994. The Plaintiff pleaded that he exchanged the suit property with his land Title No. Uasin Gishu/Lelmolok Settlement Scheme/316 and that he has ever since been in occupation and use of the suit property whereas the family of the deceased had settled upon Parcel 316.
  3. It was the Plaintiff's case that all went well until 27.06.2018 when the National Land Commission (NLC) summoned him in connection with an investigative hearing relating to a complaint of an alleged historical land injustice lodged by the 1<sup>st</sup> Defendant. It was pleaded that upon conclusion of the inquiry the NLC recommended the revocation of his title to the suit property and the regularization of the deceased as the owner thereof in 2019. It was contended that this recommendation was later in 2023 altered to cancel his title to the suit property and to regularize the 1<sup>st</sup> Defendant as the owner thereof without reference to him whatsoever.
  4. It was the Plaintiff's contention that the said actions on the part of the NLC were unlawful, unconstitutional and made without jurisdiction. It was contended that the NLC had acted in violation of the rules of natural justice, the *Limitation of Actions Act* (Cap.22), *the Constitution* of Kenya, 2010, the *National Land Commission Act*, 2012 and the *Fair Administrative Action Act*, 2016 in depriving him of the suit property.
  5. Simultaneously with the filing of the suit, the Plaintiff filed a notice of motion of even dated seeking some interim orders pending the hearing and determination of the suit. In particular, the Plaintiff sought a conservatory order preserving the suit property and maintaining the status quo pending the hearing and determination of the suit. He also sought an interim injunction to restrain the 3<sup>rd</sup> and 4<sup>th</sup> Defendants from effecting or implementing the determination of the NLC pending the hearing and determination of the suit.
  6. The record shows that the 1<sup>st</sup> Defendant filed a replying affidavit sworn on 21.12.2023 as well as a notice of preliminary objection of even date in response to the application and suit.

### **B. 1<sup>st</sup> Defendant's Preliminary Objection**

7. In his notice of preliminary objection dated 21.12.2023 the 1<sup>st</sup> Defendant contended that the suit was incompetent and bad in law because the Plaintiff was obligated to follow the appellate mechanisms provided for under Regulation 29 of the NLC (Investigation of Historical Land Injustices) Regulations, 2017 (the Regulations). It was the 1<sup>st</sup> Defendant's contention that by filing a fresh suit as opposed to an appeal, the Plaintiff had fallen foul of the law hence the suit ought to be struck out.
8. The Plaintiff filed a supplementary affidavit sworn on 23.01.2021 and a replying affidavit sworn on 07.02.2024 in answer to the preliminary objection. The Plaintiff contended that the Regulations were



annulled by the National Assembly on 28.03.2018 hence the same were not applicable. It was further contended that even if the Regulations were in force, they could not oust the jurisdiction of the court to entertain a claim where the actions complained of were unlawful and unconstitutional.

### **C. Directions on Submissions**

9. When the matter came up for directions it was directed that the 1<sup>st</sup> Defendant's preliminary objection shall be heard first. It was further directed that the said preliminary objection shall be canvassed through written submissions. The parties were consequently granted timelines within which to file and exchange their respective submissions. The record shows that the 1<sup>st</sup> Defendant filed written submissions dated 11.04.2024 whereas the Plaintiff filed submissions dated 15.03.2024 and supplementary submissions dated 26.04.2024.

### **D. Issues for Determination**

10. The court has considered the 1<sup>st</sup> Defendant's preliminary objection and the pleadings and material on record. The court is of the view that the main issue for determination is whether or not the preliminary objection dated 21.12.2023 is merited and should be upheld.

### **E. Analysis and Determination**

11. The court has considered the material and submissions on record. The 1<sup>st</sup> Defendant submitted that the Plaintiff's suit does not lie in law because Regulation 29 of the Regulations provided a specific statutory mechanism for challenging the determination of the NLC by aggrieved persons. It was submitted that a party aggrieved by such decision is obligated to lodge an appeal to the Environment and Land Court within 28 days from the date of the decision. It was thus the 1<sup>st</sup> Defendant's case that it was not open to the Plaintiff to file a fresh suit to challenge the decision of the NLC in the circumstances. The 1<sup>st</sup> Defendant relied upon the cases of Speaker of the National Assembly -vs- Karume [1992] KLR 21 and Narok County Council -vs- Transmara County Council & Another Civil Appeal No. 25/2000 among others in support of his submissions.
12. In the case of Speaker of the National Assembly -vs- Karume (*supra*) it was held, inter alia, that:

“Where there is a clear procedure for redress of any particular grievance prescribed by *the Constitution* or an Act of Parliament, that procedure should be strictly followed. Accordingly, the special procedure provide by any law must be strictly adhered to since there are good reasons for such special procedures.”
13. The Plaintiff, on the other hand, disputed that his suit was incompetent and in violation of Regulation 29 of the Regulations. It was submitted that the suit raised issues of illegality and unconstitutionality which ought to be ventilated before a court of law. It was further submitted that, in any event, the Regulations relied upon were nullified by the National Assembly on 28.03.2018 hence they could not form the basis of a preliminary objection. The Plaintiff further contended that even if those Regulations were still in force, they could not oust the jurisdiction of the court under Article 165(6) of *the Constitution* of Kenya, 2010 and Section 15 of the *National Land Commission Act*. The Plaintiff cited the case of Republic -vs- National Land Commission & Another ex parte Kimasas Farmers Co-operative Society & Others in support of his submission. The court was consequently urged to overrule the preliminary objection.
14. The court has considered the nature of the Plaintiff's suit and the reliefs sought. It is evident from the plaint that the Plaintiff's contention is that the NLC acted without jurisdiction and that its actions



(including the impugned determination) were illegal and unconstitutional. In particular, it contended that the NLC had no power to revoke the Plaintiff's title deed and that its mandate was restricted to making recommendations.

15. The court is of the opinion that if the mandate and jurisdiction of the NLC to conduct the impugned proceedings and to make the impugned decision are being challenged on constitutional grounds, then it would not be legitimate to expect the Plaintiff to pursue the appellate process envisaged under Regulation 29 of the Regulations. The court is of the view that an appeal under Regulation 29 would deal with the merits of the decision or determination of the NLC. The court is further of the opinion that if the decision of the NLC is ultimately found to be unconstitutional then whatever appellate process may have been undertaken may become superfluous. For that reason, the court is not satisfied that this is a fit case for allowing the preliminary objection.

#### **F. Conclusion and Disposal Order**

16. The upshot of the foregoing is that the court is not satisfied that the 1<sup>st</sup> Defendant's preliminary objection is merited. As a consequence, the 1<sup>st</sup> Defendant's notice of preliminary objection dated 21.12.2023 is hereby overruled. Costs of the preliminary objection shall be in the cause.

Orders accordingly.

**Ruling dated and signed at Nyandarua this 23<sup>rd</sup> day of May, 2024 and delivered via Microsoft Teams platform.**

In the presence of:

Mr. Ndegwa Wahome for the Plaintiff

Mr. Njuru for the 1<sup>st</sup> Defendant

N/A for the 2<sup>nd</sup>, 3<sup>rd</sup> & 4<sup>th</sup> Defendants

C/A - Carol

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**Y. M. ANGIMA**

**JUDGE**

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