



REPUBLIC OF KENYA



Rapemo & 2 others v Land Registrar, Rachuonyo South & 3 others (Miscellaneous Application E004 of 2024) [2024] KEELC 3861 (KLR) (16 May 2024) (Ruling)

Neutral citation: [2024] KEELC 3861 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY
MISCELLANEOUS APPLICATION E004 OF 2024
GMA ONGONDO, J
MAY 16, 2024
IN THE MATTER OF ARTICLES 23(3) (F), 50(1) & 162(2) (B) OF THE
CONSTITUTION OF KENYA, 2010
AND
IN THE MATTER OF SECTIONS 18 & 19 OF THE LAND REGISTRATION
ACT NO. 3 OF 2012
AND
IN THE MATTER OF LAND ACT, NO 6 OF 2012
AND
IN THE MATTER OF ENFORCEMENT OF THE DECISION OF THE LAND
REGISTRAR, RACHUONYO DATED 23RD JANUARY, 2024
AND
IN THE MATTER OF LAND PARCELS NOS. CENTRAL KASIUL/KAWERE
KAMAGAK/1440, 1451, 1552, 1453, 1557, 1558 AND 1693
AND
IN THE MATTER OF APPLICATION FOR JUDICIAL REVIEW REMEDIES OF
MANDAMUS, CERTIORARI AND PROHIBITION
BETWEEN

BETWEEN
PATRICK AWUOR RAPEMO 1ST APPLICANT
SYLVESTER OMONDI AWUOR 2ND APPLICANT
CHARLES OPIYO A.K.A CHARLES AWUOR 3RD APPLICANT



AND

LAND REGISTRAR, RACHUONYO SOUTH 1ST RESPONDENT
SUB-COUNTY SURVEYOR, RACHUONYO SOUTH 2ND RESPONDENT
PIUS JABULA OTUGA 3RD RESPONDENT
THOMAS OPIYO OMOLLO 4TH RESPONDENT

RULING

1. By chamber summons dated 25th February 2024, the three applicants through Onyango Jonyo & Company Advocates sought leave of this court to apply for judicial review against the respondents. On 26th February 2024, the leave was granted accordingly and it was ordered that the substantive application be lodged and served within 21 days from that date.
2. The applicants' counsel complied with the court orders and filed an application by way of a notice of motion dated 27th February 2024 (The application herein) for;
 - a. An order of certiorari do issue to bring into this court and quash the Respondents' decision and prohibit the Respondents from proceeding with implementation of the report made on 23rd January 2024 bearing reference number SOK/RACH/FR/VOL 11/068.
 - b. An order of prohibition be issue to prohibit the Respondents from interfering with the applicant's land titles numbers Central Kasipul/Kawere Kamagak/1451, 1453, 1557 and 1558 and other rights that the applicants are entitled to by virtue of being the bona fide registered owners of the said land parcels.
 - c. An order of prohibition prohibiting the Respondents from relying on and/or effecting the decision contained in the report made on 23rd January 2024 bearing reference number SOK/RACH/FR/VOL II /068 and/or from changing the relevant land registration records in their respective departments.
 - d. An order of prohibition, be issued prohibiting the 3rd and 4th Respondents from exercising proprietary rights over the dispute boundary between himself and the Applicants.
 - e. An order of mandamus compelling the 1st and 2nd Respondents to make available to the Applicants the minutes of defunct meetings held pertaining to the boundaries herein indicating all the relevant process followed when reaching at the report dated 23rd January 2024.
 - f. That grant of leave to apply for orders of certiorari, prohibition and mandamus as prayed for herein do operate as stay of the report of the 1st and the 2nd Respondents made on 23rd January, 2024 and any other decision/report pertaining to the land parcels named above and sought to be impugned by these proceedings until the final determination of this application herein.
 - g. The costs of this application and of the application for leave be provided for.
3. The application is rooted in the applicants' supporting affidavit together with a copy of a report (A-2) annexed thereto as well as twelve (12) grounds stated on the face of the same which include;
 - a. That the Applicants are the bonafide registered owners/beneficiaries of land parcels number Central Kasipul/Kawere Kamagak/1451, 1453, 1557 and 1558.



- b. That sometimes in the month of January, 2024 the 1st and 2nd Respondents convened a meeting purporting to review and/or change the boundaries to the Applicants' land parcels being Central Kasipul/Kawere Kamagak/1451, 1453, 1557 and 1558 with land parcel Central Kasipul/Kawere Kamagak/1452 on the invitation of the 3rd and 4th Respondents and without the authority and/or notice to the Applicants.
 - c. That the Applicants were never given any notice, though there has been a boundary dispute between the Applicants and the 3rd and 4th Respondents that started in 1978. The Applicants were never heard before the said report was done.
 - d. That the forgoing is kin to a denial of rules of natural justice and express statutory protection.
4. The respondents were made aware of the application as they were duly served as revealed in affidavits of service sworn on 8th April 2024 and 18th April 2024; see also *Ogada-vs-Mollin* (2009) KLR 620.
 5. It is crystal clear that the respondents failed to give notice to the applicants for review and or change of boundaries as stated in paragraph 3 (b) hereinabove. The respondents convened a meeting and generated a report (A-2) without hearing the applicants.
 6. A fair opportunity to be heard is a fundamental principle of justice; see Halsbury's Laws of England 5th Edition 2010 Volume 61 paragraph 639.
 7. The acts of the respondents as disclosed in the report (A-2) and the application in entirety violated the right to fair administrative action as enshrined in Article 47 of *the Constitution* of Kenya 2010
 8. To that end, the application is unchallenged, cogent and established against the respondents to the requisite standards. The applicants deserve the orders sought in the application.
 9. A fortiori, the application is meritorious. It is hereby allowed against the respondents jointly and severally in terms of orders 1, 2, 3, 4, 5 and 7 sought in the application as set out in paragraph 2 hereinabove.
 10. It is so ordered.

DATED AND DELIVERED AT HOMA BAY THIS 16TH DAY OF MAY 2024.

G. M. A ONG'ONDO

JUDGE

PRESENT;

1. Mr. Onyango learned counsel for ex-parte applicants -Present.
2. F. Mutiva and M. Obunga, court assistants.

