



**Republic v District Land Adjudication Officer, Rachuonyo District; Kiriwo & others (Interested Party); Aguox (Exparte) (Environment and Land Judicial Review Case 3 of 2023) [2024] KEELC 3878 (KLR) (16 May 2024) (Ruling)**

Neutral citation: [2024] KEELC 3878 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISII  
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE 3 OF 2023**

**M SILA, J**

**MAY 16, 2024**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**THE DISTRICT LAND ADJUDICATION OFFICER, RACHUONYO DISTRICT ..... RESPONDENT**

**AND**

**ELIZAPHAN AGER KIRIWO & OTHERS ..... INTERESTED PARTY**

**AND**

**FARES OGADA AGUOX ..... EXPARTE**

**RULING**

1. I have before me two applications one dated 26 March 2024 filed by the 8<sup>th</sup> interested party, i.e the County Government of Homa Bay, and the second dated 28 March 2024 filed by the State Law Office on behalf of the respondent in the main judicial review motion. Both applications more or less seek the setting aside of my ruling delivered on 26 March 2024 in respect of an application dated 29 November 2023 vide which the 1<sup>st</sup> – 7<sup>th</sup> interested parties sought the setting aside of a consent filed on 23 July 2013. Both applicants allege that they were not given an opportunity of being heard on the said application. On the part of the State Law Office, it is alleged that the respondent was not served with the application and that there is a public interest element that would call for the setting aside of the orders. For the 8<sup>th</sup> interested party, it is raised that they were not heard because at that time they were not parties to the suit. They also raise issue that the consent was in the case Kisii HCCC Miscellaneous Application No. 30 of 2011 and no application in that file was ever made to set it aside.



2. The applications are opposed mainly on the ground that service was effected and opportunity was given to the 8<sup>th</sup> interested party to be heard on the application but the 8<sup>th</sup> interested party instead came to court seeking an adjournment.
3. I have considered the applications.
4. First, I am at a loss as to what it is that the 8<sup>th</sup> interested party wishes to bring out in stating that there was nothing filed in Kisii HCCC Miscellaneous Application No. 30 of 2011 and wonders where this suit, as Kisii ELC JR No. 3 of 2023, has come from. I say so because the record is very clear. The matter was of course filed in the High Court in the year 2011 and given the number Kisii HCCC Miscellaneous Application No. 30 of 2011. In 2012, the Environment and Land Court was created. On 6 August 2013 the consent dated 23 July 2013 was endorsed settling the case. On 4 December 2023 the application dated 29 November 2023 for setting aside the consent was filed and placed before Magare J, of the High Court. He correctly found that this was a land matter for which the ELC would be the court with jurisdiction and transferred the case to this court. Upon transfer the case was re-assigned the case number ELC JR No. 3 of 2023. It is not a new case but the same case simply transferred and now identified with its transferred number. The above is just as clear as it can be. The case can no longer be heard before the High Court because the High Court now has no jurisdiction to hear land cases and that is how the case is now in the ELC. I think that sets the record very straight and I wonder what it is that the 8<sup>th</sup> interested party wants to milk from the above.
5. On the substance of the motions, for the respondent in the main judicial review suit, that is the Land Adjudication Officer, Rachuonyo, the true position of the matter is that the respondent was served with the application. There is an affidavit of service filed on 12 March 2024. It does demonstrate that the motion dated 29 November 2023 was duly served upon the Land Adjudication Department Homa Bay on 12 February 2024. They even stamped on the face of the application and the receiving stamp is there to see. If this is not service then I wonder what it is that constitutes service. I have seen that the hearing date was served to the Attorney General by email to the Kisumu Office. I may have an issue here because I had directed service to be effected on the Land Adjudication Office and the Attorney General's office in Homa Bay. The Attorney General may have a point on the service of the hearing notice. I will on that reason allow her application with costs.
6. For the 8<sup>th</sup> interested party, they were also served with the application on 12 February 2024. This is clear from the affidavit of service which annexes a copy of what was served. There is certainly a receiving stamp showing that the application was served on the said date. The 8<sup>th</sup> interested party was not served because she was a party to the suit, but because she was a party to the consent sought to be set aside. Therefore, nothing stopped the 8<sup>th</sup> interested party from filing a reply to the application despite not being a substantive party to the suit. The 8<sup>th</sup> interested party, not being a party, filed her own application to be allowed to be the 8<sup>th</sup> interested party. But as I am saying, not being an interested party did not prevent the 8<sup>th</sup> interested party from replying to the application to set aside the consent.
7. On 13 March 2024 Ms. Lamwenya, for the now 8<sup>th</sup> interested party, was present in court when I gave the date of 21 March 2024 for hearing of the application. On 21 March 2024 she was not there when I first called out the file but only Mr. Mwamu for the applicants was present. He urged that I allow the application. It was after he had made his arguments that Mr. Akello came in late to court saying that he has just been appointed to act for the County Government of Homa Bay and asked for an adjournment on the basis that he intended to file a replying affidavit. He asked for 7 days.
8. I was of course not impressed by the application for adjournment given that the application had been served on 12 February 2024, more than one month prior, and thus ample time to respond had been



given. I did not see why the County Government of Homa Bay was appointing an advocate on the date of the hearing of the application yet it had time to put its house in order. Mr. Akello was in fact not even ready with the County Government's own application to come on record for the 8<sup>th</sup> interested party. This, in my considered opinion, was a simple case of sheer unpreparedness and tardiness on the part of the 8<sup>th</sup> interested party. If you choose to come to court unprepared that is not a reason to set aside a ruling that ensued out of your lack of preparedness.

9. The Attorney General, for want of service of the hearing notice as directed by court succeeds on its application to set aside the ruling of 26 March 2024. There is no substance on the application of the 8<sup>th</sup> interested party and it is dismissed with costs. But since I still have to rehear the application, given the success of the Attorney General's application, the 8<sup>th</sup> interested party can ride on it and reply to the application. I will give directions on the re-hearing of the application when I deliver this ruling.
10. Orders accordingly.

**DATED AND DELIVERED THIS 16 DAY OF MAY 2024**

**JUSTICE MUNYAO SILA**

**JUDGE, ENVIRONMENT AND LAND COURT**

**AT KISII**

