



Republic v Chairman National Land Commission & another; Chogo & another (Exparte Applicants); African University Trust of Kenya (Interested Party) (Environment and Land Miscellaneous Application E052 of 2022) [2024] KEELC 4690 (KLR) (13 June 2024) (Ruling)

Neutral citation: [2024] KEELC 4690 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E052 OF 2022
NA MATHEKA, J
JUNE 13, 2024**

BETWEEN

REPUBLIC APPLICANT

AND

THE CHAIRMAN NATIONAL LAND COMMISSION 1ST RESPONDENT

THE NATIONAL LAND COMMISSION 2ND RESPONDENT

AND

KAZUNGU MOLI CHOGO EXPARTE APPLICANT

CHANGA WA MOLO CHOGO EXPARTE APPLICANT

AND

AFRICAN UNIVERSITY TRUST OF KENYA INTERESTED PARTY

RULING

1. The application is dated 19th January 2024 and is brought under Section I (a), (b) and Section 3 (a) of the [Civil Procedure Act](#) seeking the following orders;
 - a. That the Notice of Motion dated 24th August 2022 and filed on 31st August 2022 be struck out with costs because;
 - i. It contains material non-disclosure and concealment that are likely to embarrass the court.
 - ii. It's an abuse of the court process.
 - b. Costs.



2. It is premised on the grounds that there is no valid decision made in favour of the claimant the ex parte applicant herein in the purported claim No. NLC/HLI/007/2017 or claim No. NLC/HLI/OO 1/2017. That claim No. NLC/HLVOO 1/20 17 involved different parties from the parties before the court. As a matter of fact, there is no such a complaint registered with the National Land Commission in the names of the ex parte applicant. That the only claim filed by the Claimant Applicant is claim No. No. NLC/HLI/007/2017 which claim had not been determined as at 31st August 2022 when the judicial proceedings were filed. That these averments were concealed from the court but were disclosed by the NLC in the Replying Affidavit of Brian Ikol filed on 6th October 2022 at paragraph 24 to 27 where he depones that; ⁱ. What is captured on page 881 is not the ex parte applicants' claim Number NLC/HLV007/2017 but claim number NLC/HLV001/2017 for a different set of claimants. In actual fact the ex parte claims claim was deferred to the next commission under table 8 and page 886 of the Gazettee Notice No. 1995 of 1st March 2019, This further corroborated by the proceedings of 29th August 2018 before the commissions where the commission did not conclude the dispute the last time it came up for hearing on 29th August 2018. The commission went on to direct that another hearing date would be issued on notice where African University Trust and the parties that sold them the land would be given an opportunity to be heard. That the claim No. NLC/HLI/007/2017 was only decided on 11th October 2023 in favour of African University Trust as against the Applicant.
3. This court has considered the application and the submissions therein. The Applicants maintain that the commission has not rendered any decision on this matter and there is no decision or determination by the commission dated 7th February 2019 as the claim is pending finalization, The purported decision dated 7th February 2019 is a forgery amounting to criminals acts and perjury on the part of the ex-applicants and this Honourable Court should take punitive action against them for using a fraudulent document in court. T he Ex parte Applicant maintains that the Respondents determined his claim No. NLC/HLI/007/2017 as per the copy of the determination dated 1st March 2019 and Gazzette notice No. 1955 of 1st March 2019 and the Interested Party's allegations that the determination was deferred has no basis. That the affidavit of one Brian Ikol attached to the supporting affidavit is hearsay. That this application seeks to challenge the substratum of the judicial review application dated 24th August 2022. I find that whether the decision was rendered or not is a matter of fact and can only be determine once the court reviews the evidence in the application of judicial review dated 24th August 2022. It would be premature to determine this matter at this interim stage without the benefit of reviewing all the documents and final submissions from all the parties involved. For these reasons, I find that the application is unmerited and I dismiss it. Costs to be in the cause.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MOMBASA THIS 13TH DAY OF JUNE 2024.

N.A. MATHEKA

JUDGE

