



**Agricultural Development Corporation v Chief Land Registrar & 4 others (Miscellaneous Application 14 of 2024) [2024] KEELC 6208 (KLR) (25 September 2024) (Ruling)**

Neutral citation: [2024] KEELC 6208 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
MISCELLANEOUS APPLICATION 14 OF 2024  
FM NJOROGE, J  
SEPTEMBER 25, 2024**

**BETWEEN**

**AGRICULTURAL DEVELOPMENT CORPORATION ..... APPLICANT**

**AND**

**THE CHIEF LAND REGISTRAR ..... 1<sup>ST</sup> RESPONDENT**

**LAND REGISTRAR MOMBASA ..... 2<sup>ND</sup> RESPONDENT**

**SAHAL AGRO-HOLDINGS LIMITED ..... 3<sup>RD</sup> RESPONDENT**

**CHEPTUMO AND COMPANY ADVOCATES ..... 4<sup>TH</sup> RESPONDENT**

**ETHICS AND ANTI CORRPTION COMMISSION ..... 5<sup>TH</sup> RESPONDENT**

**RULING**

1. The Applicant filed a Notice of Motion application dated 4/3/2024 seeking orders that:-
  - a. Spent;
  - b. This Honourable Court be pleased to issue an order directing the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to rectify the register in respect of Galana Ranch/Block 1/1/ by cancelling the fraudulent registration of the impugned lease dated 17<sup>th</sup> February 2021;
  - c. This Honourable Court be pleased to issue any other order it deems fit;
  - d. The costs of the application be provided for.
2. The said application is premised on the grounds that the 3<sup>rd</sup> Respondent was a Lessee of Galana Ranch/Block 1/1 from the applicant (Agricultural Development Corporation (hereinafter referred to as “ADC”)) which is the Applicant herein, pursuant to a Lease Agreement dated 28<sup>th</sup> September 2020; that despite being executed by the necessary parties, the Lease was never registered in accordance



with the laws relating to the registration of instruments during its pendency; that when the Lessee violated the terms of the Lease by failing to execute any developments on the subject property and subsequently falling into arrears, the Lessor took necessary steps in accordance with the above-mentioned executed Lease Agreement and terminated the Lease. The 3<sup>rd</sup> Respondent soon thereafter filed Nairobi ELC Case No. 158 of 2013 in the High Court of Kenya against the Applicant seeking to prevent it from enforcing its property rights. In its reply challenging the jurisdiction of the Court, the Applicant pointed out the contents of the Clause 8 of the Lease Agreement dated 28<sup>th</sup> September 2010, which provided for Arbitration and stipulated that any and all disputes would be determined through Arbitration. The Applicant's Advocates wrote to the Chartered Institute of Arbitrators-Kenya, declaring the dispute and requesting for an Arbitrator to be appointed in the matter. The matter was subsequently transferred to Malindi ELC through a ruling delivered on the 6<sup>th</sup> June 2013 by Justice H.P.G Waweru and subsequently issued with a new case number of Malindi ELC Case No. 101 of 2013. On 27<sup>th</sup> August 2013, parties by consent transferred the matter to Arbitration, with the Court ordering the status quo as of that date be maintained pending the arbitration proceedings. Thereafter, Justice (Rtd) Benjamin P Kubo was duly nominated; he proceeded to accept the appointment to serve as the sole arbitrator, but he did not make a determination of the matter as the 3<sup>rd</sup> Respondent, being the profounder of the dispute with the Applicant herein, did not progress the matter further. The applicant states that notwithstanding the subsisting dispute between the Applicant and the 3<sup>rd</sup> Respondent, a Lease dated 17<sup>th</sup> February 2021 was fraudulently and without the applicant's consent registered over the same subject property Galana Ranch/Block 1/1 without the knowledge and consent of the Applicant. The Applicant subsequently lodged with the 2<sup>nd</sup> Respondent an application for rectification of the register seeking removal of the Lease fraudulently registered in favour of the 3<sup>rd</sup> Respondent but officers of the 2<sup>nd</sup> Respondent have indicated to the Applicant that such rectification cannot be effected without an order from a Court of Law. The Applicant was further informed by officers domiciled in the office of the 2<sup>nd</sup> Respondent that a restriction had been placed on the subject property Galana Ranch/Block 1/1 in the year 2021 by the 5<sup>th</sup> Respondent, the Ethics and Anti-Corruption Commission. The applicant hence seeks that the land register be rectified to convey the correct status of the subject property and forestall further fraudulent dealings. The application is further supported by the annexed Affidavit of Wilson K. Tonui, the managing director of the applicant which reiterates the foregoing grounds.

3. Grounds of opposition and a replying affidavit of one Abdullahi M. Hassan, a director, were filed by the 3<sup>rd</sup> respondent. The gist of those grounds and the affidavit is that the application is not only fatally defective, an attempt to steal a march on the 3<sup>rd</sup> respondent and a waste of valuable judicial time but also an abuse of the court process and the applicant is merely forum shopping; that the application has been brought under the wrong provisions and can not avail the applicant relief; that the applicant is guilty of misrepresentation and non-disclosure of an existing related suit; that a preliminary objection lies in the fact that the matter is res sub judice and contrary to the provisions of Section 6 of the CPA in that there exists another suit that is ELCLC E036 of 2023 between the applicant and the 3<sup>rd</sup> respondent, in which the court has already ordered an injunction and maintenance of status quo regarding registration of the suit property; that by the orders in that case the issue of registration of the lease dated 17/2/2021 has been dealt with in favour of the 3<sup>rd</sup> respondent pending the hearing and determination of that suit which is still pending and the applicant herein has not preferred appeal or review of that ruling and order and so this court is bereft of jurisdiction in the present matter; that the present notice of motion can not originate a suit and is the improper manner of seeking to rectify a land register and the 3<sup>rd</sup> respondent's right to a fair hearing would be curtailed unless it was heard on its defence in a substantive suit by way of viva voce evidence; that there is no existing order of court authorizing rectification; that the applicant leased the land to the 3<sup>rd</sup> respondent through a consensual extension of an earlier



lease and the 3<sup>rd</sup> respondent is in possession of and conducting business on the land and deserves quiet possession and use under the terms of the now registered lease; that in any event any allegations of fraud have to be proved; that the dispute in Malindi ELC Case No. 101 of 2013 was resolved by an out of court settlement that arrived at the extension of lease and the 3<sup>rd</sup> respondent has not violated the lease agreement.

4. I have called for and perused the original file record for Malindi ELCLC E036 of 2023. I have especially considered the ordered maintenance of status quo regarding both the physical status and the registration status of the suit land issued on 22/2/2024 by the Hon Justice Evans Makori pursuant to an application made in that case by the 3<sup>rd</sup> respondent herein. In this court's view, the order sought herein would run contrary to the status quo order made in that suit in so far as it would, if granted, possibly lead to alteration of the registration details on the land register with regard to the suit land. I find that issuance of that order under the present circumstances would be tantamount to sitting on appeal on the ruling of my brother judge or a review while the judge is still sitting and on duty within the station. It is trite that appeals against orders must be channeled to the Court of Appeal and review applications must be channeled to the judge who made the order if he is still sitting in the station where the order was made.
5. It is upon the foregoing considerations that I find that the application dated 4/3/2024 lacks merit and it is therefore dismissed. However, there shall be no orders as to costs.

**RULING DATED, SIGNED AND DELIVERED AT MALINDI ON THIS 25<sup>TH</sup> DAY OF SEPTEMBER 2024.**

**MWANGI NJOROGE**

**JUDGE, ELC MALINDI**

