



**Mukoma v Kiambu Land Registrar & 3 others; Kariuki & another
(Interested Parties) (Environment & Land Petition E001 of 2023)
[2024] KEELC 7367 (KLR) (28 October 2024) (Judgment)**

Neutral citation: [2024] KEELC 7367 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND PETITION E001 OF 2023
BM EBOSO, J
OCTOBER 28, 2024**

BETWEEN

JAMES GATHANWA MUKOMA PETITIONER

AND

KIAMBU LAND REGISTRAR 1ST RESPONDENT

THE ATTORNEY GENERAL 2ND RESPONDENT

THE NATIONAL LAND COMMISSION 3RD RESPONDENT

COUNTY GOVERNMENT OF KIAMBU 4TH RESPONDENT

AND

PETER MBURU KARIUKI INTERESTED PARTY

JIMNAH NJUGUNA KIMUNYA INTERESTED PARTY

JUDGMENT

1. The petition initiating this cause was dated 26/1/2023. It was brought against the Kiambu Land Registrar and the Attorney General. On 31/1/2023, this court directed the petitioner to join the National Land Commission and the County Government of Kiambu as the 3rd and 4th respondents and serve them with the amended petition. Consequently, the petition was amended on 3/2/2023. Further amendments were made to the petition on 20/4/2023. The further amendments brought on board the two interested parties.
2. Through the further amended petition, James Gathanwa Mukoma [the petitioner] seeks the following reliefs: (i) a declaration that his rights under Article 40 of *the Constitution* have been infringed by dint of the 1st respondent's failure to issue him with an official search relating to Limuru/Kamirithu/201 [the



suit property] that does not contain the words “Reserved for common land”; (ii) a mandatory order compelling the 1st respondent to delete the words “Reserved for common land” from the land register relating to the suit property; (iii) a mandatory order compelling the 1st respondent to forthwith issue to him an official search relating to the suit property, devoid of the words “Reserved for common land”; (iv) a declaration that land parcel number Limuru/Kamirithu/201 is a separate and distinct property different from Limuru Town/480 and that the “purported superimposition of the survey map” of the latter on the survey map of the former is unlawful, illegal, unprocedural, untenable, bad in law and an encroachment on the boundaries of the former; (v) an order prohibiting the 1st respondent against interfering with the land register and records relating to Limuru/Kamirithu/201; (vi) a mandatory order compelling the 1st respondent to promptly, when required, give the Director of Physical and Land Use Planning – Kiambu County Government, “a correct and appropriate status report” on Limuru/ Kamirithu/201 devoid of the words “Reserved for common Land”; (vii) an order requiring the 4th respondent to issue the petitioner with PPA2 Form and/or requisite subdivision approval within 14 days from the date of judgment, (viii) an order directing the 1st respondent to issue the petitioner with subdivision titles relating to subdivisions surveyed out of Limuru/ Kamirithu/201; (ix) an award of general and exemplary damages against the respondents for loss and inconveniences suffered by the petitioner; and (x) costs of the petition.

Petitioner’s Case

3. The petitioner’s case is that the suit property initially belonged to his late father, Mukoma Wa Njiriri. He adds that his late father gifted him the suit property intervivos in the 1950s and subsequently died in 1966. He contends that he was subsequently registered as proprietor of the suit property in March 2019 pursuant to a Judgment rendered by this Court [Bor J] on 12/9/2018 in Nairobi ELC Case No 187 of 2015 (OS).
4. It is the case of the petitioner that initially, he was issued with an official search that did not have the words “Reserved for common land” but subsequently the 1st respondent has been inserting the above words in all the searches relating to the land. He contends that the 1st respondent has interfered with the land records relating to the suit property by inserting the above words.
5. The petitioner faults the 4th respondent for delaying and/or failing to issue him with the PPA2 Form/ Approval for subdivision, adding that he has been unable to develop the suit property due to the 4th respondent’s failure to issue the approval.
6. The petitioner contends that the above acts and/or omissions on part of the 1st and 4th respondents infringe Articles 40, 47(1) and 60(1) (b) of *the Constitution*. The petition was canvassed through written submissions dated 23/11/2023 and rejoinder submissions dated 19/2/2024.

1st and 2nd Respondent’s Case

7. The 1st respondent filed two replying affidavits: (i) a replying affidavit by R W Macharia – Kiambu Land Registrar, dated 9/3/2023; and (ii) a replying affidavit by B K Gitonga - a Government Surveyor from the Kiambu Survey Office. In addition, the 1st respondent filed written submission dated 1/2/2024.
8. The case of the 1st and 2nd respondents is that the green card for Limuru/Kamirithu/201 was reconstructed on 8/3/2019 pursuant to the Decree issued in Nairobi ELC Case No 187 of 2015 (O.S). They add that, pursuant to the said Decree, the petitioner was registered as proprietor of the land on 13/3/2019 and a title was issued to him on the same day. They further contend that the words “Reserved for common land” have always been in the green card, adding that the words pre-date the



registration of the petitioner as proprietor of the land. They contest the petitioner's allegation that the words were inserted subsequent to his registration as proprietor of the land.

9. The 1st and 2nd respondents add that on 14/10/2022, a restriction was registered against title number Limuru/Kamirithu/201 because there exists another green card and another title relating to the same land, to wit, title number Limuru Town/480. They further contend that a site visit revealed that various plots on the proposed subdivision scheme fall along the dam spillway.

3rd and 4th Respondents' Case

10. The 3rd respondent did not file a response to the petition. If they did, it was not brought to the attention of the court. The 4th respondent filed grounds of opposition dated 4/3/2023 in which they stated that they invoiced the petitioner in January 2021, adding that the petitioner had not paid the requisite fees to facilitate processing of his application for subdivision. The 4th respondent contended that the petition was brought prematurely.

Interested Parties' Case

11. The two interested parties were joined to the petition through further amendments to the amended petition. They filed a replying affidavit sworn on 26/6/2023 by Peter Mburu Kariuki and written submissions dated 13/12/2023.
12. The case of the interested parties is that the suit property was previously registered in the name of The Native Land Trust Board and was designated as "Reserved for common land". The Native Land Trust Board was succeeded by the County Council of Kiambu. The interested parties contend that in November 1995, they applied to the Commissioner of Lands to be allocated Limuru/ Kamirithu/201 and their application was granted through a letter of allotment dated 12/4/1996. Upon complying with the conditions of the allotment, they were issued with a 99 year lease commencing on 1/4/1997. Subsequently, on 5/4/2016, their lease was registered and they were, on the same day, issued with certificate of lease number Limuru Town/480 relating to the suit property. They add that Limuru Town/480 is one of the subdivisions surveyed out of Limuru/ Kamirithu/201 following the allotment. They have exhibited a letter of allotment dated 12/4/1996 together with a certificate of lease relating to Limuru Town/480. The exhibited certificate of lease indicates that the land comprised in the title measures approximately 2.214 hectares.
13. The court has considered the petition, the response to the petition and the parties' respective submissions. It does emerge from the further amended petition; the response by the 1st and 2nd respondents; and the response from the two interested parties, that the dispute in this petition revolves around: (i) the question as to whether title number Limuru Town/480 held by the interested parties and title number Limuru/ Kamirithu/201 held by the petitioner relate to the same parcel of land on the ground; (ii) Whether there is a superimposition of the survey map of Limuru Town/480 on the survey map of Limuru/ Kamirithu/201; (iii) Whether the reservation in the green card relating to Limuru/ Kamirithu/201 pre-dates the registration of the petitioner as proprietor of the land and whether it should be removed; and (iv) Whether the 4th respondent has deliberately neglected to act on the petitioner's application for development approval.
14. Are these issues that can be effectively ventilated and adjudicated on the platform of a constitutional petition? Are they constitutional issues under the Bill of Rights? I do not think so. Issue numbers (i) to (iii) are ordinary land disputes that should be ventilated on the platform of a plaint. They are issues that require viva voce evidence that would be tested through cross-examination. Secondly, resolution of the issue relating to approval of the proposed subdivision scheme would have to be preceded by a resolution of the issues revolving around the question of duplicity of titles relating to the suitland.



15. For the above reasons, this court takes the view that the issues in this dispute were inappropriately pleaded as a petition under the Bill of Rights. They were inappropriately canvassed through affidavit evidence. They ought to be pleaded through a plaint and canvassed through viva voce evidence in a trial where parties will be accorded the opportunity to subject parties' evidence to cross-examination. Other relevant parties such as the Director of Land Administration in the National Government [the successor to the Commissioner of Lands] and the Director of Surveys will be made parties to the civil suit to facilitate complete and effectual adjudication of the above issues.
16. Consequently, this petition is struck out on the ground that the key issues in the petition were inappropriately pleaded as a petition instead of a normal civil land suit. Taking into account the fact that the relevant parties in relation to the alleged duplicity of titles and survey maps are not parties to this suit, there will be no award of costs. For avoidance of doubt, parties will be at liberty to seek adjudication of the issues on the appropriate platform(s).

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 28TH DAY OF OCTOBER 2024

B M EBOSO

JUDGE

In the Presence of: -

Ms Wambua for the Petitioner

Ms Wambui for the 1st and 2nd Interested Party

Court Assistant: Hinga

