



**Republic v National Land Commission; African Inland Church & 3 others (Interested Parties); Mbindyo (Exparte Applicant) (Environment and Land Judicial Review Case 30 of 2020) [2024] KEELC 13319 (KLR) (21 November 2024) (Ruling)**

Neutral citation: [2024] KEELC 13319 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**  
**ENVIRONMENT AND LAND JUDICIAL REVIEW CASE 30 OF 2020**  
**A NYUKURI, J**  
**NOVEMBER 21, 2024**  
**FORMERLY NAIROBI ELC JR. NO. 396 OF 2016 )**  
**IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY**  
**FOR JUDICIAL REVIEW ORDERS OF PROHIBITION AND**  
**CERTIORARI**  
**AND**  
**IN THE MATTER OF THE LAW REFORM ACT, CHAPTER 26**  
**LAWS OF KENYA**  
**AND**  
**IN THE MATTER OF THE FAIR ADMINISTRATIVE ACTIONS**  
**ACT, 2015**  
**AND**  
**IN THE MATTER OF THE NATIONAL LAND COMMISSIONS**  
**ACT, 2012**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**NATIONAL LAND COMMISSION ..... RESPONDENT**

**AND**

**AFRICAN INLAND CHURCH ..... INTERESTED PARTY**

**AGRICULTURAL DEVELOPMENT CORPORATION ..... INTERESTED PARTY**



CHIEF LAND REGISTRAR ..... INTERESTED PARTY  
DIRECTOR OF SURVEYS ..... INTERESTED PARTY  
AND  
CHARLES STEVEN MBINDYO ..... EXPARTE APPLICANT

## RULING

### Introduction

1. Before court is a notice of motion dated 4<sup>th</sup> November 2024 filed by the exparte applicant seeking the following orders;
  - a. Spent.
  - b. Spent.
  - c. That pending the hearing and determination of the substantial appeal against the judgment delivered on 10<sup>th</sup> July 2024 by Honourable Lady Justice A. Nyukuri and all consequential orders therein, this Honourable Court do stay any eminent proceedings, hearing, deliberations, determination, review activities and/or any other activities organized by the respondent herein and/or their agents/servants relating to the suit property known as Parcel No. LR. No. 9917.
  - d. That this Honourable Court do issue further orders and directions as it may deem just and fit.
  - e. That the costs of this application be provided for.
2. The application is anchored on the supporting affidavit sworn by Jane Nyaboke Mbindyo, the applicant on 4<sup>th</sup> November 2024. The applicant's case is that on 10<sup>th</sup> July 2024 dismissing the applicant's prayer for judicial review orders, prompting the applicant to file an appeal to the Court of Appeal being Nairobi Civil Appeal No. COACA/E651 of 2024.
3. The applicant complained that in an unexplained urgency, the respondent had issued dates for review hearing on the 4<sup>th</sup> and 5<sup>th</sup> November 2024 in regard to the certificate of the title for LR. No. 9917 despite the pending appeal, although the applicant was served on 28<sup>th</sup> October 2024. She further stated that she had filed an application dated 31<sup>st</sup> October 2024 before the Court of Appeal under certificate of urgency, which application was certified as urgent. She also stated that the respondent had failed to adduce evidence of a formal complaint by any party, the list of witnesses and any material that would be relied upon during hearing.
4. She further stated that there had been no proper service on the applicant to allow him prepare adequately for the hearings by the respect and that he will be highly prejudiced. She complained further that the respondent had issued the 4<sup>th</sup> respondent with allotment letters for Parcel No. LR. No. 9917 (suit property) as seen in the affidavit of David Makovu Muli of 13<sup>th</sup> July 2021, which shows clear bias and that therefore the appeal may be rendered nugatory. She also complained that the 1<sup>st</sup> respondent had allocated the suit property to the 3<sup>rd</sup> interested party and that therefore it was biased.
5. She averred that the applicant had been given a short notice for review hearing despite being unwell and not being able to attend the hearing. She argued that her appeal was meritorious and may be rendered nugatory if the orders sought are not granted. She attached her power of Attorney; directions



of the Court of Appeal made on 4<sup>th</sup> November 2024; letter by the respondent dated 17<sup>th</sup> October 2024; affidavit dated 13<sup>th</sup> July 2021; copy of allotment letter.

6. The application was unopposed as no response was filed by the respondents despite service.

### **Analysis and determination**

7. The court has carefully considered the application. The only issue is whether the applicant has met the threshold for grant of stay of proceedings by the respondent pending appeal to the Court of Appeal.
8. Order 42 Rule 6 of the Civil Procedure Rules provides for stay of proceedings as follows;
  1. No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.
  2. No order for stay of execution shall be made under subrule (1) unless—
    - a. the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and
    - b. such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.
  3. Notwithstanding anything contained in subrule (2), the court shall have power, without formal application made, to order upon such terms as it may deem fit a stay of execution pending the hearing of a formal application.
  4. For the purposes of this rule an appeal to the Court of Appeal shall be deemed to have been filed when under the Rules of that Court notice of appeal has been given.
  5. An application for stay of execution may be made informally immediately following the delivery of judgment or ruling.
  6. Notwithstanding anything contained in subrule (1) of this rule the High Court shall have power in the exercise of its appellate jurisdiction to grant a temporary injunction on such terms as it thinks just provided the procedure for instituting an appeal from a subordinate court or tribunal has been complied with.
9. Stay of proceedings and stay of execution are different and must be distinguished as the applicable tests for the two, are different. While the test for stay of execution pending appeal is demonstration of substantial loss and willingness to provide security for the due performance of the decree that may be passed; the test for stay of proceedings is higher and more stringent. Disputes are filed to be determined and not to be stayed, whether they are filed in court or before administrative or quasi-judicial bodies like the respondent herein. The right to a fair hearing under Article 50 of the *Constitution* includes the right to have one's dispute determined without delay as required in Article 159 of the *Constitution*. The right to be heard expeditiously before a quasi-judicial body is a right protected under Article 47 of the *Constitution* which provides as follows;



1. Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.
2. If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.
3. Parliament shall enact legislation to give effect to the rights in clause (1) and that legislation shall—
  - a. provide for the review of administrative action by a court or, if appropriate, an independent and impartial tribunal; and
  - b. promote efficient administration.
10. Therefore unless, the interests of justice demand any proceedings to be stayed, the court should be hesitant to stay proceedings. There must be special circumstances for proceedings to be stayed.
11. In the case of *Kenya Wildlife Service v. James Mutembei* [2019] eKLR, the court held as follows;

Stay of proceedings should not be confirmed with stay of execution pending appeal. Stay of proceedings is a grave judicial action which seriously interferes with the right of a litigant to conduct his litigation. It impinges on the right of access to justice, right to be heard without delay and overall, right to fair trial. Therefore the test for stay of proceedings is high and stringent.

.....Therefore the court's general practice is that a stay of proceedings should not be imposed unless the proceedings beyond all reasonable doubt ought not to be allowed to continue. This is a power which, it has been emphasized, ought to be exercised sparingly, and only in exceptional cases.
12. In the instant case, the applicant complains that she was served late, on 28<sup>th</sup> October 2024 when the hearing had been scheduled for 4<sup>th</sup> and 5<sup>th</sup> November 2024 and that she has not been served with the formal complaint against her as well as the witness statements and all the necessary evidence to enable her prepare to defend herself. She also states that she has been unwell and hence cannot attend the respondents review hearing. Further that the respondent has shown clear bias because it already allocated the suit property to the interested parties herein as per the affidavit filed herein in 2021.
13. It will be noted that when the applicant filed the judicial review herein, the respondent had scheduled review hearing in respect of the applicant's title for 2<sup>nd</sup> September 2016. That hearing was stalled by proceedings herein until 10<sup>th</sup> July 2024 when the applicant's prayer for judicial review orders was dismissed by this court's judgment of even date. The process undertaken by the respondent for the review hearing is thus a process provided for under Section 14 of the *National Land Commission Act*, which process is independent of these proceedings. The proceedings before the respondent are subject to this court's supervisory jurisdiction as provided for in Regulation 30 of the National Land Commission (Review of Grants and Dispositions of Public Land Regulations, which provide that a person aggrieved by the decision of the Commission may within fourteen days of the Commission's decision, appeal to the Environment and Land Court.
14. In the instant application, the applicant complained of bias, short notice, her being unwell and failure of the respondent to furnish her with the complaint and evidence against her. I have considered the supporting affidavit and it is clear that the applicant is yet to register the above complaints with the respondent. If for instance the applicant needs adjournment due to illness and or short notice, it is only proper, fair and just that the same is raised before the respondent and not before this court, as this court



cannot substitute its decision with that of the respondent, and the respondent being an independent Commission ought to be given opportunity to exercise its mandate under the law, without being unduly obstructed. In addition, if the applicant needs the formal complaint and evidence against her to be furnished to her, nothing stops her from applying for the same before the respondent. Besides, the applicant is not stopped from raising the issue of bias before the respondent. In the circumstances of this case, I find no special circumstances which in the interests of justice would militate against the parties' rights to expeditious determination of their dispute before the respondent as enshrined in Articles 47, 50 and 159 of the *Constitution*.

15. As the process undertaken by the respondent is an independent process pursuant to the respondent's mandate under Section 14 of the *National Land Commission Act*, and any challenge in respect of any decision of the respondent is provided in law, which is by way of appeal and in view of the fact that the applicant herein has not demonstrated special circumstances that would require this court's intervention in halting the proceedings before the respondent herein, I find and hold that the application dated 4<sup>th</sup> November 2024 lacks merit and the same is hereby dismissed with no order as to costs.
16. It is so ordered.

**DATED, SIGNED AND DELIVERED AT MACHAKOS VIRTUALLY THIS 21<sup>ST</sup> DAY OF NOVEMBER 2024 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM.**

**A. NYUKURI**

**JUDGE**

**In the presence of;**

No appearance for the applicant

No appearance for the respondent

Court assistant – Josephine

