



Bliss Holdings Limited v Onyango & 5 others (Constitutional Petition E006 of 2024) [2024] KEELC 13228 (KLR) (18 November 2024) (Ruling)

Neutral citation: [2024] KEELC 13228 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

CONSTITUTIONAL PETITION E006 OF 2024

MN GICHERU, J

NOVEMBER 18, 2024

IN THE MATTER OF : ARTICLES 2, 3, 10, 19, 20, 21, 22, 23, 35, 40, 47, 48, 50, 162, 165, 258, 259 AND 260 OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF: CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS UNDER ARTICLES 10, 21, 35, 40, 43, 47, 48, 50 AND 258 OF THE CONSTITUTION OF KENYA.

AND

IN THE MATTER OF: ENFORCEMENT OF THE BILL OF RIGHTS UNDER ARTICLE 22(1) 162 (2) (B) AND 165 (1) THE CONSTITUTION OF KENYA

BETWEEN

BLISS HOLDINGS LIMITED PETITIONER

AND

CHRISTINE KEMUNTO ONYANGO 1ST RESPONDENT

GEOFFREY M OGEMBO 2ND RESPONDENT

RICHOCHET ENTERPRISES LIMITED 3RD RESPONDENT

WILFRED OMARIBA 4TH RESPONDENT

DISTRICT LAND REGISTRAR - NGONG 5TH RESPONDENT

ATTORNEY GENERAL 6TH RESPONDENT



RULING

1. This ruling is on the notice of motion dated 3/6/2024. The motion is brought under Articles 22, 23 (1) (c), 162 (2) (b), 1653(b) of the Constitution, Sections 1A, 1B, 3 and 3A of the Civil Procedure Act, Orders 10 rule 11, 22 rule 52, 40 rule 1, 51 rule 1 Civil Procedure Rules, Sections 4 and 13 of the Environment and Land Court Act and all other enabling provisions of the law.
2. The motion seeks the following orders.
4. Pending the hearing and determination of the petition, an interim conservatory order do issue restraining the respondents, their employees, agents and/or servants from trespassing, dealing, developing, constructing, entering, subdividing, leasing, charging, transferring, selling, disposing, interfering, intermeddling or in any manner whatsoever dealing with L.R. No. Kajiado/Ntashart 9553 and 9557.
6. That the costs of and incidental to this application be provided for.
3. The motion is based on nine (9) grounds and is supported by an affidavit sworn by Peter Kabui Kuria, one of the applicant's director. The affidavit has nine (9) annexures. The gist of the motion is as follows. One, the 3rd respondent was registered as proprietor of L.R. No. 9552 – 58. Two, the petitioner purchased L.R. No. 9553 and 9557, suit parcels, from the 3rd respondent in the year 2014. Three, the petitioner was issued with title deeds for the suit parcels in 2/12/2015. Four, on 31/5/2018 without the petitioner's knowledge, the 1st and 2nd respondents filed a suit, Ngong MELC No. 67 of 2018 seeking a declaration that L.R. No. 7255 belongs to them and the title deed issued to the 3rd respondent was null and void. Five, on 29/1/2021, a consent was executed allowing the prayers by the 1st and 2nd respondents where the parties agreed that all subdivisions, mutations and titles originating from the suit parcels were to be cancelled and the original title reinstated in the name of the original owner, Patui Ene Murikiritu. Six, the said consent was adopted as an order of the court on 14th April 2021. Seven, the petitioner only became aware of the court order when the Land Registrar Ngong sent them a notice of intention to rectify the register and ask the petitioner to surrender the title deeds for cancellation. Eight, the Petitioner's attempt to join the suit at the Magistrates court was rejected by the court. Nine, following the dismissal of the application to join the suit the only recourse for the petitioner was to file this petition. Finally, the respondents failed to disclose that L.R. No. 7255 had been subdivided and transferred to third parties who have heavily invested in the suit parcels.
4. The motion, though served is unopposed. Counsel for the petitioner was to file written submissions but I do not see any such submissions on record.
5. I have carefully considered the motion in its entirety including the grounds, the affidavit and the annexures. I find that the following issues arise.
 - i. Whether the petitioner has privity of contract with the 1st, 2nd and 4th respondents.
 - ii. Whether this petition is the only recourse that the petitioner has.
 - iii. Whether a petition is the appropriate way to resolve the dispute.
6. On the first issue, I find that the petitioner has no privity of contract with the 1st, 2nd and 4th respondents. He only has privity of contract with the 3rd respondent which seems to have decided to breach the sale agreement between it and the petitioner. Without privity of contract, it is difficult to see how the petitioner can sustain any claim against parties who are strangers to it.



7. On the second issue, I find that this petition is not the only recourse that the petitioner has. It can file a suit against the 3rd defendant for the refund of the purchase price and damages for any loss resulting from the breach of contract.

8. As for the third issue, I find that this petition is not the appropriate way through which to seek redress. The genesis of the dispute is that the third respondent chose to breach agreement between it and the petitioner. The dispute is therefore largely between two private individuals. The state is not accused of any breach of contract. It is merely executing the wish of the original registered owner of the suit parcels expressed through a court order entered by consent. It has been held in the case of Hon. Uhuru Muigai –versus- Nairobi Star Publications Limited Petition No. 187 of 2012 (2013) eKLR, as follows.

“It is important to recognize that even if a case does raise a constitutional matter, the assessment of whether the case should be heard by the Constitutional Court rests instead on the additional requirements that access to this court must be in the interest of justice and not every matter will raise a constitutional issue worthy of attention”.

9. In paragraph 18 of the affidavit by the Petitioner dated 3/6/2024, the petitioner director deposes as follows.

That the petitioner has heavily invested on the subjected parcels and stripping it of its proprietorship is in dissonance with Sections 24 and 26 of the [Land Registration Act](#) as well as the Petitioner’s guaranteed constitutional rights”.

10. I find that had the suit been commenced vide a plaint, the issues of the sale agreement, the remedies for breach, the damages suffered, the investments by the petitioner on the suit and others would have been defined more precisely by elaborate witness statements and documents including valuation reports and photographs. The defendants would equally be in a position to file their defence and the accompanying documents. In my finding, this would be the proper way to proceed in this dispute.

11. For the above stated reasons, I find no merit in the motion dated 3/6/2024. I dismiss it with no order as to costs.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY 18TH DAY OF NOVEMBER 2024.

M.N. GICHERU

JUDGE

