



Inoi Farmers Cooperative Society Limited & another v Njira & 6 others (Petition 2 of 2023) [2024] KEELC 7545 (KLR) (14 November 2024) (Judgment)

Neutral citation: [2024] KEELC 7545 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA

PETITION 2 OF 2023

JM MUTUNGI, J

NOVEMBER 14, 2024

IN THE MATTER OF LAND ACT NO. 6 OF 2012 PART VIII COMPULSORY ACQUISITION OF INTEREST IN LAND SECTIONS 107, 107A, 110, 111, 115, 120, 121, 125 & 129

AND

IN THE MATTER ARTICLE 162 (2), 165 (3) & (6) AND 258 OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF THE SOCIETY ACT 108 PART III, 8,9,10

BETWEEN

INOI FARMERS COOPERATIVE SOCIETY LIMITED 1ST PETITIONER

KAITHERI HOUSING COOPERATIVE SOCIETY LIMITED .. 2ND PETITIONER

AND

JOHN WACHIRA NJIRA 1ST RESPONDENT

JOSEPH WANJOHI NJIRA 2ND RESPONDENT

JAMES MURIITHI NJIRA 3RD RESPONDENT

HANNAH WANGECHI NJIRA 4TH RESPONDENT

JAMES MUGO NJIRA 5TH RESPONDENT

FRANCIS MURIITHI NJIRA 6TH RESPONDENT

GERALD GACHINGA NJIRU 7TH RESPONDENT



JUDGMENT

1. The Petitioner filed the Petition dated 6th September 2023 on 7th September 2023 filed this suit through the Firm of Muthii Murigu & Company Advocates and prayed for the following orders:
 1. A declaration that the original land parcel Inoi/Kerugoya/201 was compensated with land parcel Mwea/Gathigiriri/Adj. Sec/691/236 in favour of the Respondents' father and the ownership of the original land in favour of the Respondents' father extinguished and ownership of the same conferred upon the 1st Petitioner.
 2. A declaration that the father to the Respondents was fully compensated and the Respondents were fully compensated and the Respondents do not have any claim against the Petitioners and the original Land Ref. Inoi/Kerugoya/201 is not part of the Estate of the Respondents' father.
 3. An order notifying the Land Registrar Kirinyaga Office and cancelling any title issued in favour of the Respondents that is a resultant subdivided of the old title Inoi/Kerugoya/201.
 4. An order of permanent injunction to restrain the Respondents their agents, servants, employees, assigns or anyone acting on their behalf from evicting, entering or in any way interfering with the Inoi/Kerugoya/3148, 3150, 3151, 3132, 3153, 3154, 3155, 3156, 3157, 3158,3159 and 3160 which are the subdivision of the original Land Reference Inoi/Kerugoya/201.
 5. Any other relief this court may deem fit to grant.
 6. Cost of the Petition.

The Petitioner's Case

2. The Petitioners' case is premised on the grounds outlined in the Petition and the Supporting Affidavit sworn in support of the Petition by Felix Muriithi Mwai, the Chairman of the 1st Petitioner, filed on 7th September 2023. The Petitioner averred that the Respondents' late father, Njira Ngari, was the original owner of land parcel Inoi/Kerugoya/201 and that about 1978, the County Council of Kirinyaga requested the landowners of land bordering Kerugoya Town to surrender their land for the expansion of the Town and in turn be compensated with other lands in the sparsely populated Mwea area. The Respondents' father surrendered the suit land in favor of the 1st Petitioner and as compensation the County Council compensated him with Land reference Mwea/Gathigiriri/691 & 236 and a cash payment of Kshs. 30,800/-, which he acknowledged receipt of. The Respondents' father however did not surrender the title of the suit land to the 1st Petitioner. The 2nd Petitioner was authorized by the 1st Petitioner to construct a housing estate in the suit land and the 2nd Petitioner proceeded and developed residential houses on the land as depicted in the annexed photographs. The Petitioners averred that despite knowing of the compulsory acquisition of the suit property in the favour of the 1st Petitioner, the Respondents proceeded to file a succession cause after their father's death and included the suit property land reference No. Inoi/Kerugoya/201 in the inventory of the estate assets which the Petitioners claim was a deliberate concealment of facts to benefit from a property that was not part of the estate of their deceased father.
3. The Petitioners further filed a Supplementary Affidavit dated 25th March 2024, where they annexed the abstracts of title for Land parcels Kirinyaga/Gathigiriri/236 and 691 which indicated the Respondents' father was registered as the owner of the land parcels in 1975 and 1972 respectively which was an



affirmation that indeed the County Council of Kirinyaga compensated the Respondents' father as per the arrangement. The Respondents though having been served did not respond to the Petition and the Court permitted the Petitioners to proceed to urge the Petition by way of written submissions.

Petitioners' Written Submissions

4. The Petitioners filed their written submissions dated 21st August 2024, stating that land reference No. Inoi/Kerugoya/201 was compulsorily acquired by the County Council of Kirinyaga. The Respondents' late father was compensated by the County Council with land reference No. Mwea/Gathigiriri Adj. Sec 691 & 236. The land Parcel Inoi/Kerugoya/201 was allocated by the County Council to Inoi Farmers' Cooperative Society, the 1st Petitioner, who was given permission to develop it. Additionally, the 1st Petitioner was directed by the defunct County Council of Kirinyaga to pay a sum of Kshs. 30,000/- to the Respondents' father, which they did, fully settling the issue of compensation. The Petitioners further argued that the Respondents falsely misrepresented and concealed facts and wrongly claimed to be beneficiaries of land parcel Inoi/Kerugoya/201 which had been compulsorily acquired from their late father and fully compensated for through the allocation of land parcels Kirinyaga/Gathigiriri/236 and 691.

Analysis and Determination

5. I have reviewed the pleadings and considered the Petitioner's submissions. The sole issue for determination in this Petition is whether the Petitioners have substantiated their case and whether they are entitled to the orders sought in the Petition.
6. Evidence indicates that the Respondents were served, yet they failed to appear or file any response to the Petition, rendering this Petition uncontested. Despite this, it remains imperative to evaluate the Petitioner's case against the backdrop of relevant laws and Judicial precedents.
7. The threshold of what constitutes a constitutional Petition was established in the Case of Anarita Karimi Njeru v. R 1976 – 80 KLR 1272, and reaffirmed by the Court of Appeal in the Case of Mumo Matemu v. Trusted Society Of Human Rights Alliance & others 2013 eKLR. In the latter case, it was stated that a party seeking redress in a matter involving reference to *the Constitution* must clearly specify the provisions alleged to have been violated and provide details of the alleged infringement. This is the approach consistently taken by the Courts in Constitutional Petitions in our Country. In the Mumo Matemu case (supra), the Court of Appeal stated: -

“We cannot but emphasize the importance of precise claims in due process, substantive Justice and the exercise of jurisdictions by a Court. In essence, due process, substantive Justice and the exercise of jurisdiction are a function of precise legal and factual claims. However, we also note that precision is not conterminous with exactitude

Yet, the principle in Anarita Karimi Njeru (supra) underscores the importance of defining the dispute to be decided by the Court. In our view, it is a misconception to claim as it has been in recent times with increased frequency that compliance with rules of procedure is antithetical to Article 159 of *the Constitution* and the overriding objective principle under Section 1A and 1B of the *Civil Procedure Act* (Cap 21) and Section 3A and 3B of the *Appellate Jurisdiction Act* (Cap 9). Procedure is also a handmaiden of just determination of cases.”

8. This Petition as presented meets the criteria for precision and clarity. It has set out the various Constitutional provisions and Statutory provisions alleged to have been violated and has further



outlined the alleged violations. The Petitioners claim that the Respondents have threatened to forcibly evict them from their land after fraudulently causing the land to be transmitted to themselves constitutes a breach of the Petitioners right to property.

9. In this case, the Supporting Affidavit filed by the Petitioner clearly demonstrates that, during the period when the then County Council of Kirinyaga sought to expand Kerugoya Town, it requested nearby landowners to cede their properties in exchange for alternative plots in the less densely populated area of Mwea. The Petitioners at Paragraph 8 of the Affidavit state that "the Respondent's father surrendered his land to the 1st Petitioner and received Land Ref. Mwea/Gathigiriri/691 & 236 as compensation." In addition to the two parcels of land the Respondent's late father was also compensated with a cash sum of Kshs. 30,800/-. Documentation, including correspondence between the now-defunct Kirinyaga County Council and the 1st Petitioner, confirms that the compensation agreement was duly fulfilled on the part of the County Council. Moreover, title abstracts on record verify that Njira Ngare, the Respondent's late father, was officially registered as the owner of land parcels Kirinyaga/Gathigiriri 691 and 236 on 20th June, 1972, and 20th June, 1975, respectively.
10. In the Case of David Kibet Mutai & Others .v. Attorney General C.A Civil Appeal No 95 of 2016 [2019 eKLR] the Court of Appeal stated thus: -

“The position before us is that the Appellants averred to certain facts under oath in an Affidavit. The Respondents did not controvert those facts either through an affidavit in response or through cross-examination. An Affidavit is sworn evidence. It occupies a higher pedestal than grounds of opposition, basically issues of law intended to be argued. Two things flow from this. First, by the mere fact of the affidavits not having been controverted, there is an assumption that what is averred as factual evidence is admitted. Secondly, a question arises regarding the weight or probative value of the averred factual evidence. In other words, are the facts averred in the Affidavits sufficient to prove the Appellants' claims?”

11. The averments by the Petitioners in the Supporting and Supplementary Affidavit have not been controverted and therefore I accept the Petitioners assertions to be correct that their property rights have been violated in regard to land parcel Number Inoi/Kerugoya/201. This parcel was compulsorily acquired by the defunct Kirinyaga County Council for the expansion of Kerugoya Town from the Respondents late father and he was duly compensated.
12. The land acquisition process for the suit land was completed in the 1970s, and it is important to note that it was governed by the former Constitution of Kenya and the Land Acquisition Act Cap 295 (now repealed). Section 75 (1) of the retired Constitution contained relevant provisions, which read as follows:

“No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except where the following conditions are satisfied:

1. the taking of possession or acquisition is necessary in the interest of defence, public safety, public order, public morality, public health, town and county planning or the development or utilization of property so as to promote the public benefits; and
2. the necessity thereof is such as to afford reasonable justification for the causing of hardship that may result to any person having an interest or right over the property; and



3. provision is made by a law applicable to that taking of possession or acquisition for the prompt payment of full compensation...”
13. The Land Acquisition Act (now repealed) outlined the procedure to be adhered to whenever any property was to be compulsorily acquired. When the compulsory acquisition process began, Section 3 of the Land Acquisition Act Cap 295 Laws of Kenya stated the following:

“Whenever the Minister is satisfied that the need is likely to arise for the acquisition of some particular land under section 6, the Commissioner may cause notice thereof to be published in the Gazette, and shall deliver a copy of the notice to every person who appears to him to be interested in the land.”
14. Section 8 of the Land Acquisition Act provided that all interested parties must receive prompt and full compensation in cases of compulsory land acquisition. The evidence presented demonstrates that the County Council acquired the subject land compulsorily and that the Respondents’ father received full compensation for it. Therefore, the 1st Petitioner came into possession of the property through compulsory acquisition and the second Petitioner has since developed a housing estate thereon, as has been demonstrated in their further Affidavit.
15. The safeguarding of private property, as ensured by Section 75(2) of the retired Constitution, is upheld within the framework of Article 40 of the 2010 Constitution. Specifically, Article 40, clauses (2) and (3), articulate the following provisions:

“40

 - (2) Parliament shall not enact a law that permits the State or any person:- To arbitrarily deprive a person of property of any description or of any interest in, or right over, any property of any description ...
 - (3) The State shall not deprive a person of property of any description, or of any interest in, or right over property of any description, unless the deprivation:
 - (a) results from an acquisition of land or an interest in land or a conversion of an interest in land or title to land, in accordance with Chapter Five, or
 - (b) is for a public purpose or in the public interest and is carried out in accordance with this Constitution and any Act of Parliament that:-
 - i. requires prompt payment in full of just compensation to the person, and
 - ii. allows any person who has an interest in, or right over, that property a right of access to a Court of Law.”
16. Although the County Council of Kirinyaga and the Respondent’s father do not appear to have followed the conventional procedure provided under the Land Acquisition Act, Cap 295 Laws of Kenya in the compulsory acquisition of the land belonging to the Respondent’s late father there is no



doubt that the intention was for the County Council to acquire land parcel Inoi/Kerugoya/201 from the Respondent's father and compensate him. The intention was actualized as the correspondences exhibited by the Petitioners illustrate. In a letter dated 16th June, 1987 addressed to the Petitioners the Clerk Kirinyaga County Council wrote:-

RE:- Development of LR Inoi/keruoya/201.

Further to my letter No. LND/10/3K/CI/137 of 27th May 1987, I wish to refer to Para 2, phrase “---which the Council has to pay the owner.” Could you please remit to the Council Kshs 30,800/- (Thirty Thousand eight hundred only) being the difference between the value of his Inoi/Kerugoya/201 and compensating parcels Mwea/Gathingiriri/691 and 236 so that we can pay Njira Ngari immediately.

Please expedite to hasten the development.

Signed

JFN Muchiri

Clerk to the Council.

17. The Petitioners paid the payment of Kshs 30,800/- on 7th July, 1987 and were issued a Misc Income Receipt No. J554771. In a further letter dated 14th August 1987 the Council wrote to the Petitioners as follows:-

RE:- Development of a Housing Estate – Kerugoya Township LR Inoi/Kerugoya/201.

This is to confirm that we have already paid amount of compensation to Mr. Njira Ngari who has in turn signed the transfer of the above named parcel in favor of this Council.

In accordance with the original agreement you may, therefore, continue with your project on the same subject complying with the Building By-Laws of the Kerugoya/Kutus Town Council.

Yours faithfully,

J Mwangi

Clerk to the Council

18. For reasons that have not been disclosed the County Council of Kirinyaga did not follow through with the processing of the transfer of LR Inoi/Kerugoya/201 in its favour and the title remained in the Respondent's father's name though the Petitioners took possession and proceeded to complete the housing development they were constructing and had factory buildings on the land.
19. The County Government of Kirinyaga vide a letter dated 6th June, 2022 indeed affirmed the acquisition and compensation process was completed. The content of the letter is as follows:-

To Whom it May Concern

Re:Inoi/Kerugoya/201, Mwea/Gathigiriri/ADJ.SEC/691 & 236.

Records under our custody shows that Inoi/Kerugoya/201 (approximately 3.3 Acres) was acquired by the defunct Local Authority (Kirinyaga County Council) and compensated with two parcels – Mwea/Gathigiriri/Adj.Sec 691 & 236 (approximately 6.6 Acres) in 1975. Land documentation as per the respective Green Card show that the three parcels



were registered to the name of one NJIRA NGARI from whom Inoi/Kerugoya/201 was acquired and duly compensated with Mwea/Gathigiriri/Adj. Sect. 691 & 236.

Rev. Samuel Kanjobe

CEC Member

Land Housing and Urban Development.

20. I have made reference to the foregoing correspondences to illustrate that there was indeed an acquisition of LR. Inoi/Kerugoya/201 and that due compensation for the same was made to the Respondents late father. The Respondents without any shadow of doubt were aware that the parcel of land LR. Inoi/Kerugoya/201 had been acquired and compensation had been made to their father. That they had the audacity to subject LR. No. Inoi/Kerugoya/201 to succession as part of their late father's estate assets depicts insincerity on their part. They were aware that the land was in the possession and occupation of the Petitioners where the 2nd Petitioner had in fact constructed residential houses and factory buildings of the 1st Petitioner which were visible to all and sundry and were clearly standing on the land. The Respondents equally following the succession shared out the two land parcels Mwea/Gathigiriri/Adj.Sec/691 and 236 which were the subject of the compensation.
21. The Respondents clearly were being dishonest and insincere and the law cannot permit them to benefit from their own wrong doing. The title held by their late father ought to have been surrendered for cancellation and the acquired land transferred to the County Council of Kirinyaga and/or to the allottees of the Council. The Respondents late father having accepted the agreed compensation was deemed to have surrendered all the interest he held in the land parcel Inoi/Kerugoya/201 and it was of no consequence that he continued holding the title deed to the land. Equity would not allow the Respondents to retain the land for which their father was compensated and also keep that which their father received in compensation.
22. I am satisfied the Petition has merit and has been substantiated and proved to the required standard. I enter Judgment in favour of the Petitioners and issue the following consequential orders:-
 1. A declaration be and is hereby issued that the Respondents late father Njira Ngari (deceased) was duly compensated for Land Parcel Number Inoi/Kerugoya/201 with land parcels Number Mwea/Gathigiriri/Adj.Sec/691 and 236 (now Kirinyaga/Gathigiriri/691 and 236 respectively).
 2. That the title of the Respondents deceased father to land Parcel Inoi/Kerugoya/201 was extinguished upon the compensation being effected and could not form part of his estate upon his death.
 3. That the title in respect of land parcel Inoi/Kerugoya/201 issued to the Respondents as beneficiaries and the resultant subdivisions thereof being Inoi/Kerugoya/3148 to 3160 and/or any other subdivisions are null and void and should be cancelled.
 4. That the Land Registrar Kirinyaga is ordered to cancel the title land parcel Inoi/Kerugoya/201 and all resultant subdivisions thereof and to register Inoi Farmers' Co-operative Society Ltd the 1st Petitioner herein as the owner of land parcel Inoi/Kerugoya/201 in place of the Respondents.
 5. There will be no order for costs.

JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY AT KERUGOYA THIS 14TH DAY OF NOVEMBER 2024.



J. M. MUTUNGI
ELC - JUDGE

