



REPUBLIC OF KENYA



KENYA LAW
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**Mechumo v National Land Commission & 3 others (Environment & Land
Petition E003 of 2022) [2023] KEELC 322 (KLR) (27 January 2023) (Ruling)**

Neutral citation: [2023] KEELC 322 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA
ENVIRONMENT & LAND PETITION E003 OF 2022**

BN OLAO, J

JANUARY 27, 2023

BETWEEN

GEORGE MECHUMO PETITIONER

AND

NATIONAL LAND COMMISSION 1ST RESPONDENT

COUNTY GOVERNMENT OF BUNGOMA 2ND RESPONDENT

**SEVENTH DAY ADVENTIST CHURCH (EAST AFRICA
LTD) 3RD RESPONDENT**

(CDF) SIRISIA CONSTITUENCY 4TH RESPONDENT

RULING

1. This ruling is in respect to two applications being:
 1. The Petitioner's Notice of Motion dated 9th May 2022.
 2. The 4th Respondent's Notice of Motion dated 27th June 2022.
2. By a Petition dated 9th May 2022, Rt. Rev. George Mechumo (the Petitioner) sought judgment against the National Land Commission, The County Government Of Bungoma, The Seventh Adventist Church (east Africa) Ltd And The Constituency Development Fund (cdf) Sirisia (the 1st to 4th Respondents respectively) with respect to the land parcel No North Malakis/south Wamondo 142 (the suit land) as follows:
 - a. A declaration that the respondents have violated the right of the congregation of the Anglican Church of Kenya under Article 47 of *the Constitution*.
 - b. The Construction commenced on L.r No North Malakisi/south Wamono/142 by the 2nd, 3rd and 4th Respondents are null and void.



- c. Any other relief this Honourable Court may deem fit to grant.
3. The brief substratum of the Petition for purposes of this ruling is that the Anglican Church of Kenya (the Church) has been in occupation of the suit land since 1952 on which they have constructed a church in which their congregation have been worshipping to-date. However, on 6th May 2022, the 2nd, 3rd and 4th Respondents deposited materials on the suit land and commenced excavation thereon with the intention of putting up new structures. That the conduct of the Respondents is in violation of Articles 47, 50, 60 and 67 of *the Constitution* as well as Sections 152, 152E, 152G and 155 of the *Land Act*.
 4. Simultaneously with the Petition the Petitioner filed a Notice of Motion of even date seeking the following orders:
 1. Spent
 2. Spent
 3. A conservatory order be issued restraining the Respondents, their agents and servants from continuing with any construction works on the land parcel No North Malakisi/south Wamono/142 pending the hearing and determination of this constitutional petition.
 5. The application is premised on the grounds set at therein and is supported by the affidavit of the Petitioner. It is predicated on the same grounds as those raised in the petition and annexed thereto are photograph of a church as well as other buildings and construction materials – annexures GM-1 to GM-7. It is the Petitioner’s case that the conduct of the Respondents amount to evicting the church and its congregation from the suit land in contravention of the provisions of *the Constitution* and other relevant laws.
 6. When that application was placed before Asati J on 12th May 2022, she directed that it be served upon the Respondents and be canvassed by way of written submissions to be filed on or before 14th June 2022. However, none of the Respondents filed any responses or submissions in respect to that application by the 14th June 2022 as directed by Asati J including upto the time of directing this ruling.
 7. By a Notice of Motion dated 27th June 2022 and filed on 28th June 2022, the 4th Respondent sought the following reliefs with respect to the Petition:
 1. The 4th Respondent be struck out from the Petition.
 2. The Petitioner do bear the costs of the Petition.
 8. That application is based on the grounds set out therein and is supported by the affidavit of Joyce Wasike Wanjalathe 4th Respondent’s Manager. It is the 4th Respondent’s case that it is a stranger to this petition as it does not construct any buildings which is a function of the County Government. That the 4th Respondent is not aware about the dispute herein nor is it involved in the suit land.
 9. When that application was placed before me on 28th June 2022, I directed that it be served and canvassed by way of written submissions to be filed on or before 27th July 2022 when it would be mentioned before the Deputy Registrar to confirm compliance and take a date for the ruling to be delivered by way of electronic mail.
 10. However, and although the parties were indulged to file their responses and submissions, neither the Petitioner nor the other Respondents filed any response to the 4th Respondent’s Notice of Motion.



Indeed on 31st August 2022, Ms Walakha for the 2nd Respondent informed the Deputy Registrar that the 2nd Respondent would only be responding to the main petition.

11. It is therefore clear from the record that both the petitioner's Notice of Motion dated 9th May 2022 and the 4th Respondent's Notice of Motion dated 27th June 2022 are un-opposed. I shall nonetheless consider both applications on their own merits.

The Petitioner's notice of motion dated 9th May 2022.

12. The Petitioner seeks an order restraining the Respondents, their agents and servants from continuing to carry out any construction on the suit land pending the hearing and determination of this Petition. It is conceded by the Petitioner that the suit land is registered in the name of the 2nd Respondent. Indeed the petitioner has annexed to his further supporting affidavit dated 16th August 2022 a copy of the Certificate of Search confirming that the suit land has since 3rd May 1977 been registered in the name of Bungoma County Council the precursor of the 2nd respondent. Therefore, the ownership of the suit land is not really a matter for determination in this Petition. It bears representing that what the Petitioner are mainly aggrieved about with respect to the conduct of the respondents is a violation of Article 47 of *the Constitution* which reads in sub-Article (1) that:

47. "Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair."

The Petitioner also cites Article 50(1) of *the Constitution* which reads:

50. (1). "Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body."

Sections 152A, B, C, D, E of the *Land Act* on the other hand deal with prohibition against unlawful occupation of land and provides for the issuance of relevant notices before eviction from public land. Therefore, while the petitioner does not appear to challenge the 2nd Respondent's title to the suit land, his main grievance appears to be that the church ought to have been heard and given the necessary notice to vacate. That has not been controverted and in my view, discloses a prima facie case to warrant the orders sought. Further, the continued construction by the Respondents' agents and/or servants on the suit land while it is currently being utilised by the Church as a place of worship will, in my view, amount to irreparable injury which cannot be adequately compensated by an award of damages. It will also be in violation of Article 32(2) of *the Constitution* which provides that:

- 32 (2) "Every person has the right either to individually or in community with others, in public or in private, to manifest any religion or belief through worship, practices, teaching or observance, including observance of a day of worship".

Places of worship should not be violated or desecrated. In Leviticus 19:30, it is written:

"Ye shall keep my Sabbaths and reverence my sanctuary. I am the Lord."

Among the places to respect are churches, mosques and other places of worship. If, as the Petitioner claims, the Church has been utilizing the suit land to worship since 1952, and this has not been controverted, it is not asking for too much for the Respondents to comply with



the law even if they must evict the Church. And even if I was to determine this application on the balance of convenience, I would resolve it in favour of granting the order sought.

13. There is merit in the Petitioner's Notice of Motion dated 9th May 2022. It is for allowing.
4TH Respondent's Notice Of Motion Dated 27TH

June 2022.

14. By this Notice of Motion, the 4th Respondent claims that it is a stranger to the suit land and the dispute herein. Further, that it is not involved in any construction of Nursery Schools which is a function of the National Government.
15. Although this application is also not opposed as the Petitioner did not file any response, this Court is aware that by a recent decision of the Supreme Court In Institute For Social Accountability & Another -v- National Assembly & Others– Petition NO 1 of 2018 2022 KESC 39 KLR delivered on 8th August 2022, among the orders made was that the Constituency Development Fund Act 2013 is Unconstitutional. The 4th Respondent herein is an organ under the said act. Further, the 4th Respondent has pleaded through the replying affidavit of it's manager Joyce Nasike Wanjala that it is not involved in the constructions being carried out on the suit land and no documents have been placed before this Court to that effect.
16. This Court finds merit in the 4th Respondent's Notice of Motion dated 27th June 2022. The same is allowed.
17. Ultimately therefore, and having considered the two applications herein, this Court makes the following disposal orders:
1. The Petitioner's Notice of Motion dated 9th May 2022 is allowed in terms of pray (3) thereof.
 2. The 4th Respondent's Notice of Motion dated 27th June 2022 is allowed with the result that the 4th Respondent is struck out from this Petition.
 3. In view of the orders granted in (1) above, this petition must be heard and determined within 12 months from the date of this ruling otherwise that order will lapse unless extended by this Court.
 4. There shall be no orders as to costs.
5. Finally, and as I have already mentioned in the body of this ruling, the Petitioner's case, as I understand it, is that he is not questioning the 2nd Respondent's title to the suit land. All that the Church seeks is to be treated fairly and in accordance with the Constitution and the relevant laws if it must vacate the land parcel No North Malakisi/south Wamono/142 which is Public Land. That, in my view, is a matter which can be amicably resolved outside the Court by the parties if they put their minds to it as it is not an insurmountable task. I invite them to pursue that cause.

BOAZ N. OLAO

JUDGE

27TH JANUARY 2023

**RULING DATED SIGNED AND DELIVERED AT BUSIA ELC BY WAY OF ELECTRONIC MAIL
THIS 27TH DAY OF JANUARY 2023 WITH NOTICE TO THE PARTIES.**

BOAZ N. OLAO



JUDGE

27TH JANUARY 2023

