



**Harun v County Government of Kajiado; Alini General Agencies Limited (Interested Party)
(Environment & Land Petition 4 of 2019) [2023] KEELC 330 (KLR) (26 January 2023) (Ruling)**

Neutral citation: [2023] KEELC 330 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND PETITION 4 OF 2019**

**MN GICHERU, J
JANUARY 26, 2023**

IN THE MATTER OF A CONSTITUTIONAL PETITION BY NELSON M.D. HARUN PURSUANT TO ARTICLE 35(1) ON ACCESS TO INFORMATION, ARTICLE 40 ON PROTECTION OF RIGHT TO PROPERTY AND ARTICLE 47 ON RIGHT TO FAIR ADMINISTRATIVE ACTION AND IN THE MATTER OF THE FAIR ADMINISTRATIVE ACTION ACT (ACT NO. 4 OF 2015) AND IN THE MATTER OF THE LAND REGISTRATION ACT (ACT NO. 6 OF 2012) AND IN THE MATTER OF THE COUNTY GOVERNMENT OF KAJIADO

BETWEEN

NELSON MUTURI DUMBEYIA HARUN PETITIONER

AND

COUNTY GOVERNMENT OF KAJIADO RESPONDENT

AND

ALINI GENERAL AGENCIES LIMITED INTERESTED PARTY

RULING

1. This ruling is on the notice of motion dated October 17, 2022. It is under order 45 rule 1 and section 3A of the [Civil Procedure Rules](#) and Act. It seeks the following orders;
 - i. Review, discharge and or setting aside of the order dated October 11, 2022.
 - ii. In the alternative and without prejudice to prayer 2, the stay be with respect to plots C302 and C303 only.
 - iii. The respondent do issue the allotment letter for plot C153 which is not challenged herein.



- iv. The costs of this application be borne personally by the advocate for the interested party Mr Ike Owiti.
2. The application is supported by seven grounds, four affidavits and three annexures. The gist of the above material is that the petitioner is in occupation of the suit property and has been in such occupation since the year 2009. On October 11, 2022, Mr Owiti for the interested party misled the court when he said that the interested party was in occupation.

As a result of this statement made by counsel from the bar, the court ordered a stay of the judgment and decree herein. Earlier on August 31, 2022 and October 3, 2022, the court had declined a similar oral application made from the bar.

3. The application is opposed by the interested party and Alice Nyanchama Nyambaka, one of its directors, has sworn a replying affidavit dated October 25, 2022. She insists in the said affidavit that the interested party is in occupation of the suit property which is vacant except for a pit latrine which she dug. Annexed to the affidavit are six photographs of what the deponent says are the suit plots.
4. I have carefully considered the application dated October 17, 2022 in its entirety including the affidavits, annexures and grounds. I find that it has merit and it is allowed for the following reasons.

Firstly, the order sought to be set aside was issued on the assumption that the interested party was in actual possession. This assumption has been made uncertain by the current application especially, by the affidavits challenging such possession.

Secondly, the application by the interested party seeking to set aside the judgment and decree herein has been dismissed. There is little likelihood that the judgment and decree herein will ever be varied because only the respondent could have appealed against it but did not do so.

This means that the decree herein must be implemented just like was the case before the interested came into the suit.

For the above reasons, the application dated October 17, 2022 is allowed in its entirety and order of October 11, 2022 vacated. Cost to the petitioner.

It is so ordered.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 26TH DAY OF JANUARY, 2023.

M.N. GICHERU

JUDGE

