



Ilkeekonyokie-Olmorogi Trust v Ministry of Agriculture, Livestock, Fisheries and Cooperatives & another; National Land Commission & 4 others (Interested Parties) (Environment & Land Petition 3 of 2021) [2023] KEELC 329 (KLR) (26 January 2023) (Ruling)

Neutral citation: [2023] KEELC 329 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND PETITION 3 OF 2021**

MN GICHERU, J

JANUARY 26, 2023

IN THE MATTER OF ARTICLES 2, 3, 10, 19, 22, 23, 25, 27, 40, 47, 48, 50, 60, 61, 63, 67, 70, 232, AND 249 OF THE CONSTITUTION OF KENYA, 2010 AND IN THE MATTER OF LAND ACT, 2012 AND IN THE MATTER OF THE LAND REGISTRATION ACT, 2012 AND IN THE MATTER OF THE COMMUNITY LAND ACT, 2016 AND IN THE MATTER OF THE NATIONAL LAND COMMISSION ACT, 2012 AND IN THE MATTER OF THE FAIR ADMINISTRATIVE ACTION ACT, 2012 AND IN THE MATTER OF PHYSICAL AND LAND USE PLANNING ACT, 2019 AND IN THE MATTER OF THE ENVIRONMENTAL MANAGEMENT AND COORDINATION ACT, 1999 AND IN THE MATTER OF THE CONSTITUTION OF KENYA, 2010 (PROTECTION OF RIGHTS OF FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES AND IN THE MATTER OF THE NATIONAL LAND COMMISSION (INVESTIGATION OF HISTORICAL LAND INJUSTICES) REGULATIONS, 2017 AND IN THE MATTER OF THE ENVIRONMENTAL (IMPACT ASSESSMENT AND AUDIT) REGULATIONS, 2003 BETWEEN

BETWEEN

ILKEEKONYOKIE-OLMOROGI TRUST PETITIONER

AND

THE MINISTRY OF AGRICULTURE, LIVESTOCK, FISHERIES AND COOPERATIVES 1ST RESPONDENT

THE MINISTRY OF LAND AND PHYSICAL PLANNING 2ND RESPONDENT

AND

NATIONAL LAND COMMISSION INTERESTED PARTY

THE COUNTY GOVERNMENT OF KAJIADO INTERESTED PARTY

HALAL MEAT PRODUCTS LIMITED INTERESTED PARTY



**EAST AFRICAN MOTOR SPORTS CLUB - REGISTERED
TRUSTEES INTERESTED PARTY
CHINA ROAD AND BRIDGE CORPORATION KENYA . INTERESTED PARTY**

RULING

1. This ruling is on the notice of motion dated October 22, 2021. The said motion is brought under “ *The Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules*- Rule 4, Articles 10, 19, 22, 23, 25, 27, 40, 47, 48, 50, 60, 61, 63, 67, 70, 232 and 249 of the *Constitution* of Kenya, 2010 and Section 3 of the *Environmental Management and Coordination Act, 1999*.
2. The motion seeks four orders namely,
 - iii. Pending the hearing and determination of the petition, a conservatory order does issue staying the implementation of the part Development Plan made by the second Respondent.
 - (v) Pending the hearing and determination of the petition, a conservatory order does issue prohibiting any quarrying, dumping or other land degrading activities on the land originally known as Ngong/Ngong/1959.
 - (vii) Pending the hearing and determination of this petition, a conservatory order does issue prohibiting any planning, surveying, subdivision, sale, lease of the land originally known as Ngong/Ngong/1959.
 - (viii) The Petitioners be granted leave to amend the petition and to file supplementary affidavits.
3. The motion is based on the following grounds and reasons.

Firstly, the 1st interested party in a decision dated February 7, 2019 made the following orders.

 - a. The land under claim is resurveyed.
 - b. That all public utilities and agencies are given sufficient land;
 - c. The residual land reverts to Ilkeekonyokie to be registered as community land and
 - d. Any land irregularly given to private entities is reverted to Ilkeekonyokie.

Secondly, the second Respondent has failed to resurvey the suit land within the period of three (3) years as required by Section 15 (10) of the *National Land Commission Act*.

Thirdly, all correspondence by the Petitioner to the second Respondent and first Interested Party has not been acted upon or responded to.

Fourthly, the Petitioner’s interests in the suit land are threatened by the second Respondent’s part development plan which has been made without consideration of the first Interested Party’s decision and in exclusion of all the Petitioner’s interest in the land.

Fifthly, the above mentioned PDP has included entities who were not the intended beneficiaries of the suit land according to the purpose for which it was donated, which is veterinary farming and training. The allocation will unprocedurally, illegally and unfairly dispossess the Petitioner of its interests in the land.

Sixthly, the PDP contravenes the first Interested Party’s decision dated February 7, 2019 regarding the reversion of the remainder of the land to the Petitioner.



Seventhly, part of the land is being degraded through quarrying activities allowed by the second Respondent as well as dumping and other activities which do not align to the original purpose for which the land was donated by the Petitioner, which is veterinary farming and training.

Finally, the application discloses merit and meets the threshold set in the case of *Gatirau Peter Munya-versus- Mwenda Kithinji and 2 others* (2014) eKLR for the grant of conservatory orders and if it is not allowed, the entire petition will be rendered nugatory.

4. The motion is further supported by an affidavit sworn by Stephen Mparingoi which has 51 paragraphs and 12 annexures.

In summary, the deponent who is the chairman of the Petitioner deposes that in the year 1938, the British Colonial Government approached the Ilkeekonyokie Olmorogi Community requesting for a piece of land for farmers training in the area. The community which was under the leadership of Chief Kairagga Ole, accepted the request.

As a result, L R Ngong/Ngong/1959 measuring 1400 acres vide gazette notice No 890 of May 18, 1957 was set aside for the purpose of a veterinary farm and training center. Later on March 14, 1975 L R No NGONG/2627, 2628 and 2629. L R Numbers 2628 and 2629 were unlawfully and without approval allocated to the third interested party, a private entity.

Eventually, L R No 2627 which remained was shared between the County Government of Olkejuado, L R 21399 and the Government of Kenya, L R 21400.

Out of L R No 21400 that remains with the Government of Kenya, there are approximately 931 acres of land which remain uncommitted and this is the land which the Ilkeekonyokie Olmorogi Community has legally established a claim over.

5. The community has previously petitioned the National Assembly Departmental Committee on lands in the Eleventh Parliament. In addition, the community also petitioned the Senate's standing committee on land and Natural Resources.

Parliament made six recommendations contained in paragraph 20 of the deponents' affidavit which have never been implemented by the first Interested Party.

Following the first Interested Party's inaction, the community lodged a petition with them. Eventually on February 7, 2019, the first Interested Party made the following decision in regard to the original L R No 1959. "The claim is granted. The commission recommends that the National Land Commission, the Ministry of Land and Physical Planning and County Government undertake to ensure that:-

- i. The land under claim is resurveyed;
- ii. That all public utilities and agencies are given sufficient land
- iii. The residual land revert to Ilkeekonyokie to be registered as community land and,
- iv. Any land irregularly given to private entities is reverted back to Ilkeekonyokie".

6. The community contends that the intended allocation of the land that they donated is contrary to the intended purposes. They contend further that the commission and other players are reluctant to implement the recommendations above and that the first development plan has been made to the exclusion of the community.

This contravenes both the *Constitution*, particularly Article 10 and the Planning Laws. It is for these and other reasons that they pray for the orders in the notice of motion.



7. The Notice of Motion is opposed by the third interested party, Halal Meat Products Limited, and to this end Habib Mohamed Ali Motha has sworn a 59 paragraph replying affidavit with several annexures.

The reply elicits the following issues.

Firstly, there is the issue of previous litigation over the same property especially Nairobi ELC Case No 1128 of 2013 where the court had this to say about the suit land.

“...Therefore, when the land was set apart, it became public land, and it was no longer community land...”

The third Interested Party adds that the court has already determined the dispute to the effect that the Petitioners seek compensation from the government and this suit is a mere rehash.

Secondly, L R 2628 and 2629 are charged to Barclays Bank of Kenya Limited (now Absa Bank Kenya PLC) for the sum of Kshs 65 million pursuant to a charge dated December 3, 2001 yet the said bank is not a party in this suit yet the Petitioners acknowledge in these pleadings that the said property is charged.

Thirdly, the Petitioner having been incorporated as a trust on September 13, 2016, cannot purport to claim L R No 2628 and 2629 for which the third Interested Party has had a valid title since 1975.

Fourthly, the third Interested Party owns L R 1960 and 2221 which is adjacent to the suit property and it is not party of the disputed land. This property should therefore not be confused with the suit property.

Fifthly, the third interested party has utilized parcels 2628 and 2629 for the development of the livestock industry and research in Kenya, breeding, meat abattoir with sewerage treatment, holding area for animals and animal treatment. It further committed its other property L R 1960 and 2221 for the development of livestock industry and research in Kenya among other livestock activities in coordination with Ngong Veterinary Farm.

Sixthly, the Government of Kenya as the lessor issued a lease to the third interested Party on January 1, 1975. The said lease is valid for 99 years and it was reissued on March 29, 2000.

Finally, it is disputed that the suit land was set aside for the benefit of the Petitioner only and it is contended that it was to benefit the whole country.

Issues have been raised on failure by the Petitioner to involve the Attorney General, the third Interested Party and the Ministry of Agriculture in the petition before the National Land Commission.

For the above reasons, the third Interested Party prays that the notice of motion dated October 22, 2021 be dismissed.

8. Learned counsel for the parties were to file written submissions by January 10, 2022. They had not done so by January 19, 2013. This ruling has therefore been written without the benefit of learned Counsels' submissions.

9. I have carefully considered the notice of motion dated October 22, 2021 in its entirety including the affidavits, grounds and annexures. I find that it has no merit for the following reasons.

Firstly, while it is certain that there has been previous litigation over the suit property, it is not certain at this stage what the true position of this litigation is. This is because while the petitioner says that it withdrew ELC No 1128 of 2013. the third Interested Party says there was a finding by the court. Certainty is needed on the true position.



Secondly, it is certain that the community has been dispossessed of the suit land for over 80 years. In the intervening period, other parties may have acquired property rights over the suit land yet they have not been joined in this Petition. It would not be fair to issue some of the orders sought in the absence of such parties as Absa Bank Limited which has a valid charge over some of the suit property.

Finally, it would seem that the Petitioner has not exhausted all the available avenues for dispute resolution because it seems that it is a matter of time before it is allocated 931 acres of land in addition to any other land that may be recovered from any illegal allocation.

For the above reasons, I dismiss the Notice of Motion dated October 22, 2021 save for prayer (viii) which seeks leave to amend. Cost in the cause.

It is so orders.

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

M N GICHERU

JUDGE

