



**Harun v County Government of Kajiado; Alini General Agencies Limited (Interested Party)  
(Environment & Land Petition 4 of 2019) [2023] KEELC 388 (KLR) (25 January 2023) (Ruling)**

Neutral citation: [2023] KEELC 388 (KLR)

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

**MN GICHERU, J**

**JANUARY 25, 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**

**AND**

**IN THE MATTER OF PLOT NUMBERS C152, C153, C302, C303,  
C886, C887 AND C88/NOONKOPRIR CENTRE, KITENGELA**

**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 August 30, 2022. It is brought under article 50(1) and (2) of the Constitution, sections 3 and 3A of the Civil Procedure Act, order 22, rule 22, order 51, rules 1 and 3 Civil Procedure Rules and all other enabling provisions of the law. It seeks the following orders.
  - i. Stay of execution of the judgment dated May 28, 2020 and any consequential orders.
  - ii. Setting aside of the said judgment dated May 28, 2020 and any consequential orders.
  - iii. Hearing of the interested party herein on merit.

2. The motion is supported by nine grounds, two affidavits dated August 30, 2022 and September 19, 2022 and three annexures. The gist of the above material is that the interested party is the registered owner of plot numbers C302 and C303 Noonkopir shopping centre Kitengela which they occupy.

In June, 2022, they were ordered to surrender the allotments to the said parcels pursuant to a court decree. That is the time they became aware of this petition and the proceedings thereto. They were therefore condemned unheard yet they have a meritorious and arguable defence disclosing triable issues and deserving to be heard. They stand to lose property registered in their name.

3. The application is opposed by the petitioner who has sworn a replying affidavit dated September 12, 2022 which has ten annexures. The gist of the detailed affidavit is that long before filing this petition, the petitioner engaged a director of the interested party on several dates in early and mid-2019 through cellphone number 07xxxxxx3.

On May 7, 2019, he met the said director who was in the company of Mr Jonathan Mutelelu, Kitengela town administrator. This same director made a report at Kitengela police station against the petitioner. In short, the interested party was always aware of this suit and when the respondent refused to cooperate with the court and provide the interested party's particulars to the court, the judge ordered that they be served through substituted service and this was done as per the petitioner's annexure number 8.

The petitioner therefore urges that the interested party should not be heard to say that they were never served because they were.

4. Counsel for the parties filed written submissions on October 31, 2022 and November 4, 2022 respectively.

5. I have carefully considered the notice of motion in its entirety including the affidavits, annexures, grounds, submissions and the case law cited therein. I find that the motion has no merit for two reasons.

Firstly, the orders of *certiorari*, prohibition and *mandamus* were issued against the respondent and its actions. The respondent is a public body, unlike the interested party, against which such orders cannot issue.

The actions complained of and which the court found proved, were committed by the respondent and not the interested party. The suit having been heard on merit cannot be set aside except on appeal by the respondent and not by new evidence by the interested party.

Secondly, the interested party is not coming in to say that the petitioner was given a fair hearing before his letters of allotment were revoked. What I understand the interested party to be saying is simply that they were condemned unheard. This is not sufficient to warrant the setting aside of the judgement and



decree on record. Only compliance with the Constitution, statute and rules would have saved the day for the respondent.

The judgment on record is testimony to non-compliance with any of the above. In fact, the interested party is not coming in to make the murky waters cleaner but to make them murkier by confirming that it is indeed a beneficiary of the illegalities found to have been committed by the respondent. I dismiss the application in its entirety. Cost to the petitioner.

It is so ordered.

**DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 25<sup>TH</sup> DAY OF JANUARY, 2023.**

**M.N. GICHERU**

**JUDGE**

