



Republic v Land Registrar Rachuonyo East, South & North Sub-Counties; Tindi (Exparte) (Environment & Land Miscellaneous Case 6 of 2021) [2023] KEELC 169 (KLR) (25 January 2023) (Ruling)

Neutral citation: [2023] KEELC 169 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY

ENVIRONMENT & LAND MISCELLANEOUS CASE 6 OF 2021

GMA ONGONDO, J

JANUARY 25, 2023

(FORMERLY MIGORI ELC MISC NO. E004 OF 2021)

IN THE MATTER OF ORDER 53 RULE 1 & 3 OF CIVIL PROCEDURE

ACT

AND

IN THE MATTER OF THE LAND REGISTRATION ACT, NO 3 OF 2012

AND

IN THE MATTER OF ARTICLES 2, 10, 19,40,47,48 AND 50 OF THE

CONSTITUTION OF KENYA 2010

AND

IN THE MATTER OF SECTIONS 24, 26 AND 79 OF THE LAND

REGISTRATION ACT 2012

AND

IN THE MATTER OF SECTIONS 8 & 9 OF THE LAW REFORM ACT

CAP 26 LAWS OF KENYA

AND

IN THE MATTER OF SECTIONS 7 &8 OF THE FAIR

ADMINISTRATIVE ACTIONS ACT 2015

BETWEEN

REPUBLIC APPLICANT

AND



THE LAND REGISTRAR RACHUONYO EAST, SOUTH & NORTH SUB-COUNTIES RESPONDENT

AND

OTIENO KENNEDY TINDI EXPARTE

RULING

1. This ruling is in respect of service of an application by way of a notice of motion dated August 16, 2022 and filed in court on August 27, 2022 where the applicant/interested party, Joseph Aroka Nyandega through the firm of Modi and Company Advocates, is seeking, among other orders, that he be joined as an interested party in the instant judicial review application and that judgment delivered on July 29, 2021 and consequential orders made affecting land reference number Central Kasipul Kawere/2147, be set aside.
2. The *ex parte* applicant, Otieno Kennedy Tindi through the firm of Mugo and Associates Advocates, opposed the application by way of his replying affidavit sworn on May 10, 2022. He implored the court to dismiss the application with costs.
3. Counsel for the applicant and counsel for the *ex parte* applicant filed and exchanged their respective submissions in respect of the application.
4. The determination of the application cannot be delivered on this date in the interest of justice as stated infra.
5. It is crystal clear that counsel for the applicant has not served the application and the submissions upon the respondent, Land Registrar Rachuonyo East, South and North Sub Counties.
6. This court is duty-bound to ensure that the respondent is made aware of the existence of the application and to have the respondent served with all the necessary papers. The respondent has the right to appear and respond to the application or decline to do so; see *Ogada v Mollin* [2009] KLR 620.
7. All the parties in the present application are entitled to access justice as stipulated in article 48 of the *Constitution of Kenya, 2010*.
Moreover, the parties have the unlimited right to be heard herein pursuant to articles 25 (c) and 50 (1) of the same *Constitution*.
8. Indeed, a fair opportunity to be heard is a fundamental principle of justice; see *Halsbury's Laws of England* 5th Edition 2010 Volume 61 paragraph 639 and *James Kanyita Nderitu and another v Marios Philotas Gbikas and another* (2016) eKLR.
9. On that account, The applicant's counsel shall serve the respondent with the application and the submissions within seven days from this date for a response thereto together with submissions, if any, to be filed and served within ten days from the date of service.
10. The application is fixed for February 22, 2023 to confirm compliance and for further directions.
11. It is so ordered.

DELIVERED, DATED AND SIGNED AT HOMA-BAY THIS 25TH DAY OF JANUARY 2023.

G.M.A ONG'ONDO



JUDGE

PRESENT

1. None.

2. Okello, Court Assistant

