



Skan Commission Agencies Ltd v Makuyuni Farmers Ltd & 2 others (Environment & Land Petition 17 of 2018) [2023] KEELC 16749 (KLR) (22 February 2023) (Judgment)

Neutral citation: [2023] KEELC 16749 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT & LAND PETITION 17 OF 2018
MN KULLOW, J
FEBRUARY 22, 2023**

BETWEEN

SKAN COMMISSION AGENCIES LTD PETITIONER

AND

MAKUYUNI FARMERS LTD 1ST RESPONDENT

LAND REGISTRAR NAROK 2ND RESPONDENT

ATTORNEY GENERAL 3RD RESPONDENT

JUDGMENT

1. The Petitioner had instituted the petition herein brought on their own behalf and on behalf of all its members who purchased land from the 1st Respondent parcel of land known as CIS-Mara-Ololunga/157 and CIS-Mara- Ololunga/198 who have never obtained their Title Deeds, and sought the following orders and declarations;-
 - a) A declaration that the Constitution rights of Skan Commercial Agencies to Property, protection from discriminations, right to protection of law from in human Dignity and Fair Administration action has been violated by the Respondents.
 - b) A declaration that the Respondents did not follow the right procedure when issuing titles with Respondents.
 - c) A declaration that the Respondents did not follow the right procedure when issuing titles with Respect to CIS-Mara- Ololunga/157 and 198.
 - d) A declaration that the Petitioners are entitled to prompt payment in full and just compensation for deprivation of property and infringement of their Constitutional rights.



- e) A declaration that the actions of the Respondents and their agents were unconstitutional, unlawful, null and void, in purporting to terminate the agreement dated 8/6/2006 between Mukuyu-ni Farmers Company LTD and the Petitioner for the sale of 58 acres of land.
 - f) A declaration that the 1st and 2nd Respondents have violated the Petitioners equal benefit of law under Article 27 of *the Constitution*.
 - g) An order of judicial Review to quash any decision of the 1st, 2nd and 3rd Respondent made pursuant to a flawed, biased and unreasonable investigations or recommendations.
 - h) Award of general damages and costs.
 - i) In the alternative to prayers (a)- (h) the court do order a refund of the total purchase price.
2. The petitioners had in support of the petition relied on the grounds that they had paid the sum of Kshs. 3,510,000/= to the 1st Respondent for the purchase of 358 acres registered as CIS-Mara- Ololunga/198 which is occupied by it's members. They contend that after payment of the purchase price, the Director of the 1st Respondent would subdivide the parcel of land known as CIS-mara- Ololunga/157 and 198 so that the petitioners would have the 358 acres they had paid for. However, they later found out that the land was not subdivided as agreed and further that the title thereto has been issued to strangers.
 3. The petitioner further contend that due process was not followed and the conduct of the Respondents had violated their rights under Article 27,28, 29,40, 47,48 and 159 of *the Constitution* of Kenya.
 4. The petition was opposed by the Respondents; the 1st Respondents through its Chairman Stephen Kiane swore a Replying Affidavit in answer to the petition. The 1st Respondent denied the receipt of the sum of Kshs. 3,510,000 but averred that they entered into a sale Agreement and only received the sum of Kshs. 2,032,500 towards the purchase of 58 acres of parcel of CIS-Mara- Ololunga/157 and 198. That there no agreement of sale of the an extra 300 acres and never agreed with the petitioner to purchase 358 acres and have thus transferred the 58 acres to the petitioners and the fact that the petitioner alleges to occupy the 358 acres they purchased is not true and that land parcel CIS-Mara- Ololunga/157 was not subdivided.
 5. I have considered the petition and the answer to the petition and the rival submissions and it is my opinion that only issue for determination is whether the Respondent have infringed on the right of the petitioners as infringed and whether the orders sought can be granted.
 6. From the pleadings and the submissions filed it is abundantly clear that the entire petition is hinged on the sale of land between the petitioners and the Respondents. This was a commercial transaction that involved the sale of land that was never concluded and consequently it is the petitioner's assertion that his fundamental rights have been infringed upon by the Respondent.
 7. I have read the entire petition and I find no single infringement of the petitioners rights.
 8. It is my humble opinion that the petitioners had other avenues for redress through the instant petition.
 9. In the case of the *County Council of Busia =vs= Julius Orina Manwari and 12 Others* (2015) eKLR the court held;-

“The court is swayed by the Respondents argument that there is an alternative remedy to petitioners cause and as a general Rule where a parallel remedy exists then that remedy and not a Constitutional relief, should be sought unless that remedy does not provided adequate relief”



10. In the instant petition is clear that the petitioner cause is based on breach of a contractual relation which could easily be remedied if the petitioners had filed a suit for due performance of the contract of sale or seek damages for breach of contract.
11. I therefore find that the petitioners Rights have not been violated merely by the Respondents failing to perform their part of the contract.
12. The upshot of the above is that the petition is not merited and I strike out the same with costs to the Respondents.

DATED SIGNED DELIVERED,VIRTUALLY AT MIGORI THIS 22ND DAY FEBRUARY OF 2023

MOHAMMED.N. KULLOW

JUDGE

