



**Mwaisama & 158 others v Ndara B Community & 2 others (Land Case Petition E001 of 2023)
[2024] KEELC 5934 (KLR) (Environment and Land) (19 September 2024) (Ruling)**

Neutral citation: [2024] KEELC 5934 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VOI
ENVIRONMENT AND LAND
LAND CASE PETITION E001 OF 2023
EK WABWOTO, J
SEPTEMBER 19, 2024**

BETWEEN

**GARDIEL MNYAMBO MWAISAMA & 158 OTHERS & 158
OTHERS PETITIONER**

AND

**NDARA B COMMUNITY 1ST RESPONDENT
TRUSTEES OF DIASPORA UNIVERSITY TOWN 2ND RESPONDENT
UNIVERSAL RESOURCES INTERNATIONAL LTD 3RD RESPONDENT**

RULING

1. This Ruling is in respect to the 1st and 2nd Respondent's Notice of Motion application dated 22nd October 2023. The application was supported by the supporting affidavit sworn by Ronald Mwang'ombe on even date. The following orders were sought in the application:
 - a. ...Spent.
 - b. That this Honourable Court do stay proceedings herein pending the hearing and determination of this application interpartes.
 - c. That this Court do stay proceedings herein pending carrying out of investigations instituted by Ndara B Community Land Management Committee through the Directorate of Criminal Investigation, Voi on the 159 Petitioners background and/or origin.
 - d. That Directorate of Criminal Investigations, Voi, to table the investigations report on the 159 Petitioners herein within 30 days from the date hereof
 - e. That costs of the application be provided for



2. The Application was based on several grounds, including that:
 - a. The 1st Respondent was duly registered at the passage of *the Constitution* and holds the property constitutionally vide a registration title issued in 1982 as Sagalla/Ndara “B” 1
 - b. The Petitioners claim the suit land is their ancestral home, and the Respondent is of a different view. The suit land is not ancestral land and if at all they are in the said land, then they are there illegally.
 - c. The filing of the application is not an afterthought and the prayers sought would assist the Court arrive at an informed decision.
3. The application was opposed by the 3rd Respondent and the Petitioners herein. The said application was canvassed by way of written submissions pursuant to the orders issued by this court on 16th May 2024.
4. The Applicants relied on their earlier submissions dated 16th February 2024 wherein it was argued that at the time of filing the application the DCI had already commenced the process of investigations and that the Petitioners would not be prejudiced at all if the orders were granted
5. The 3rd Respondents filed submissions dated 10th July 2024 in which it was argued that the Applicant failed to table any evidence save for the mere mention that the matter had been reported to the police.
6. The Petitioners filed written submissions dated 6th March 2024. It was submitted that the Applicant despite alleging that the investigations had commenced in 2022, they had failed to attach a copy of OB extract confirming their complaint. They had not tendered any evidence to show that they encountered any frustrations in the course of their investigations. It was also submitted that the Applicant are on a fishing expedition in respect to their application and this court should not aid the Applicant in their mission. The court was urged to dismiss the application.
7. Having considered the application together with the written submissions filed by counsel for the parties, the sole issue for determination is whether the application dated 22nd October 2023 is merited?
8. The institution of suits vide a petition is a matter of constitutional importance. Not only is it to be considered that the suit carries weight, in that, the substantive issues are tied to fundamental freedoms and rights but also that such suits enjoy a sui generis procedure and flexibility as enumerated in *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013.(commonly referred to as the Mutunga Rules)
9. With regards to stay of proceedings in petitions, Rule 32 of the Mutunga Rules specifically speaks to instances of stay where an appeal is pending. It is therefore safe to conclude that in all other circumstances where stay of proceedings is sought, the discretion of the court is triggered.
10. Application of this discretion is to ensure prudent use of judicial time and resources to dispense justice for the parties and guard against delay the pursuit of justice- whether advertent or inadvertent.
11. In *Meenye & Kirima Advocates v Gathoni Limited; Isabiriye & 2 others (Intended Interested Party)* (Environment & Land Miscellaneous Case 39 of 2016) [2023] KEELC 18524 (KLR) (6 July 2023) (Ruling), the applicant sought stay of proceedings pending the conclusion of the ongoing



investigations by the Ministry of Lands and Physical Planning, the DCI and the Registrar of Companies. I associate myself with the sentiments of my brother Angote J. in his ruling:

“....An order for stay of proceedings needs to be balanced against a litigant’s right to expeditious justice under Article 159(2)(b) of *the Constitution*.”

Although in the above-mentioned suit, the suit property had already passed ownership to a third party through auction, the key consideration in determining stay of proceedings was the effect and impact of granting such orders- which in this instant suit also presents itself as a pertinent question.

12. The provisions of Article 159(2)(a)(b)(c) and (d) of *the Constitution* of Kenya as read with Sections 1A and 1B of the *Civil Procedure Act*, Cap 21 mandate this court to judiciously breathe life into the overriding objective of the Act by ensuring justice to parties in all civil proceedings is rendered in an expeditious manner.
13. The Applicants allege to be the rightful owners of the land by virtue of their registration as a community and title issued in 1982. It was also submitted that only one of the Petitioners is a member of the Ndara B Community. It is now nearly a year since the filing of the application, the applicants have given no further indication of the progress of the investigations. For this reason, the Court is of the opinion that the pendency of the investigations may be an exercise in perpetuity which is tantamount to delaying the determination and disposal of the Petition and thus an affront to justice.
14. In conclusion, it is the finding of this court that the 1st and 2nd Respondents application dated 22nd October 2023 lacks merit and the same is hereby dismissed in its entirety. Each party to bear own costs of the application.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT VOI THIS 19TH DAY OF SEPTEMBER 2024.

E. K. WABWOTO.

JUDGE

In the presence of:-

Mr. Mwzighe for the Petitioners.

Mr. Onindo for the 1st Respondent and 2nd Respondent.

N/A for 3rd Respondent.

Court Assistant; Mary Ngoira and Norah Chao.

