



Republic v Murang'a District Land Surveyor & another; Nyaga & another (Exparte Applicants); Murang'a District Land Registrar (Interested Party) (Environment and Land Appeal E001 of 2023) [2025] KEELC 1464 (KLR) (24 March 2025) (Ruling)

Neutral citation: [2025] KEELC 1464 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANGA
ENVIRONMENT AND LAND APPEAL E001 OF 2023
MN GICHERU, J
MARCH 24, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

MURANG'A DISTRICT LAND SURVEYOR 1ST RESPONDENT

ATTORNEY GENERAL 2ND RESPONDENT

AND

NELSON NJIRU NYAGA EXPARTE APPLICANT

ELIUD NJUGUNA UNO EXPARTE APPLICANT

AND

MURANG'A DISTRICT LAND REGISTRAR INTERESTED PARTY

RULING

1. This ruling is on the notice of motion dated 15-3-2024. The said motion is brought under Section 80 of the Civil Procedure Act, Cap 21 and Orders 45 and 51 of the Civil Procedure Rules. It seeks the following residual orders.
2. Stay of execution of the judgment dated 30-11-2023 and the decree dated 21-2-24.
3. Setting aside and/or review of the judgment and decree in (2) above.
4. In the alternative, the Respondents and the Interested Party be granted leave to file their replying affidavit and submissions to the Judicial Review Application dated 24-4-23 and filed on 27-4-203.



5. That the costs of this application be in the cause.
2. The motion is based on eleven(11) grounds and is supported by an affidavit sworn by the District Land Surveyor Murang'a, one Regina Njue, which has fourteen(14) annexures. The gist of the motion is as follows. Firstly, even though the Respondents were duly served with the pleadings herein, the counsel who had conduct of the matter proceeded for a training at the Kenya School of Government from 1-5-2023 to 31-5-2023 and was therefore not able to file a response in the matter. Secondly, the said counsel has never appraised the Applicants of the outcome of the case through service of submissions or judgment notices. She only came to know of the case when the decree was presented to her for implementation. Thirdly, the implementation of the decree of this Court is impossible as it conflicts with the status on the ground. It also conflicts with another decision of the High Court issued in Kiambu JR No. 3 of 2016. In addition, there are other related suits touching on the same land. They include Thika ELC Case No. 501 of 2017(formerly Nairobi ELC 680 of 2014) and Thika ELC No. 214 of 2018(formerly Nairobi ELC 681 of 2014). Fourthly, the Exparte Applicants were aware of the two matters mentioned above. For the above and other reasons, the Applicants pray for the orders as above.
3. The motion, though served, is unopposed by the Exparte Applicants. None of them has filed a replying affidavit or any other material.
4. I have carefully considered the motion in its entirety and I find that it has merit for the following reasons. Firstly, it is fair and just that the Respondents be heard in the matter as good reasons have been given as to why a replying affidavit could not be filed on time. Secondly, the Respondents and any other party with a stake in the dispute ought to be heard. Article 50(1) of the *Constitution* requires that parties to a dispute be given a fair hearing. It would not be a fair hearing if the Respondents were denied a chance to reply to the motion when the Petitioners stand to suffer no prejudice at all if the current motion is allowed. Finally, it is said that the implementation of the decree herein will cause conflict with the ground and other court orders. It is important for the court to understand the difficulty in implementing the decree herein and this will only be possible if the Respondents and any other party with a stake in the matter is heard before final orders are made.
5. In conclusion and for the reasons already given, the notice of motion dated 15-3-2024 is allowed in terms of prayers 3 and 4.

Costs in the cause.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 24TH DAY OF MARCH, 2025.

M.N. GICHERU

JUDGE.

Delivered online in the presence of; -

Court Assistant – Mwangi Njonjo

Exparte Applicants' Counsel – Miss Mwirichia

1st and 2nd Respondents' Counsel – Miss Kabai

3rd Respondents Counsel – Proposed

Mr. Kaburi for the 1st to 15th Interested Parties.

