



REPUBLIC OF KENYA



**Muratha & 17 others v Wambaki & 5 others (Environment and Land Case  
Civil Suit 1206 of 2015) [2022] KEELC 2459 (KLR) (28 April 2022) (Ruling)**

Neutral citation: [2022] KEELC 2459 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE CIVIL SUIT 1206 OF 2015  
LC KOMINGOI, J  
APRIL 28, 2022**

**BETWEEN**

**MICHAEL NJUGUNA MURATHA ..... 1<sup>ST</sup> PLAINTIFF**  
**CATHERINE NJERI KIBOI ..... 2<sup>ND</sup> PLAINTIFF**  
**BENJAMIN NJUGUNA ..... 3<sup>RD</sup> PLAINTIFF**  
**DAVID KAHONGE KAMAU ..... 4<sup>TH</sup> PLAINTIFF**  
**SIMON MWANGI ..... 5<sup>TH</sup> PLAINTIFF**  
**ZACHARIA GITHINJI NG'ANG'A ..... 6<sup>TH</sup> PLAINTIFF**  
**CHARLES MWANGI GATU ..... 7<sup>TH</sup> PLAINTIFF**  
**VERONICA WAMBUI MUGO ..... 8<sup>TH</sup> PLAINTIFF**  
**PETER KIMANI ..... 9<sup>TH</sup> PLAINTIFF**  
**PETER WAWERU ..... 10<sup>TH</sup> PLAINTIFF**  
**PETER NJOROGE MWANGI ..... 11<sup>TH</sup> PLAINTIFF**  
**PETER NGIGE MOSES ..... 12<sup>TH</sup> PLAINTIFF**  
**JOSEPH MUIRURI MBUGUA ..... 13<sup>TH</sup> PLAINTIFF**  
**LUCY WAITHERA KAMAU ..... 14<sup>TH</sup> PLAINTIFF**  
**JOSEPH MBUGUA ..... 15<sup>TH</sup> PLAINTIFF**  
**FELISTAS NJERI ..... 16<sup>TH</sup> PLAINTIFF**  
**JOHNSON KINUA ..... 17<sup>TH</sup> PLAINTIFF**  
**FRANCIS MUHORO ..... 18<sup>TH</sup> PLAINTIFF**

**AND**



MARGARET NGE'ENDO WAMBAKI ..... 1<sup>ST</sup> DEFENDANT  
TERESIA WANJIKU WAMBAKI ..... 2<sup>ND</sup> DEFENDANT  
JOSEPH KIMANI GATHECHA ..... 3<sup>RD</sup> DEFENDANT  
SAMEUL KAMAU KURIA ..... 4<sup>TH</sup> DEFENDANT  
MARY WAIRIMU MURINGU T/A WAKIBUI HELP GROUP  
INVESTMENT ..... 5<sup>TH</sup> DEFENDANT  
CHIEF LANDS REGISTRAR THIKA ..... 6<sup>TH</sup> DEFENDANT

## RULING

1. This is the notice of motion dated 3st November 2021 brought under section 1A, 1B(a), 3 and 3A, section 63 (e) of the *Civil Procedure Act* Cap 21, order 51 rule 1 and all other enabling provisions of the law.
  2. It seeks orders:-
    - a. That the Plaintiffs/Applicants be allowed to reopen their case ad call for or provide further evidence in relation to this suit.
    - b. That costs be in the cause.
  3. The grounds are on the face of the application and are set out in paragraphs 1 to 7.
  4. The application is supported by the affidavit of Michael Muratha, the 1<sup>st</sup> Plaintiff/Applicant herein sworn on the 3<sup>rd</sup> November 2021.
  5. The application is opposed. There is a replying affidavit sworn by Joseph Kimani Gatheca, the 3<sup>rd</sup> Defendant/Respondent on the 10<sup>th</sup> November 2021.
  6. I have considered the notice of motion and the affidavit in support. I have also considered the replying affidavit, and the submissions filed on behalf of the Plaintiffs. The issue for determination is whether this application is merited.
  7. Order 18 rule 10 of the Civil Procedure Rules provides that:-

“The court may at any stage of the suit recall any witness who has been examined, and may, subject to the law of evidence for the time being in force; put such questions to him as the court thinks fit.”
  8. I have considered the rival positions. It is the Plaintiffs’ case that the case ought to be re-opened in order for them to adduce additional evidence.
  9. I have considered the circumstances of this case and I find that it is in the interest of justice that I allow the application.
  10. I find merit in this application and the same is allowed. The costs be borne by the Plaintiffs.
- It is so ordered.

**DATED, SIGNED AND DELIVERED NAIROBI THIS 28TH DAY OF APRIL 2022.**



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**L. KOMINGOI**

**JUDGE**

**In the presence of:-**

Ms Wachira for Mr. Kahuthu for the Plaintiffs

Mr. Njonjo for the Defendants

Steve - Court Assistant

