



**M’Ngundu & another (Suing as the Legal Representatives of M’Ngundu M’Mucheke – Deceased)  
v Deputy County Commissioner – Igembe North & 3 others; M’Atheru (Interested Party)  
(Constitutional Petition E006 of 2023) [2025] KEELC 5377 (KLR) (14 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5377 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
CONSTITUTIONAL PETITION E006 OF 2023**

**BM EBOSO, J**

**JULY 14, 2025**

**BETWEEN**

**CHARLES KIPCHANGI M’NGONDU ..... 1<sup>ST</sup> PETITIONER**

**JOSHUA KAMENCU M’NGONDU ..... 2<sup>ND</sup> PETITIONER**

**SUING AS THE LEGAL REPRESENTATIVES OF M’NGONDU M’MUCHEKE –  
DECEASED**

**AND**

**THE DEPUTY COUNTY COMMISSIONER – IGEMBE**

**NORTH ..... 1<sup>ST</sup> RESPONDENT**

**THE LAND ADJUDICATION OFFICER - NAATHU/NAATHU**

**ADJUDICATION SECTION ..... 2<sup>ND</sup> RESPONDENT**

**THE LAND REGISTRAR - MERU NORTH ..... 3<sup>RD</sup> RESPONDENT**

**HON. ATTORNEY GENERAL ..... 4<sup>TH</sup> RESPONDENT**

**AND**

**JOSEPH KARUTI M’ATHERU ..... INTERESTED PARTY**

**RULING**

1. Falling for determination in this ruling is the petitioners’ notice of motion dated 29/8/2024, through which they seek leave to amend their pleadings in terms of the draft amended petition annexed to the supporting affidavit sworn by Charles Kipchangi M’Ngundu. In addition, the petitioners seeks an order of status quo preserving the estate of the late M’Ngundu M’Mucheke. The application was expressed as anchored on Section 1A, 1B, 3, 3A and 100 of the [Civil Procedure Act](#) and Order



- 8 rule 3 and 5 of the *Civil Procedure Rules*. It was supported by two affidavits sworn by Charles Kipchangi M’Ngundu sworn on 29/8/2024 and 19/11/2024 respectively. It was canvassed through written submissions dated 5/5/2025, filed by M/s Muma & Kanjama Advocates.
2. The case of the applicants is that the intended amendments will demonstrate a violation of the deceased’s constitutional rights, particularly violation of the right to own property, and will help this court to definitively determine the issues that are in controversy. They add that the amendments are necessary for complete and effectual determination of all the matters that are in controversy in the proceedings. The applicants further contend that the intended amendments do not introduce new or inconsistent cause of action against the respondents and do not alter the fundamental character of the petition.
  3. The applicants add that on 20/8/2024, the interested party together with his agents, trespassed onto the suit land in a bid to enforce the impugned decision of the 1st respondent, made on 12/9/2017. It is their case that unless a preservative status quo order is issued, the interested party will proceed to take occupation of the suit land.
  4. The respondents did not oppose the application. On his part, the interested party opposed the application through a replying affidavit dated 5/11/2024 and written submissions. His case is that, the application is frivolous and an abuse of the process of the court because it delves into the merits of the 1st respondent’s decision which, according to the interested party, can only be challenged through judicial review proceedings. The interested party contends that the intended amendments have the potential of introducing a new cause of action. He adds that there has been inordinate, inexcusable and unexplained delay in bringing the application.
  5. The interested party states that when this court dismissed the petitioners’ application seeking conservatory orders vide a ruling dated 11/7/2024, he immediately took occupation of the suit land and he has remained in occupation since then, hence the plea for a status quo order has been overtaken by events. The interested party adds that the applicants have failed to demonstrate to the court how the intended amendments will aid their case, adding that the issues raised in the intended amendments are in the purview of judicial review and cannot be raised in a constitutional petition. He further contends that the applicants have been misusing this court by filing frivolous applications intended to delay finalization of this case. He adds that he has immensely suffered defending numerous suits and applications. He urges the court to reject the application.
  6. The court has considered the application, the response to the application and the parties’ respective submissions. The court has also considered the relevant legal frameworks and jurisprudence. The two key issues that fall for determination in this ruling are: (i) Whether the application dated 29/8/2024 satisfies the criteria for granting leave to amend a petition: and (ii) Whether the application satisfies the criteria for granting a conservatory or interim order pending the hearing and disposal of a petition. I will be brief in my sequential analysis and disposal of the two issues.
  7. The application dated 29/8/2024 was expressed as anchored on Sections 1A, 1B, 3, 3A and 100 of the *Civil Procedure Act*. The application is a motion brought in a pending constitutional petition under the Bill of Rights. Insofar as the plea for leave to amend the petition is concerned, the applicable legal frameworks are rules 18 and 19 of the *Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules* [hereinafter referred to as “the Constitutional Practice and Procedure Rules”]. The applicants’ reliance on the *Civil Procedure Rules* is, clearly, a misdirection.
  8. The relevant framework applicable to a plea for conservatory or interim orders in a petition in form of a status quo order is rule 23 of the *Constitutional Practice and Procedure Rules*. It is therefore to be observed that, the applicant’s reliance on the *Civil Procedure Act* and the *Civil Procedure Rules* is,



similarly, misplaced. The respondent did not, however, raise the above misdirections as an issue to be determined by the court. I will, in the circumstances, ignore the above procedural misdirections and address the above two issues.

9. Rule 18 of the *Constitutional Practice and Procedure Rules* vests in this court discretionary jurisdiction to grant leave to a party to amend his pleadings. Our courts have, over the years, outlined general principles that guide the above jurisdiction. As a general principle on amendment of pleadings, courts will normally allow amendment of pleadings at any stage of the proceedings if it can be done without occasioning injustice or prejudice to the other party. Secondly, if the likely prejudice can be indemnified by an award of costs, the plea for amendments will be allowed [see *Eastern Bakery v Castelino* (1958) EA 461.
10. The third guiding principle is that the object of amendment of pleadings is to enable the parties to alter their pleadings so as to ensure that the litigation between them is conducted on the basis of the true state of facts which the parties really and finally intend to rely on. Lastly, the overall objective of amendment is to make the function of the court more effective in determining the substantive merits of the parties' respective cases.
11. The present petition challenges the decision of the Minister, made in exercise of the Minister's statutory mandate under Section 29 of the *Land Adjudication Act*. Although the applicants seek to introduce completely new prayers, the ultimate plea is the nullification of the said impugned decision. The plea for leave to amend the petition was brought before hearing of the petition commenced. At this point, the interested party and the respondents will have ample opportunity to respond to the intended amendments.
12. Taking the foregoing into account, the court comes to the finding that the criteria for grant of leave to amend a petition under rule 18 of the *Constitutional Practice and Procedure Rules* has been met. The interested party will be indemnified through an award of costs. Taking into account the nature of the application, the costs are hereby assessed at Kshs. 25,000/=. I now turn to the plea for a preservative status quo order.
13. The plea for a status quo order preserving the estate of the late M'Ngundu M'Mucheke is, in essence, a plea for a conservatory order staying implementation of the impugned decision of the Minister, which was made on 12/9/2017. The relevant criteria that guides our courts when called upon to grant conservatory orders of this nature was outlined by the Supreme Court of Kenya in *Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 others* [2014] eKLR as follows:

“Conservatory orders bear a more decided public-law connotation: for these are orders to facilitate ordered functioning within public agencies, as well as to uphold the adjudicatory authority of the Court, in the public interest. Conservatory orders, therefore, are not, unlike interlocutory injunctions, linked to such private-party issues as “the prospects of irreparable harm” occurring during the pendency of a case; or “high probability of success” in the supplicant’s case for orders of stay. Conservatory orders, consequently, should be granted on the inherent merit of a case, bearing in mind the public interest, the constitutional values, and the proportionate magnitudes, and priority levels attributable to the relevant causes.”
14. From the materials placed before this court, this petition was preceded by Meru ELC Judicial Review Application No. E008 of 2023 in which the petitioner sought leave to apply for orders of certiorari and prohibition relating to the impugned decision of the Minister. This Court [Nzili J] considered the application and rejected it vide a ruling dated 4/10/2023 on the ground that there was an unreasonable delay of 6 years. That is not all.



15. Vide a notice of motion dated 16/11/2023, the applicant made an interlocutory plea for conservatory orders in this petition. This Court [Yano J] considered the plea on merits and rejected it through a ruling dated 11/7/2024. Soon after that, the applicant brought the present application, seeking similar interlocutory orders.
16. Given the above background, the application is, clearly, an abuse of the due process of the court. If the applicant is dissatisfied with the ruling of the court rendered on 11/7/2024, the remedy available to him is an appeal to the Court of Appeal. Bringing a similar plea to the same court a few days after the court considered and rejected a similar plea on merits is clearly an abuse of the process of the court. The applicant, is in essence, inviting this Court [Eboso J] to review the merits of the preceding decision of the court [Yano J]. The court does not have that jurisdiction. Consequently, the finding of the court on the second issue is that the application under consideration does not meet the criteria for grant of a conservatory order such as a status quo order that the applicant seeks.
17. In the end, the application dated 29/8/2024 is disposed as follows:
  - a. The plea for conservatory/interim order in form of a status quo order preserving the estate of the late M'Ngundu M'Mucheke is declined for being an abuse of the process of the court.
  - b. The petitioner is granted leave to amend his petition in terms of the exhibited draft and serve the amended petition within 10 days.
  - c. The petitioner will, within 30 days from today, pay to the interested party's advocates, a sum of Kshs. 25,000/= as costs of the application. In default, the order granting leave shall stand vacated and any amendments effected pursuant to the leave shall stand struck out.

**DATED, SIGNED AND DELIVERED AT MERU THIS 14<sup>TH</sup> DAY OF JULY, 2025**

**B M EBOSO [MR]**

**JUDGE**

In the Presence of:-

Mr.Khasogo holding brief for Mr. Kanjama for the Petitioner

M/s Asuma holding brief for Mr. Mutembei for the Interested Party

Ms Wairumu for the Respondent

Court Assistant - Tupet

