



**Mutisya & another v District Land Registrar, Makueni County & 4 others (Environment & Land Petition E003 of 2021) [2024] KEELC 1310 (KLR) (6 March 2024) (Ruling)**

Neutral citation: [2024] KEELC 1310 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI  
ENVIRONMENT & LAND PETITION E003 OF 2021**

**TW MURIGI, J  
MARCH 6, 2024**

**BETWEEN**

**STEPHEN KASALO MUTISYA ALIAS LAZARO MUTISYA ..... 1<sup>ST</sup> PETITIONER  
FELISTA MBULA KIOME ..... 2<sup>ND</sup> PETITIONER**

**AND**

**DISTRICT LAND REGISTRAR, MAKUENI COUNTY ..... 1<sup>ST</sup> RESPONDENT  
DIRECTOR OF LAND ADJUDICATION & SETTLEMENT MINISTRY OF  
LANDS & PHYSICAL PLANNING ..... 2<sup>ND</sup> RESPONDENT  
SUB-COUNTY SURVEYOR, KIBWEZI COUNTY ..... 3<sup>RD</sup> RESPONDENT  
BRIAN MUTIE MUTINDA ..... 4<sup>TH</sup> RESPONDENT  
COUNTY COMMANDER, NATIONAL POLICE SERVICE MAKUENI  
COUNTY ..... 5<sup>TH</sup> RESPONDENT**

**RULING**

1. By a Notice of Motion dated 17<sup>th</sup> February, 2022 brought under Article 159(2)(d) of the [Constitution](#), Sections 1A, 1B and 3A of the [Civil Procedure Act](#) and Order 10 Rule 8 and Order 51 Rule 1 of the [Civil Procedure Rules](#) the Petitioners/Applicants seek the following orders:
  - i. That leave be granted to the Petitioners for default judgment to be entered against the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Respondents herein.
  - ii. That the costs of this application be borne by the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Respondents.
2. The application is premised on grounds appearing on its face together with the supporting affidavit of Stephen Kasalo Mutisya sworn on his own behalf and on behalf of the 2<sup>nd</sup> Petitioner on even date.



## The Applicants Case

3. The deponent averred that the Petition herein was filed on 12/4/2021 alongside with the application dated 9/4/2021. That upon service of the Petition and the application, the Hon Attorney General filed and served a Notice of Appointment of Advocate on 17/5/2021 on behalf of the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Respondents. That since then, the said Respondents have not filed any response to the Petition.
4. He further averred that on 25/10/2021 and 25/11/2021, the Learned State Counsel was granted time to respond to the Petition but has not done so to date. He urged the court to allow the application as prayed.
5. The 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Respondents did not file any response to the application despite being duly served.

## Analysis and Determination

6. Having considered the application, the only issue that arises for determination is whether default judgment should be entered against the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Respondents.
  7. Order 10 Rule 8 of the [Civil Procedure Rules](#) states that: -

‘No judgment in default of appearance or pleading may be entered against the Government without the leave of the court and any application for leave shall be served not less than seven days before the return day.’
  8. For a party to invoke the above provision, he/she must have sued the Government. The [Government Proceedings Act](#) governs proceedings by or against the Government. In the matter at hand, it is not in dispute that the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Respondents are Government departments/Ministry represented by the Hon. Attorney General. The Petitioners alleged that they effected service of the Petition together with the application upon the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, and 5<sup>th</sup> Respondents.
  9. Section 13 of the said [Act](#) provides that:-

“ All documents required to be served on the government for the purpose or in connection with any civil proceedings by or against the government in accordance with the provision of this act shall be served on the Attorney General”.
  10. In an application such as this, the court must be satisfied that service of the Petition was duly effected in accordance with the law. From the affidavit of service sworn by Mary Mutuku Advocate the Petition and application were served upon the Hon Attorney General on 12/04/2021 via their email address. The record shows that the Attorney General filed a Notice of Appointment dated 13<sup>th</sup> May 2021 on behalf of the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Respondents entered appearance The Petitioners/Applicants produced the Notice of Appointment as Exhibit “SKM1”.

The record shows that the Hon. Attorney General was present in Court on 29/5/2023 when directions were given on the disposal of the instant application.

  11. The court has a duty to further the overriding objective to facilitate the just, expeditious, proportionated and affordable resolution of civil disputes governed under the Act.
- I have carefully perused the court record and I have not seen any response by the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Respondents to the Petition herein let alone the instant application as per the directions issued on 29/5/2023.



12. In the case of *Bayusuf & Sons Ltd v. Attorney General* [2002] 2 KLR 279 the Court emphasized the importance of complying with rules of civil procedure where it aptly held as follows: - “The purpose of adhering to the rules of procedure was emphasized in where it was held that the obligation to obey the *Civil Procedure Rules* is for the purpose of establishing and maintaining orderliness in the process of deciding, establishing and protection of citizens’ constitutional basic rights.”
13. The upshot of the foregoing is that the application dated 17<sup>th</sup> February 2022 is merited and the same is allowed as prayed.

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**HON. T. MURIGI**

**JUDGE**

**RULING DATED, SIGNED AND DELIVERED VIA MICRO SOFT TEAMS THIS 6<sup>TH</sup> MARCH, 2024.**

In the presence of

Wambua for the Petitioners/Applicants

Menge for the Hon Attorney General

Court assistant Kwemboi

