



**Kailutha & 4 others v Adjudication Officer Ruiiri/Rwarera Adjudication Section
& 2 others; M'muthuri & 13 others (Interested Parties) (Environment & Land
Petition 3 of 2020) [2023] KEELC 20580 (KLR) (11 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 20580 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND PETITION 3 OF 2020
CK YANO, J
OCTOBER 11, 2023**

BETWEEN

**STANELY KAILUTHA 1ST PETITIONER
KANYILI FRANCIS 2ND PETITIONER
BENARD KIMATHI 3RD PETITIONER
GEOFFREY ABURUKI 4TH PETITIONER
JOSEPH MUGAMBI 5TH PETITIONER**

AND

**THE ADJUDICATION OFFICER RUIRI/RWARERA ADJUDICATION
SECTION 1ST RESPONDENT
THE LAND REGISTRAR MERU CENTRAL DISTRICT 2ND RESPONDENT
THE HONOURABLE ATTORNEY GENERAL 3RD RESPONDENT**

AND

**JUSTUS M'IKIAO M'MUTHURI INTERESTED PARTY
ROBERT MONGO INTERESTED PARTY
M'MINYORI M'KIRIA MEMEMBA INTERESTED PARTY
WILSON KINYUA MUTUA INTERESTED PARTY
AMON MUTHAMIA IGWETA INTERESTED PARTY
JUSTUS MBAABUIKAMATI INTERESTED PARTY
JANE KARAMBU IKAMATI INTERESTED PARTY
JEREMANO SAMAKI M'ARITHI INTERESTED PARTY**



PETER MUGAMBI MUCHEKI INTERESTED PARTY
PETER KENNETH MUTHURI INTERESTED PARTY
DAVID KIRIMI MWITHIMBU INTERESTED PARTY
DANIELKIBITI M’GACHARA INTERESTED PARTY
ABDI HASSAN GUYO INTERESTED PARTY
PHILIP KANGETHE INTERESTED PARTY

RULING

1. This matter was consolidated with Petition No. 2 of 2019 and the same are now heard together. The matter is part heard. Indeed, the petitioners in Petition No. 2 of 2019 has already closed his case and matter was scheduled for further hearing. However by notice of motion application dated 31st July, 2023, Stanley Kailutha Kailutha, the 1st petitioner in petition no. 3 of 2020 is seeking for an order to issue directing the Deputy Registrar of this court to conduct a scene visit on land Parcel No. Ruiru/Rwarera Adjudication Section 750, 752, 815, 831, 2447, 2969, 3999, 5670, 5997, and 6266 to establish who is in occupation of the suit land, developments thereon, installations on the ground and file a report.
2. The application is premised on the grounds thereon and supported by the affidavit of Stanley Kailutha, the applicant sworn on July 31, 2023 wherein he avers that the petition was consolidated with petition No. 2 of 2019 and the two are now heard together. That prior to the order for consolidation, a scene visit had been conducted on petition No. 2 of 2019 and facts on the ground were ascertained. The applicant now wants scene visit on the parcels referred to above as they were never visited during the earlier visit.
3. The application is opposed by the 5th, 10th, 11th and 14th interested parties in petition No. 3 of 2020 vide a replying affidavit dated 5th September, 2023 sworn by Philip Kangethe, the 14th interested party. It is their contention that the application for scene visit should have been raised at the pre-trial stage before the suit was consolidated and set down for hearing. It is therefore their contention that the application is an afterthought and a delaying tactic. The said interested parties aver that in the event the court allows the application, the costs of the scene visit should be borne by the applicants.
4. The other parties to the suits are not opposed to the application but want the applicants to meet the costs of the intended scene visit.
5. The court has considered the application and the submissions made. The only issue for determination is whether or not the orders sought in the application should be allowed as prayed. As already stated, this is a consolidated suit. It is not disputed that a scene visit has been made and a report filed in respect of parcels in one of the petitions. Considering that the envisaged visit report may assist the court in arriving at a just decision, and further considering that no prejudice will be suffered by any party because of the envisaged visit, since the parties who have already testified and closed their case may re-open it and costs, I will allow the application for scene visit as prayed. The applicants will however meet the costs of the said visit.
6. In the result, the notice of motion dated July 31, 2023 is allowed in terms of prayers 1 and 2 thereof. A report to be filed within 30 days. The applicants shall meet the costs of the scene visit.



7. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MERU THIS 11TH DAY OF OCTOBER, 2023.

C.K YANO

JUDGE

