



**Muthoni & 130 others v Murang’a County Government & 3 others (Environment & Land Petition E005 of 2024) [2025] KEELC 3996 (KLR) (15 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3996 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MURANGA  
ENVIRONMENT & LAND PETITION E005 OF 2024**

**MN GICHERU, J**

**MAY 15, 2025**

**BETWEEN**

**CYRUS NJOROGE MUTHONI & 130 OTHERS & 130 OTHERS & 130 OTHERS ..... PETITIONER**

**AND**

**MURANG’A COUNTY GOVERNMENT ..... 1<sup>ST</sup> RESPONDENT**

**MINISTRY OF LANDS, PUBLIC WORK, HOUSING & URBAN DEVELOPMENT ..... 2<sup>ND</sup> RESPONDENT**

**NATIONAL LAND COMMISSION ..... 3<sup>RD</sup> RESPONDENT**

**THE HONOURABLE ATTORNEY GENERAL ..... 4<sup>TH</sup> RESPONDENT**

**RULING**

1. This ruling is on the preliminary objection dated 16-12-2024. The said objection is based on two grounds.
  - a. The subject matter of this petition and the issues raised herein were conclusively heard and determined in Murang’a High Court Constitutional Petition No. E003 of 2022, Cyrus Njoroge Muthoni and 130 Others vs. National Land Commission and 3 Others which involved the Petitioners herein and the present petition is therefore Res Judicata.
  - b. In the premises, this court lacks jurisdiction to hear and determine this petition and as such the same ought to be dismissed with costs.
2. Counsel for the 1<sup>st</sup> Respondent and for the petitioner filed written submissions dated 16-1-2025 and 10-2-2025.



3. In the submissions, the 1<sup>st</sup> Respondent's counsel raises the following issues. Firstly, the issues raised in this petition were conclusively heard and determined in Petition No. E003 of 2022, Cyrus Njoroge Muthoni and 130 Others Vs. National Land Commission and Others which involved the petitioners herein and the present petition is therefore Res Judicata. Secondly, the earlier petition was heard and determined whereby this court dismissed the Petitioner's petition. In dismissing the petition the court said the claim lay to the National Land Commission because it related to a historical land injustice. Thirdly, the issues raised in petition number E003/2022 are the same as in this petition namely, own a portion of land previously owned by Delmonte Kenya Limited. The only thing that has changed is that Delmonte has surrendered a portion of land which the petitioners claim and which is not yet given to them. Fourthly, the petitioners have sued the National Land Commission instead of filing their claim with it. Fifthly, the recommendations made by Parliament were to be implemented by the Ministry of Lands and Physical Planning and the National Land Commission the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents herein.

For the above and other reasons, the 1<sup>st</sup> Respondent prays for the striking out of the petition with costs. The other Respondents did not file any submissions. The third Respondent told this Court on 20-3-2025, through its counsel, that it supports the preliminary objection.

4. In opposing the preliminary objection, the petitioner replies as follows. Firstly, res judicata is not a competent ground of a preliminary objection as it is not premised on a pure point of law. In res judicata, the court has to ascertain facts and evidence from another suit by going through pleadings in that other suit to conclude that indeed res judicata arises. Secondly the orders sought in this suit are materially different from those sought in the earlier suit. Thirdly, in this case, the court is being asked to go read the proceedings in Petition No. E003/2022 and compare the two whereas in a preliminary objection, the court should determine it without having to result to ascertaining the facts from elsewhere apart from looking at the pleadings. This is as per the ratio decidendi in the case of Quick Enterprises Ltd. vs. Kenya Railways Corporation Kisumu HCCC No. 22 of 1999. Fourthly, the issues raised in this petition ought to be heard and determined on merit as they are weighty and its dismissal at an interlocutory stage will be unjust. Fifthly, it is already admitted that Delmonte has surrendered a portion of land which the petitioners now claim. This is unlike the case in petition No. E003/2022 where the land had not been surrendered. For the above and other reasons, the petitioner prays that the preliminary point of law be dismissed.
5. I have carefully considered the preliminary objection in its entirety including the written submissions by the two counsel who filed submissions. I find that the preliminary objection has no merit for the following reasons.  
  
Firstly, the Preliminary Objection is not anchored on any pleadings. There is no replying affidavit on which the pleadings in Petition No. E003/2022 have been anchored. As it now, the court is being asked to go and peruse the proceedings in petition No. E003/2022 and compare them to the pleadings filed by the petitioner herein. This is not proper. It was upon the 1<sup>st</sup> Respondent to file the said pleadings in this case and show how they are similar. The court cannot rely on submissions from the bar only. Tangible evidence must be filed in this case by the Respondent raising the preliminary objection.
6. Secondly, even in those submissions from the bar, it is apparent that in the earlier petition, the petitioners were fighting Delmonte to surrender land to them while in this case land has already been surrendered and what the petitioners are unhappy with, is the mode of its distribution and the beneficiaries of the distribution. There are two different scenarios. If that were the case, and it could well be, then there is no similarity in the two petitions.
7. Finally, striking out of pleadings is a draconian move that derogates on the right to a fair hearing enshrined in [the constitution](#). A court should rather sustain a suit than strike it out. Striking out is too



severe because the dispute that made the party come to court in the first place will remain unresolved. This is not the intention of Article 50(1) of *the Constitution* which guarantees a fair hearing to any party which has a dispute that can be resolved by the application of the law. It is simply not fair to strike out pleadings unless very good and clear reasons have been given by the party seeking the striking out. In this case, it is not clear to me why I should strike out the petition herein.

For the above stated reason, I dismiss the preliminary objection dated 16-12-2024 with costs to the petitioner.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 15<sup>TH</sup> DAY OF MAY, 2025.**

**M. N. GICHERU JUDGE**

Delivered online in the presence of:-

Court Assistant – Mwangi Njonjo

Petitioners' counsel – Miss Wairimu holding brief

1<sup>st</sup> Respondent's counsel – Mr. Chege

Miss Kemunto for 3<sup>rd</sup> Respondent

4<sup>th</sup> Respondent's counsel – Miss Kirina

