



County Government of Bungoma & another v Attorney General & 2 others (Environment & Land Case 563 of 2016) [2025] KEELC 4757 (KLR) (19 June 2025) (Ruling)

Neutral citation: [2025] KEELC 4757 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 563 OF 2016**

**AA OMOLLO, J
JUNE 19, 2025**

BETWEEN

THE COUNTY GOVERNMENT OF BUNGOMA 1ST PETITIONER

MURUMBA CHIULI 2ND PETITIONER

AND

THE HON. ATTORNEY GENERAL 1ST RESPONDENT

**THE MINISTER OF LANDS, HOUSING AND URBAN
DEVELOPMENT 2ND RESPONDENT**

AYUB MURUMBA KAKAI 3RD RESPONDENT

RULING

1. For determination is the application by the 3rd Respondent dated 27th September, 2024. He prays to be granted following orders;
 - i. Temporary injunction to restrain the petitions from leasing, selling or alienating the suit parcels of land
 - ii. Leave to admit that bundles of documents dated 6th December, 2023 and 29th May, 2024
 - iii. Notice to produce directed at the petitioners and 1st and 2nd Respondent to produce gazette No. 3093 of 23rd October, 1974
 - iv. It pleases this Hon. Court to issue Vesting Orders, directing the Director of Surveys of Kenya, to file in this Hon. Court then serve upon all parties; copies of Original Index Card and Area List of Muchi Registration Diagrams 2 and 5, annexed to both First Edition Aerial View and First Edition Adjudication Index Maps; for determining how and when LR No. Ndivisi/Muchi 1432 started existing from part-portions of LR No. Ndivisi/Muchi 1265 and 1251.



- v. Spent
 - vi. Spent
 - vii. It pleaded this Hon. Court to issue Ex Parte Orders, directing the State Counsel of Civil Litigation; to avail the Hon. Attorney of Kenya and Cabinet Secretary for Lands in Court, so that they are heard concurrent with the Director of Kenya Surveys, County Secretary, County Attorney, Secretary to the Municipal Council of Webuye, County Surveyor and District Land Registrar.
 - viii. It pleases this Hon. Court to issue Ex Parte Orders, directing Professor Tom Ojienda to avail the National Commissioner of Lands and the National Director Physical Planning, so that they can be heard concurrent with the Director of Surveys of Kenya, among other aforesaid witnesses.
 - ix. Alternatively, it pleases this Hon. Court to investigate these matters from the disputed sites, pursuant to Order 18: Rule 11 of the Civil Procedures Act Cap 21; so that the Director of Surveys, County Secretary, County Attorney, County Surveyor, District Land Registrar, Commissioner of Lands, Cabinet Secretary of Lands and the Hon. Attorney General of Kenya; can settle the entire Land Acquisition Disputes in Webuye Township, in respect of Kenya Gazette No. 1710 of 12th June, 1970.
2. The application is supported several grounds listed on its face inter alia;
 - a. The Petitioners/Respondents herein, are busy developing the suit properties, while we are still casing.
 - b. The grounds under paragraphs [b] to [q] constitute evidence of disputed activities between 1974 to 1978.
 - c. On the 29th day of April, 2014; the Wekesa & Simiyu Advocates acting for the Petitioner/ Respondents herein, requested the Director of Surveys of Kenya, to provide them with the Aerial Photography of the L.R No. Ndivisi/Muchi/1265.
 - d. On the same 29th, 2014 the Petitioners herein, furthered to request for certified copy of the Area List of 1st Edition Map or Photo Enlargement Diagram No. 2 of Muchi Registration.
 3. The contents of grounds [b] – [q] listed on the face of the motion is reiterated in the affidavit sworn in support of the application.
 4. In opposing the application referenced as dated 29th May, 2024 the Petitioner filed grounds of opposition, preliminary objection and Replying affidavit all dated 28th March, 2025. The Petitioner avers that the application is defective as it is not anchored on any provisions of the law and is supported by a defective affidavit. The defect in the affidavit pointed out is that the 3rd Respondent's name appear at the introduction as the one swearing to the facts but the affidavit is signed off as sworn by Benjamin Barasa who is not even a party to these proceedings.
 5. The Petitioner denied trespassing on and or selling the suit property stating that since compulsory acquisition in 1972, they constructed government offices currently in use. The Petitioner deposes that the hearing has proceeded with only one witness remaining [the Director of surveys] therefore introducing new evidence as proposed by the 3rd Respondent will prejudice them and violate their constitutional right to a fair hearing.



6. The Petitioner deposes that the 3rd Respondent has made numerous similar applications which demonstrate abuse of court process. That the present application is a continuum of litigation in instalments with sole purpose of delaying the conclusion of the petition. That some of the prayers sought are overtaken by events.
7. Lastly that the 3rd Respondent has not met the conditions for grant of the prayers sought. They urged the court to dismiss the application.

Analysis and determination:

8. Although the application the Petitioner responded to is dated May 2024, the Applicants clarified that they were the same word for word although he opted to go with the application dated September, 2024. I have considered the application as filed and the grounds upon which it is premised as well as the grounds raised in opposition thereof. To begin with, this case is partially heard with the petitioner's case coming to a close. The petitioner's last witness is the Director of Surveys and who the Petition took out and served summons to witness to attend court during the next hearing date.
9. Since the Director of surveys is being called to give evidence, the 3rd Respondent/Applicant can only seek orders for notice to produce [prayer 4 of the motion] if the said witness does not avail them on the date of hearing. Nothing stopped them from writing to the director to be supplied with the listed documents.
10. Prayer No. 5 & 6 is overtaken by events as the dates have passed and hearing has been taking place. The County Government [1st Petitioner] has also availed all their witnesses save for the Director of Surveys.
11. In regard to prayer 7 and 8, the hearing of the Respondents' case is yet to commence. It is also not the duty of this court to compel a party to avail their witness. In the event the 3rd Respondent wishes to rely on the evidence of the witnesses of his Co-Respondents, the law allows him to summon that specific witness. Otherwise the orders as pleaded in paragraph 7 & 8 of the application are not available to him.
12. Similarly, prayer 9 of the notice of motion is not for granting. By hearing this petition, parties get opportunity to present their evidence and thereafter the court could render its finding over the dispute after analyzing the said evidence. There is no other way this court can investigate the dispute other than hearing the case.
13. In so far as seeking the orders of temporary injunction to stop interference with the land, the Applicant was under a duty to establish the existence of either prima facie case, irreparable loss or on whose favour the balance of convenience tilts.
14. None of the grounds listed in support of the application elaborates on the nature/evidence of interference of the land by the petitioners. The 3rd Respondent does also not disclose the irreparable harm he is likely to suffer unless the orders sought are granted. Thus, the prayer was made without any foundation to lean on.
15. Finally, with respect to admission of documents, I note the same were filed after two witnesses by the Petitioner had testified. Although no explanation has been proffered for the late filing, the documents have been in possession of the Petitioner for one and half years [6/12/2023 and one year respectively [for the bundle filed on 29/05/2024].
16. The petitioners are yet to close their case hence any prejudice they are likely to suffer can be cured by recalling either of their witnesses who have already testified. Refusing to admit the said documents



will cause more harm to the 3rd Respondent whose evidence would have been closed out of these proceedings.

17. In conclusion, the application succeeds only under prayer 2 of the motion for admission of the 3rd Respondents documents. The remainder prayers, 3 to 9 are dismissed either for being overtaken by events and or for lack of merit. Each party to bear their respective costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 19TH DAY OF JUNE, 2025

A. OMOLLO

JUDGE

