



Wambugu v Chief Land Registrar & 6 others; Agricultural Development Corporation (Interested Party) (Environment and Land Petition E005 of 2024) [2025] KEELC 6261 (KLR) (Environment and Land) (25 September 2025) (Ruling)

Neutral citation: [2025] KEELC 6261 (KLR)

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

MC OUNDO, J

SEPTEMBER 25, 2025

**IN THE MATTER OF ARTICLES 20, 21, 22, 23, 40,
47 7 60 OF THE CONSTITUTION OF KENYA, 2010**

AND

**IN THE MATTER OF VIOLATION OF THE RIGHT TO PROPERTY
KNOWN AS LAND REFERENCE NO. 20591/53, NAIVASHA**

AND

**IN THE MATTER OF THE REGISTRATION OF TITLES ACT,
CAP 281 AND THE REGEISTERED LAND ACT, CAP 300**

BETWEEN

JUDY WATURI WAMBUGU PETITIONER

AND

CHIEF LAND REGISTRAR 1ST RESPONDENT

NATIONAL LAND COMMISSION 2ND RESPONDENT

DIRECTOR OF SURVEY 3RD RESPONDENT

SETTLEMENT FUND TRUSTEES 4TH RESPONDENT

HEZEKIAH MUHIA NJOROGE 5TH RESPONDENT

ANDREA WAMBUI GITAU 6TH RESPONDENT

SOLOMON WAHOME MUTEITHIA 7TH RESPONDENT



AND

AGRICULTURAL DEVELOPMENT CORPORATION INTERESTED PARTY

RULING

1. I have anxiously considered whether or not the deponents to the replying affidavits herein filed by the 5th, 6th and 7th Respondents should be cross-examined as sought by the Applicants to the current Application. In doing so, I have also considered the fact that the mode of disposal of the Petition had been taken by consent at the behest of the Petitioner wherein there had been no application made by either party on the propriety of the directions given and therefore in the absence of such challenge, the directions given had conformed with Rule 20 (1) of the Mutunga Rules which stipulate as follows:

“The hearing of the petition shall, unless the Court otherwise directs, be by way of— (a) affidavits; (b) written submissions; or (c) oral evidence.”

2. In Fanikiwa Limited & 3 others v Sirikwa Squatters Group & 17 others (Petition 32 (E036), 35 (E038) & 36 (E039) of 2022 (Consolidated)) [2023] KESC 105 (KLR) (15 December 2023) (Judgment), the Supreme Court had observed as follows:

“This matter entails disputed ownership of land. In other words, there are competing claims as to the ownership of the suit parcels. Therefore, it behoves a court to make a just determination on the same, procedurally. In doing so, it has to, on the basis of the law and evidence before it, decide who the owner is and thoroughly interrogate how such ownership was conferred. In the present scenario, a trial process involving examination, cross-examination and re-examination of the witnesses is the only way of resolving the competing allegations and counter allegations. We recognize that the superior courts below relied on rule 20(1)(a) of the Mutunga Rules to hear the matter by way of affidavit evidence. However, we are of the view that a court is required to make a special endeavor to unravel all the competing claims and in particular, by calling for viva voce evidence from witnesses, especially those who have sworn depositions, and cross-examination done. This is particularly important because its decision will have a far-reaching impact especially upon the party(ies) whose ownership may end up being nullified. In taking this view, we are fortified by rules 20(3), (4), and (5) of the Mutunga Rules which allow a court to admit oral evidence, examine and cross-examine parties.

In the circumstances of this case therefore, we are not convinced that it was prudent and judicious, considering the highly contentious nature of the claims and circumstances of each of the numerous parties involved to determine this matter by affidavit evidence only. The authors of the said affidavits ought to have been called and cross-examined to test the veracity of the affidavits and documentary evidence. To our minds, this would have presented the best available evidence for the learned trial judge to make his decision fairly.”

3. The Respondents have however objected to the Application for reason that it was an attempt by the Petitioner to steal a match from the other parties herein by not giving them an equal chance to interrogate the Petitioner and secondly that it was an attempt to circumvent a similar suit filed vide Naivasha ELCLC/E053 of 2024 and to avoid judicial determination of who between Settlement Fund Trustee (SFT) and Agricultural Development Corporation (ADC) had a better and lawful ownership or claim to the subject parcels of land.



4. I have considered whether or not there are real contested matters of fact that could not be resolved by way of affidavit evidence thereby requiring viva voce evidence which is imperative to assist the court in determining the dispute between the parties. Paragraphs 6,7,8, 12, 13, 14, 15, 16, 17, 18 19, 20 and 23 of the Affidavit in support of the Petition which contains statements of facts on illegalities and fraud against the Respondents and which facts have been highly contested by the Respondents thereby forming a good basis for the Court to allow viva voce evidence to enable cross-examination to separate the wheat from the chaff.
5. However, the court having been referred to a pending matter before it being Naivasha ELCLC No. E053 of 2024 which matter had been commenced by way of a Complaint, wherein the bone of contention was in regard to the competing root of the titles herein issued to the parties in the present Petition, and where the Petitioner had substantively responded to the averments therein, I have asked myself whether allowing the Petitioner to cross examine the 5th, 6th and 7th Respondents will amount to having two cases being heard parallel to each other which will then not only be an affront to the sub-judice rule but would also be in violation of the overriding objective of the *Civil Procedure Act* which require under Section 1B that there be an “efficient use of the available judicial and administrative resources”.
6. In search of an answer and in exercising my discretion, therefore I find and hold that this issue would best be resolved by staying a determination of the current application pending an address by the parties as to whether or not the current Petition is sub judice Naivasha ELCLC No. E053 of 2024. Parties shall therefore file their respective written submissions, concurrently within 14 days from today wherein the matter will be mentioned to confirm compliance and thereafter a date taken for delivery of a comprehensive ruling.

It is so ordered.

DATED AND DELIVERED VIA MICROSOFT TEAMS AT NAIVASHA THIS 25TH DAY OF SEPTEMBER 2025.

M.C. OUNDO

ENVIRONMENT & LAND – JUDGE

