



**Murage v Katita & another (Environment and Land Case
6 of 2024) [2025] KEELC 5736 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5736 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND CASE 6 OF 2024**

MD MWANGI, J

JULY 31, 2025

BETWEEN

MAINA MURAGE PLAINTIFF

AND

DANIEL KELEMBU KATITA 1ST DEFENDANT

**THE HON ATTORNEY GENERAL (ON BEHALF OF THE GOVERNMENT OF
KENYA, THE CHIEF LAND - REGISTRAR AND THE LAND REGISTRAR,
KAJIADO) 2ND DEFENDANT**

*(In respect of the Notice of Motion application dated 23rd
April 2024 pursuant to Order 51 of the Civil Procedure Rules)*

RULING

Background

1. By way of a notice of motion application dated 23rd April 2024, the Plaintiff/Applicant sought orders that:
 - a. Leave be granted to the Plaintiff to file a current valuation report of Land Parcel Kajiado/Kaputiei North/1220;
 - b. The valuer who prepares the report be summoned to testify and be made available for cross-examination by the Defendants, if necessary; and
 - c. The costs of this application be determined in accordance with, and awarded based on, the final outcome of the main suit.
2. The application is supported by the affidavit of Maina Murage, the Plaintiff, who avers that he had previously produced in evidence a valuation report dated 17th October 2019 prepared by Mr. J.W.



Gathuri, a registered valuer with COG Consultants Limited. He deposes that nearly five years have since lapsed since the preparation of the said report, and owing to the considerable lapse of time and prevailing market fluctuations, the report no longer accurately reflects the present value of the suit property.

3. He further states that the fresh valuation is necessary to aid the Court in fairly determining damages for loss of bargain, a substantive prayer in the Plaint, and that the updated report is merely supplementary, not intended to reopen the trial or introduce new matters outside the pleadings. The Plaintiff maintains that no prejudice will be occasioned to the Defendants, who will retain the right to interrogate and cross-examine the valuer on the contents of the report.
4. Having considered the Notice of Motion, the supporting affidavit, and the applicable law, the Court is guided by Sections 1A and 1B of the *Civil Procedure Act*, which encompasses the overriding objective of the Court to facilitate the just, expeditious, proportionate, and affordable resolution of disputes. Article 159(2)(d) of *the Constitution* further commands courts to administer justice without undue regard to procedural technicalities. The power vested in the Court under Section 3A of the *Civil Procedure Act* to make such orders as may be necessary for the ends of justice is wide enough to accommodate the present application, whose sole aim is to provide the Court with up-to-date evidence of the property's value for a just determination of the issues at hand. The Plaintiff's main suit includes a claim for damages for loss of bargain, making the current valuation of the suit property material evidence.
5. The Court of Appeal observed in *Trust Bank Limited v Amalo Company Limited* [2003] eKLR, that:

“A court must allow evidence that enables it to reach a fair and just decision, provided that in so doing no party is prejudiced beyond what can fairly be remedied by an opportunity to be heard on that evidence.”

In the instant suit, the Defendants will have an opportunity to cross-examine the valuer, if they so wish and no unfair prejudice has been demonstrated.

6. Further, this Court notes that the intended update is not tantamount to reopening the Plaintiff's case or supplementing his pleadings with new facts, but simply ensures that the Court is not left to rely on an outdated assessment. The purpose of adducing expert valuation evidence is to assist the Court to arrive at a fair assessment of damages, and where the evidence already on record has become stale due to the passage of time, a supplementary valuation may be allowed in the interest of justice.
7. This approach is consistent with the decision in *John Karanja Njenga v Kenya Commercial Bank Limited* [2019] eKLR, where the Court permitted an updated valuation, holding that:

“A valuation, by its very nature, is time-bound and the court must be guided by the most accurate and recent assessment to avoid rendering a decision based on speculative figures.”

8. In the present case, I find that the Plaintiff has demonstrated sufficient cause for the orders sought. The Defendants have not shown any prejudice that cannot be remedied by the opportunity to contest or test the evidence through cross-examination. In line with the overriding objective and the duty of the Court to do substantive justice, I am persuaded that the prayers sought are merited.
9. Accordingly, the court finds that the plaintiff's application is merited and makes the following orders:
 - a. Leave is hereby granted to the Plaintiff to file and serve a current valuation report of Land Parcel Kajjado/Kaputiei North/1220 within sixty (60) days of this ruling;



- b. Upon filing of the updated valuation report, the Defendants shall be at liberty to request for the summoning of the valuer for purposes of cross-examination on the contents of the report, should they so desire;
- c. The costs of this application shall abide the outcome of the main suit.

10. It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 31ST DAY OF JULY 2025.

M.D. MWANGI

JUDGE

In the virtual presence of:

N/A by the Parties

Court Assistant: Edwin

