

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA
ELC CASE NO. E010 OF 2023

TERESIA WANGUI
MURIMI.....PLAINTIFF

VERSUS

NATIONAL IRRIGATION AUTHORITY.....1ST
DEFENDANT
FAITH NYAMBURA MIGWI.....2ND
DEFENDANT

RULING

1. This Ruling concerns whether or not the report prepared by the National Irrigation Authority (NIA), on the directions of the Court, dated 4th March 2025 should be adopted as an order of the Court.

2. The Plaintiff herein filed an amended Plaint in this matter dated 3rd October 2024 seeking, inter alia, a declaration that the decisions of the 1st Defendant made on 15th December 2020 and 23rd March 2021 directing her to surrender one acre out of Riceholding No. 708 were null

and void; cancellation of the same; and reversion of the one acre to her. The Plaintiff also sought a permanent injunction restraining the 2nd Defendant from interfering with Riceholding No. 708 (Tebera Section Unit T.23), a directive to the 1st Defendant to verify the acreages of Riceholdings 708 and 553 and to rectify the nominal roll accordingly, and costs.

3. The Plaintiff contends that she is the rightful licensee of Riceholding No. 708 measuring 3.5 acres, whereas the 2nd Defendant is licensee of Riceholding No. 553 measuring 4 acres. She alleges that the 1st Defendant's records wrongly reflect the 2nd Defendant as holding 5 acres, thereby creating grounds for the latter's persistent claim over one acre of her (Plaintiff's) Riceholding.

4. The Arbitration Committee of the Mwea Irrigation Scheme summoned the Plaintiff on 15th December 2020 and on 23rd March 2021 and the Committee resolved that she should surrender one acre to the 2nd Defendant. She challenges that decision as being irrational, procedurally

unfair, and ultra vires, more so given an earlier court determination in Wang'uru PMCC No. 76 of 2014.

5. The 2nd Defendant, in her defence, asserts entitlement to the disputed one acre and maintains that the Plaintiff has no cause of action, urging dismissal of the suit.

Directions of the Court

6. When the matter came up on 4th November 2024 for pretrial directions, the Court observed that the dispute essentially turned on the true acreages of Riceholdings No. 708 and 553. The Court with the agreement of the Plaintiff and the 2nd Defendant directed the 1st Defendant to verify the ground acreages and reconcile them with the nominal register, and to file a report. Pending that exercise, parties were ordered to maintain the prevailing status quo.

7. The NIA filed its report dated 4th March 2025 whereby the report reiterated the earlier resolution of the Arbitration Committee that required the Plaintiff to surrender one (1) acre to the 2nd Defendant. Upon its production, the Plaintiff indicated her objection to its adoption, prompting the

Court to direct parties to file their comments respecting the report.

Plaintiff's Observations

8. By her written observations dated 4th June 2025, the Plaintiff faulted the report as unhelpful in resolving the real dispute. She maintained that she had not been involved in the arbitral process that culminated in the surrender of one acre, yet she had lawfully occupied her riceholding for over 20 years. She urged the Court to disregard the report and proceed to hear the matter on its merits.
9. The Plaintiff justified bringing the matter by way of Plaint, relying on the Court of Appeal's decision in **Peter Muchai Muhura v Teachers Service Commission (2015) eKLR**, where the Court held that the Constitution of Kenya 2010 had collapsed rigid procedural barriers between Judicial Review and ordinary suits, in the spirit of **Articles 22 and 159 of the Constitution.**

2nd Defendant's Observations

10. In her comments dated 23rd June 2025, the 2nd Defendant maintained that the Plaintiff was indeed present during the arbitral sittings of 15th December 2020. She asserted that the award in her favour was merited and was not dependent on the proximity of the riceholdings.

11. She contended that the NIA operates under a self-regulating statute that provides a dispute-resolution mechanism. She relied on the case of **Karingi v National Irrigation Authority & 30 Others (ELC E023 of 2023)** and **Municipal Council of Mombasa v Republic & Umoja Consultants Ltd (2002) eKLR** to argue that challenges to NIA decisions may only be mounted through Judicial Review and, not by way of ordinary suits. She therefore urged the Court to dismiss the Plaintiff's challenge and adopt the report.

Analysis and Determination

12. The issue for determination is whether the NIA report of 4th March 2025 ought to be adopted as an order of this Court.
13. The Court appreciates that the dispute between the parties has revolved around conflicting acreage as reflected in the nominal roll and on the ground. The purpose of the directions issued on 4th November 2024 was to obtain an independent technical report from the 1st Defendant to guide the Court.
14. The Plaintiff has challenged the report as inadequate and prejudicial, arguing that it failed to clarify the basis on which one acre was hived off from her riceholding. The 2nd Defendant, on the other hand, urges reliance on the report and the arbitral process that preceded it.
15. Two issues arise. Firstly, whether the report provides sufficient clarity to dispose of the dispute, and secondly, whether the Plaintiff's recourse by plaint is fatally defective.

16. On the first issue whether the report provides sufficient clarity it is necessary to revisit the Court's earlier directions of 4th November 2024. At that stage, the Court observed that **“it does appear that the dispute in this matter relates to the sizes/acreages of Riceholdings 708 and 553.”** The Court then referred the matter to the National Irrigation Authority (NIA) surveyor for verification, clearly appreciating that NIA, as the Statutory Manager of the Mwea Irrigation Scheme, is the body best placed to undertake acreage verification both on the ground and on the nominal roll.

17. The NIA subsequently filed its report dated 4th March 2025. In that report, the Authority indicated that the parties had been subjected to its internal dispute resolution mechanism, which culminated in a finding that the 2nd Defendant's riceholding measures 5 acres while the Plaintiff's measures 2.5 acres.

18. The question arises whether given the terms of reference issued by the Court, the NIA report addressed the matter sufficiently, or whether the NIA Surveyor required to do something more as per the Court Order.
19. The report filed by NIA merely reverted to the earlier arbitral proceedings and there was no report prepared by the NIA Surveyor pursuant to the Court order as directed.
20. Having come to the conclusion that the NIA report dated 4th March 2025 and filed on 5th March 2025 did not abide with the Court's terms of reference, it follows the report cannot be adopted and the same is accordingly set aside.
21. The parties in their filed comments/observations in regard to the NIA report addressed the issue whether or not the Plaintiff had invoked the jurisdiction of the Court properly. The Defendant took the position that the Plaintiff could only have approached the Court by way of Judicial Review as she was challenging Administrative

actions/decisions of the NIA. The Plaintiff maintained she had properly invoked the jurisdiction of the Court.

22. While the Court appreciates a jurisdictional issue can be raised at any stage of the proceedings, the Court notes that the comments/observations invited from the parties were limited to the adoption or otherwise of the NIA report dated 4th March 2025. The Court has determined the report cannot be adopted and set the same aside. If the 2nd Defendant wishes to raise a jurisdictional issue, she would be at liberty to move the Court appropriately.

23. As the directions relating to filing of a NIA Surveyor's report arose in the course of taking pretrial directions, I direct that the matter be fixed for pretrial directions on 9th February, 2026 for directions.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT
KERUGOYA THIS 12TH DAY OF NOVEMBER 2025.**

J. M. MUTUNGI

ELC JUDGE