



**Mwangi (Suing as a Representative of the Kenol Football Club) &
2 others v Wamaua & 4 others (Environment and Land Petition
E001 of 2025) [2026] KEELC 196 (KLR) (26 January 2026) (Ruling)**

Neutral citation: [2026] KEELC 196 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANGA
ENVIRONMENT AND LAND PETITION E001 OF 2025
MN GICHERU, J
JANUARY 26, 2026
IN THE MATTER OF ARTICLES 22,23,24,40,47(1) AND 50(1) OF THE
CONSTITUTION OF KENYA
IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS
AND FREEDOMS UNDER ARTICLES 24(1), 27(1), 40(3) AND 50 OF THE
CONSTITUTION OF KENYA 2010

BETWEEN

**SAMUEL MWIRIGI MWANGI (SUING AS A REPRESENTATIVE OF THE
KENOL FOOTBALL CLUB) 1ST PETITIONER**
**BONIFACE MUIRURI GACHANJA(SUING AS A REPRESENTATIVE OF
KENOL UNITED BROTHERS SELF HELP GROUP) 2ND PETITIONER**
**RICHARD MACHARIA MWANGI (SUING AS A REPRESENTATIVE OF
KENOL VOLLEYBALL STARS TEAM) 3RD PETITIONER**

AND

HON MARY WAITHIRA WAMAUA 1ST RESPONDENT
**NATIONAL GOVERNMENT CONSTITUENCIES DEVELOPMENT FUND-
MARAGUA CONSTITUENCY 2ND RESPONDENT**
LAND REGISTRAR MURANG'A 3RD RESPONDENT
NATIONAL LAND COMMISSION 4TH RESPONDENT
HON ATTORNEY GENERAL 5TH RESPONDENT



RULING

1. This ruling is on the notice of motion dated 10-9-2025. The motion which is by the Petitioners is brought under Articles 22, 23, 24,40, 47 (1) and 50(1) of the Constitution of Kenya. It seeks the following residual orders.
 3. That pending the hearing and determination of the petition herein, the Court does grant a temporary injunctive order restraining the 1st and 2nd Respondents either by themselves, their agents, servants and/or personal representatives from carrying out any construction work and/or entry to the land known as Makuyu/Kimorori/Block 1/5615.
 4. That a conservatory order be issued staying and suspending the decision of the agents of the 2nd Respondent to use the said land for the construction of an ICT Hub.
 5. That the costs of this application be costs in the petition.
 6. Any other relief that the Court may deem fit to grant in redress to the violation of the Petitioners' constitutional rights.
2. The motion is based on Eleven (11) grounds and is supported by an affidavit of the first petitioner dated 10-9-2025 and a supplementary affidavit dated 11-9-2025. The gist of the above material is as follows. Firstly, the Petitioners are Kenyan Citizens who have filed this suit in public interest under Articles 22 and 258(2) (C) of the Constitution to protect the rule of law, good governance and constitutionalism. They are also club officials of Kenol Football club, Kenol United Brothers and Kenol Volleyball Stars respectively. All the three clubs are involved in sports. Secondly, the suit property is public land and the only public ground that is open to the public and residents of Kenol town. It is used by the public for different activities be they cultural, political, entertainment and social economic. Thirdly, the 1st and 2nd Respondents have irregularly, unlawfully and blatantly breached the Petitioners' rights and public interest rights to property, Fair administrative Action and Public participation all protected under the Constitution of Kenya by planning to construct an ICT Hub on the grounds. In this connection, on 2-9-2025, the 1st Respondent in the company of a group of people drove an excavator to the suit land with the intention of commencing the project. The residents of Kenol have expressly communicated to the 1st Respondent that they are against the construction of the ICT Hub on the suit land and the 1st and 2nd Respondents have blatantly ignored the objections of the residents. No good reason has been given by the 1st and 2nd Respondents as to why the suit land should be used as an ICT Hub and not as a recreational facility. Worse still, the 1st and 2nd Respondents have not provided alternative land for the community to use as a recreational facility. Fourthly, the suit said land has provided the youth in the area a recreational facility which has significantly resulted in reduced crime and drug abuse among the youth. The Petitioners and other area residents have a legitimate expectation to be heard and included in discussing how the suit land should be utilized. Fifthly, the suit land carries a lot of history because it is where the late J.M. Kariuki gave his first speech in post-independent Kenya where he informed Kenyans that Kenya had gained independence from the British colonisers.
For the above and other reasons, the Petitioners pray for the above orders.
3. The motion is opposed by the Respondents and the 1st Respondent has sworn a replying affidavit dated 24-11-2025 in which she replies as follows. Firstly, the suit land does not only cover plot No. Makuyu/Kimorori/Block 1/5615 but it also covers plot No. Makuyu/Kimorori/Block 1/5616. The two parcels are public land reserved for Maragua District Headquarters(Murang'a South Sub County headquarter



offices). The two parcels mutated from L.R. No. Makuyu/Kimorori/Block 1(Ngimu)5613 which measures 5.38 hectares. L.R. No. 5613 was itself a combination of L.R. Nos. 1806 and 1807 which measured 3.28 Ha and 2.1 Ha respectively. This land was reserved for the Government of Kenya for Murang'a South headquarters in the year 2006. Back then, the District Commissioner wrote to the commissioner of lands seeking to have the land registered in the name of Maragua District Headquarters. The normal procedures were all complied with. For example, there was an advertisement in the Standard and Taifa Leo newspapers of 15-1-2007 as well as the Kenya Gazette. Thereafter the District Physical Planning Officer prepared a part development plan (PDP) Ref. No. C1851/06/01 which was forwarded to the Ministry of Lands through the Director of Physical Planning vide a letter dated 15-5-2007. The PDP was approved by the Minister and the said approval communicated to the Commissioner of Lands vide the Director of Physical Planning dated 28-9-2007. This is clear proof that the two parcels were legally, procedurally, regularly and formally reserved for Murang'a South Sub-County headquarters to provide adequate space for the many offices required for proper service delivery to the public. Secondly, the intended construction of the ICT Hub is projected to help the public especially the local youth access digital jobs because it will be equipped with computers and free Wi-Fi, offering the public opportunities to learn and work online. Thirdly and in addition to the above, the 2nd Respondent has also planned to build houses for police officers housed at Kenol Police Station, a Huduma Centre, a Modern Law Courts among other necessary Government infrastructure. Fourthly, the petitioners have access to other fields for sports such as the new Kimorori Primary School which is 300 meters away and Kaga Primary and Secondary School which is 2 Kms and which are have adequate playing fields. Finally, sports and recreation are devolved functions of the County Government and not the function of the National Government. For the above and other reasons, the Respondents pray for the dismissal of the motion. The petitioners' counsel filed written submissions dated 29-12-2025 while counsel for the 1st, 2nd, 3rd and 5th Respondents filed hers which are dated 16-1-2026. Both sides are agreed that the applicable tests in injunctions and conservatory orders are as in the cases of Giella vs. Cassman Brown and Munya vs. Kithinji and 2 others .

4. I have carefully considered the motion in its entirety including the grounds, the two affidavits by the 1st Petitioner as well as the replying affidavit by the 1st Respondent. Since the orders sought are both injunctive and conservatory in nature, the tests to apply are those set in the cases of Giella vs. Cassman Brown and Co. Ltd [1973] E.A. 358 and Munya vs. Kithinji and 2 Others [2014] eKLR (Supreme Court) respectively.
5. Have the petitioners established a prima facie case with a probability of success and in whose favour does the balance of convenience tilt? This is the question in regard to the injunction sought.

As for conservatory orders the test is more or less similar because the petitioners must in addition to the above conditions demonstrate that failure to issue the orders sought will prejudice public interest. I find that since the petition is at the interlocutory stage it is prudent to look at the balance of convenience only. The Petitioners are saying that the proposed construction of an ICT Hub, houses for police officers, a Huduma Centre, modern law courts among other infrastructure should not proceed because the land on which they are to be built is the only one available for public recreation. On the other hand the Respondents are saying that the proposed construction has been planned for long and it was subjected to public participation. In addition there is alternative recreational ground and in any case, the function of providing recreational facilities is the responsibility of the County Government which is not even a party in this case.

6. I find that the balance of convenience tilts in favour of allowing the proposed construction to proceed rather than issuing injunctive orders because it seems, at least prima facie, that the project has been planned for many years and it is of benefit to the public. While recreational facilities are equally



important, it is clear for now that the suit land was never set aside recreational facilities. In short, the tests set in the two celebrated cases of Giella (Supra) and Munya (Supra) have not been met. The motion dated 10-9-2025 is therefore dismissed. Costs in the cause.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 26TH DAY OF JANUARY, 2026.

M.N. GICHERU JUDGE.

Delivered online in the presence of; -

Court Assistant – Mwangi Njonjo

Petitioners' Counsel – Absent

1st to 5th Respondents' Counsel - Absent

