



**Rotich & 7 others v Yator & 14 others (Environment and Land Petition  
12 of 2020) [2026] KEELC 155 (KLR) (22 January 2026) (Ruling)**

Neutral citation: [2026] KEELC 155 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT AND LAND PETITION 12 OF 2020**

**CK YANO, J  
JANUARY 22, 2026**

**BETWEEN**

- SAMUEL KIMOSOP ROTICH ..... 1<sup>ST</sup> PETITIONER**
- DONALD KIROP BETT ..... 2<sup>ND</sup> PETITIONER**
- JOHN EKIRU KELAI ..... 3<sup>RD</sup> PETITIONER**
- ANDREW CHEMWENO ..... 4<sup>TH</sup> PETITIONER**
- ERICK CHERUIYOT KIPKORE ..... 5<sup>TH</sup> PETITIONER**
- DAVID KIBIWOT ACHIKWA ..... 6<sup>TH</sup> PETITIONER**
- SAMUEL CHEMEITOI KIPKORIR ..... 7<sup>TH</sup> PETITIONER**
- ABRAHAM KIPKOSGEI CHELANG'A ..... 8<sup>TH</sup> PETITIONER**

**AND**

- JOHN KIPCHUMBA YATOR ..... 1<sup>ST</sup> RESPONDENT**
- MICHAEL KIPTANUI TALAM ..... 2<sup>ND</sup> RESPONDENT**
- NIXON KIPCHIRCHIR MURREY ..... 3<sup>RD</sup> RESPONDENT**
- THE KIPLOMBE GREENFIELD FARM GROUP ..... 4<sup>TH</sup> RESPONDENT**
- THE MARAKWET DEVELOPMENT ASSOCIATION (MDA) .... 5<sup>TH</sup>  
RESPONDENT**
- THE CHIEF KIBULGENY LOCATION ..... 6<sup>TH</sup> RESPONDENT**
- THE ASSISTANT COUNTY COMMISSIONER, SOY SUB-  
COUNTY ..... 7<sup>TH</sup> RESPONDENT**
- THE DEPUTY COUNTY COMMISSIONER, SOY SUB-  
COUNTY ..... 8<sup>TH</sup> RESPONDENT**



**THE COUNTY COMMISSIONER, UASIN GISHU COUNTY .... 9<sup>TH</sup>  
RESPONDENT**

**THE LAND REGISTRAR, UASIN GISHU COUNTY ..... 10<sup>TH</sup> RESPONDENT**

**THE CHIEF LAND REGISTRAR, NAIROBI ..... 11<sup>TH</sup> RESPONDENT**

**THE PERMANENT SECRETARY, INTERIOR & CO-ORDINATION OF  
NATIONAL GOVERNMENT ..... 12<sup>TH</sup> RESPONDENT**

**THE PERMANENT SECRETARY, MINISTRY OF LANDS .. 13<sup>TH</sup> RESPONDENT**

**THE ATTORNEY GENERAL ..... 14<sup>TH</sup> RESPONDENT**

**THE NATIONAL LAND COMMISSION ..... 15<sup>TH</sup> RESPONDENT**

### **RULING**

1. The Petitioners/Applicants herein filed the Notice of Motion Application dated 29<sup>th</sup> July, 2024 seeking the following ORDERS: -
  - i. Spent.
  - ii. That the new officials of and the resolutions passed by the members of the Marakwet Development Association (MDA) the 5<sup>th</sup> Respondent, in the meetings held on 02-02-2024 and 09-03-2024 respectively, according to the desire of the members of the Marakwet Development Association (MDA) and for such new officials to transact the business of the Marakwet Development Association (MDA) for and on behalf of the members of the Marakwet Development Association (MDA) be and are hereby introduced to the Uasin Gishu County Commissioner.
  - iii. That the appropriate variations of the Consent Order given on 20.04.2022 in terms of paragraph 7 of that consent order or otherwise and/or the recognition of the new developments including the new officials in line with the election done and the resolutions passed by the members of the Marakwet Development Association (MDA) for such officials to, and to continue to do business for and on behalf of the members of the Marakwet Development Association (MDA) be and are hereby allowed forthwith.
  - iv. That the implementation and/or the execution of the consent order given on 20.04.2022 by the Uasin Gishu County Commissioner and the new officials of the Marakwet Development Association (MDA) in line with the resolution of the members of the Marakwet Development Association (MDA) be and is hereby allowed forthwith.
  - v. That costs to the petitioners/applicants.
2. The application is anchored on 7 grounds on the face thereof and supported by the affidavit of the 1<sup>st</sup> Petitioner/Applicant sworn on even date, on his own behalf and on behalf of his Co-Petitioners/Applicants and in the interest of the members of the Marakwet Development Association (MDA).
3. He listed the names of the new office bearers and their respective offices, elected during the Annual General meeting held on 02.02.2024. He further outlined the 10 resolutions passed during the said Annual General meeting, which included among others that the business of the MDA to be undertaken by the new office bearers/holders.



4. He further deponed that a subsequent General Meeting was held on 09.03.2024, in which the members of MDA passed additional 15 resolutions, which he outlined. Among the resolutions passed was that the new elected officials should seek to take over the official documents from the 1<sup>st</sup> respondent and thereafter petition the 9<sup>th</sup> respondent, who is the ADR Chairman, to reconstitute the ADR Committee and resume the tasks charged as directed in the consent judgment.
5. He added that the members of the MDA further passed a resolution which gave the new officials the mandate to use copies of the MDA documents to pursue acquisition of the land title deeds at Kiplombe/ Kiplombe Block 13 (Greenfield).
6. That pursuant to the said meeting and the resolutions unanimously passed, a letter dated 24.03.2024 was written, forwarding the minutes of the meetings held on 02.02.2024 and 09.03.2024 to the 9<sup>th</sup> respondent in respect to the suit property, Kiplombe/ Kiplombe Block 13 (Greenfield) and the implementation of the orders given on 20.04.2022.
7. The 9<sup>th</sup> respondent responded to the said letter vide their letter dated 24.06.2024, wherein he gave a progress report on the implementation of the consent order issued on 20.04.2022. He advised that the new officials should file an application introducing the members resolutions, including the one electing them as new officials of the MDA, with the mandate to transact the business of MDA on behalf of the members.
8. The 9<sup>th</sup> respondent further recommended that the application be made seeking the court's recognition of the new development and appropriate variation of the consent order in order to allow the new officials to continue transacting on behalf of MDA.
9. It is his claim that despite writing a letter dated 09.02.2024 to the 1<sup>st</sup> respondent to organize and facilitate the handing/taking over of the functions and instruments of the office of the MDA, the 1<sup>st</sup> respondent vide his letter dated 13.02.2024 declined to hand over the same as demanded.
10. He reiterated that by consent of the parties, the Hon. Judge on 26.06.2021 referred the matter to the County Commissioner, Uasin Gishu County for resolution. The same was done and the report by the County Commissioner was adopted as an order of the court on 20.04.2022.
11. He deponed that the members of the MDA did not and have never participated in the dissolution/ liquidation of the MDA after 02.10.2015 and/or the preparations that led to the fraudulently, illegally or unlawfully obtained beneficiary list in 2017 by the 1<sup>st</sup> respondent.
12. It was his contention that Mr. John Kipchumba Yator, Kiplombe Greenfield Farm Group and Nixon Kipchumba Murei, were and are not members of the MDA upto and after 27.06.2024 after the committee meeting of the MFA was held. He stated that the executive officials of the MDA comprised of Elijah Kitum as the chairman, who is since deceased, Stephen Cheboi (secretary) and Michael Rotich (treasurer) who is also deceased. He maintained that the said executive officials were duly elected by the MDA members according to the *constitution* and rules of the MDA on 02.02.2024 and 09.03.2024.
13. In conclusion, it was his claim that upto and after 02.02.2024 and 09.03.2024, the 1<sup>st</sup> respondent has been exhibiting resistance and obstruction of the implementation and/or execution of the consent order given on 20.04.2022 against the wishes of the MDA members including the petitioners. He thus urged the court to allow the application as sought.
14. The application was opposed. The 1<sup>st</sup> Respondent filed a Replying Affidavit sworn on 29<sup>th</sup> August, 2024. He dismissed the application as being vexatious, frivolous and an abuse of the process of court which ought to be struck out with costs.



15. He deponed that he is the chairman of the 5<sup>th</sup> respondent competent to swear the affidavit on his own behalf and on behalf of the duly elected official of Marakwet Development Association, who have authorized him to swear this affidavit on their behalf and for the fifth respondent. He annexed the copy of the said Authority to swear.
16. He reiterated that he is currently the Chairman of Marakwet Development Association (MDA) having been elected as such in the annual general meeting of the year 2015, with the sole purpose of assisting the members of the Association to procure titles for their lands held on their behalf by the association.
17. That alongside the other elected officials of the association, they began the process of verification of all the members of the association to ascertain their actual land parcel sizes, to determine the legitimate beneficiaries thereof and to further process the titles to their land and even engaged the Chief Land Registrar at Nairobi for purposes of the issuance of the titles to the members.
18. He explained that the petitioners being dissatisfied with the verification and the clearance process to enable the members obtain titles to the land held on their behalf by the association, instituted the instant petition, seeking to challenge the said process of issuance of titles to the members of the Association.
19. He acknowledged that the suit was heard, determined and settled vide an amended consent order issued on 20/4/2022, and which is the subject of the present application.
20. It is however his contention that pursuant to the said amended consent order and which was adopted as a judgment of the court issued on 20/4/2022, all titles already issued were nullified and fresh titles to be issued to the members of the Association.
21. Further, by virtue of paragraph 7 of the amended consent order, a fresh ground verification exercise was to be conducted by the elected officials with permissible alterations by the Uasin Gishu County Commissioner who was to supervise the entire process and ascertain the legitimate beneficiaries of the land held by the Association and their respective shares thereof.
22. In addition, as per paragraph 5 of the amended consent order, the original documents; that is, the original maps, original members register, survey register and the bank statements, were to be used in the ground verification exercise.
23. It is his claim that the said ground verification exercise started and has been ongoing and thus far, a total of 312 title deeds have been issued to the members of the Association and 680 titles are yet to be issued to the members of the association who are yet to be cleared to obtain titles to their land.
24. He deponed that the petitioners in an effort to frustrate the process of ground verification exercise and the clearance of members which was being conducted in compliance with the amended consent order/ judgment, conducted an unlawful, illegal and sham elections on the 02.02.2024, to have new persons elected to transact business on behalf of the Association in order to defeat the verification and clearance exercise which was being conducted by him and the other elected officials of the Association with the supervision of Uasin Gishu County Commissioner.
25. Consequently, he maintained that the said elections held on 02.02.2024 was unlawful and outlined the grounds and reasons thereof in detail at paragraph 18 (i) – (xiv). It is further his claim that the said elections contravened the Association articles and was thus unlawful, illegal, null and void ab initio and as a result, the elected officials thereof cannot be allowed to transact business on behalf of the association and/or its members.



26. It is further his claim that the persons elected as officials in the elections held on 02.02.2024 want to be allowed to use certified copies to undertake the verification of the members of the association for purposes of being issued with the titles which he maintains is contrary to the amended consent order issued on the 20/4/2022 at paragraph 5, which decreed that only original documents were to be used in the process of the ground verification and issuance of titles to the members of the association.
27. He thus contends that the said illegally elected officials of the associations are vested with ill motives in the process of ground verification to determine the legitimate beneficiaries of the land held by the association, their shares and issuance of titles to the lands held on their behalf by the association.
28. He deponed that the process of ground verification, clearance of the members and the issuance of titles to the members of the Association had already begun and so far, a total of 312 titles have been issued to the individual members of the Association and a further 680 titles are yet to be issued to the members of the association, who are yet to be cleared to obtain titles to their land.
29. He thus avers that the members of the association will suffer harm that cannot be remedied by an award of damages as they risk being evicted from their land parcels and being rendered homeless.
30. It is his contention that due to the unlawful actions of the persons elected on the 02.02.2024 seeking to transact business on behalf of the 5<sup>th</sup> respondent herein, they lodged a suit challenging the validity of the said elections held on the 02.02.2024 and the legality of the persons elected thereto to manage and conduct business of the 5<sup>th</sup> respondent. That it is therefore proper and in the interest of justice that the orders sought are not granted pending the determination of the suit challenging the elections of the said newly elected officials of the 5<sup>th</sup> respondent into office.
31. He maintained that no prejudice shall be suffered by any party if the orders sought are granted (sic).
32. He added that the 5<sup>th</sup> respondent and its members stand to suffer substantial loss and harm if the alleged new officials are allowed to transact business of the 5<sup>th</sup> respondent as their interest and rights in suit property Kiplombe/Kiplombe Block 13(Greenfield) held on their behalf by the Association shall be adversely interfered with.
33. He therefore avers that it is proper that orders sought are not granted in order to preserve the rights of all the parties.
34. Further, it was also his claim that the applicants in the said application have not tendered any proof to support the allegations that he has been obstructing the ground verification exercise, the determination of their respective shares, clearance and to facilitate the issuance of the titles. He maintained that together with the elected officials, they have been performing their duties as regard the execution of the amended consent order issued on the 20.04.2022.
35. Conversely, he accused the current Deputy County Commissioner for Soy Sub-County for frustrating the verification exercise when he began to conduct the verification exercise contrary to the laid down rules and to the exclusion of the elected officials of the association who had original documents which were supposed to be utilized in the verification exercise and he annexed a copy of the letter showing exclusion of association officials in the verification process in support of his claims.
36. He also accused the applicants for working in cohort with the new Deputy County Commissioner for Soy Sub County to frustrate the verification exercise as directed in the amended consent judgment aimed at watering the works that they have so far done in implementing the decision of the court.
37. In conclusion, he urged the court to dismiss the application with costs.



38. When the matter came up on 17.11.2025 for mention, Mr. Kutei holding brief for Mr. Kwame for the 6<sup>th</sup> – 14<sup>th</sup> Respondents, informed the court that they are not participating in the application.
39. This court issued directions that the Application be canvassed by way of written submissions. Both parties filed their rival submissions together with authorities, which I have read and considered.

**Analysis and Determination:**

40. I have read and considered the grounds in the application, the supporting affidavit and annexures as well as the replying affidavit thereto and annexures together with the rival submissions. Consequently, it is my considered opinion that the main issues arising for determination are;
  - i. Whether the Amended Consent Order dated 20.04.2022 can be varied in the nature sought.
  - ii. Who shall bear the costs of the application.

**Whether the Amended Consent Order dated 20.04.2022 can be varied in the nature sought;**

41. The petitioners/applicants herein have filed the instant application seeking the variation of the Amended Consent Order dated 20.04.2022 in terms of paragraph 7 of the said Amended Consent Order.
42. The purpose of the said variation as sought is for the recognition of the new officials elected and the resolutions passed in the annual general meeting held on 02.02.2024 and the subsequent meeting held on 09.03.2024 and the introduction of the said officials to the 9<sup>th</sup> Respondent. It further seeks to allow the said new officials to transact the business of the MDA on behalf of the members of the Association and to continue with the implementation and/or execution of the consent order by the new elected officials together with the 9<sup>th</sup> respondent.
43. The 1<sup>st</sup> respondent and the other elected officials opposed the application on the main ground that they are the lawfully elected officials of the MDA and that the subsequent meetings and elections held are unlawful, null and void ab initio and consequently not capable of vesting the said new elected officials with any lawful powers and mandate on behalf of the members of the MDA.
44. The main question that follows is whether the said Amended Consent Order can be varied in the nature sought.
45. The terms of the consent order are not contested. Both parties have admitted and duly acknowledged that the petition was determined vide the Amended Consent Order dated 20.04.2022 and the conditions outlined therein.
46. The general rule is that a consent order entered into by counsel is binding on all parties and cannot be set aside and/or varied unless on exceptional circumstances and where it is proved that it was obtained by fraud or collusion or given without sufficient material facts.
47. In the case of Board of Trustees National Social Security Fund -vs- Michael Mwalo (2015) eKLR, it was held that: -

“The judgment arose from consent of the parties to the suit. The law pertaining to setting aside of consent judgments or consent orders has been clearly stated. A court of the law will not interfere with a consent judgment except in circumstances such as would provide a good ground for varying or rescinding a contract between parties. To impeach a consent order or



a consent judgment, it must be shown that it was obtained by fraud or collusion or by an agreement contrary to the policy of court.”

48. The question that this court therefore seeks to determine is whether the variation in the nature sought herein is justified and whether the applicants have met the set standard.
49. From the above case law, it is clear and evident that a consent order can only be set aside and/or varied on circumstances that would provide a good ground for varying, setting aside or rescinding a contract such as fraud, collusion or by an agreement contrary to the policy of the court.
50. In the instant case, the variation has not been sought on the grounds outlined above but on strength and/or pursuant to the provisions of paragraph 7 of the said amended consent order. I therefore wish to reproduce verbatim the contents of the said paragraph to determine whether the same amounts to an exceptional circumstance to warrant the grant of the orders sought.
51. Paragraph 7 of the Amended Consent Order dated 20.04.2022 states as follows: -
  - “7. that the honourable court issues a declaration that the MDA Executives Office Bearers (with permissible alterations in its composition by the County Commissioner, Uasin Gishu County) to facilitate the ground verifications and consequent clearance of members for title registration under the supervision and direction of the County Commissioner, Uasin Gishu County, their role will also include overseeing and adjudicating over onsite/emerging complaints in order to further the objective of the founders of MDA.” (emphasis added)
52. A plain reading and understanding of the above paragraph as part of the consent order is that, the parties and their counsel in entering into the consent were alive to the fact that there could be variations of the consent and had anticipated the possibility of alterations in the composition of the Executive Office bearers of the MDA.
53. From a look at the application, the applicants’ main ground for the said variation is that there was an annual general meeting held on 02.02.2024 where elections were held and new officials of the MDA elected and several resolutions passed including the conduct and transaction of business of the MDA by the new officials. A subsequent meeting was held on 09.03.2024 where additional resolutions were passed.
54. This in my considered opinion falls well within the grounds, conditions, variations and/or permissible alterations anticipated under paragraph 7 of the Amended Consent Order above since it seeks the introduction of the newly elected officials of the MDA, the Executive office bearers.
55. The respondents’ main ground of opposing the application is that the elections held on 02.02.2024 and the subsequent meeting of 09.03.2024 was unlawful, null and void ab initio. They deponed that they had lodged a suit seeking to challenge the said elections and contest the newly appointed office bearers. However, no case number, pleadings in the alleged suit and/or any orders issued in the said suit stopping the said newly elected officials from taking office was annexed to the replying affidavit to corroborate the said averments. In the absence of such evidence, this court is unable to verify the probative value of the said assertions and they remain mere unsubstantiated allegations.
56. Be that as it may, this court is unable to delve into the legality, validity and/or correctness of the said elections of the new officials of the MDA which does not fall within the scope of its jurisdiction. The importance of jurisdiction cannot be overstated and this court is cognizant of its jurisdiction as clearly stated in the *constitution* and the *Environment and Land Court Act*.



57. In view of the foregoing, it is the finding of this court that the applicants have proved their application to the required standard and therefore, there is need for the Amended Consent Order to be varied in the nature sought for the above reasons and to ensure the implementation of the consent orders.

### **Who shall bear the costs of the Application**

58. The general rule is that costs shall follow the events unless the court directs otherwise as provided in section 27 of the *Civil Procedure Act*.
59. In the present case, having held that the petitioners/applicants have proved their application to the required standard, it is my finding that they are entitled to costs of the application.

### **Conclusion**

60. Consequently, I accordingly find that the Notice of Motion Applications dated 29.07.2024 by the petitioners/applicants is merited and is hereby allowed as prayed. Costs of the Application to be borne by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents.
61. It is so ordered.

**DATED, SIGNED AND DELIVERED AT ELDORET THIS 22<sup>ND</sup> DAY OF JANUARY, 2026.**

**HON. C. K. YANO**

**JUDGE**

Ruling delivered in the virtual presence of: -

Mr. Cheptarus for the Petitioners/Applicants.

No appearance for Mwendwa for 1<sup>st</sup>, 3<sup>rd</sup> & 5<sup>th</sup> Respondents.

Mr. Ogutu for Proposed interested party.

Mr. Kwame for 6<sup>th</sup> – 14<sup>th</sup> Respondents.

No appearance for 15<sup>th</sup> Respondent.

Court Assistant – Laban

