

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT VOI

ELCLC NO. E015 OF 2025

1. MBULIA COMMUNITY LAND DEFENDERS

2. JOHANA KATEMBO

3. GEORGE MWASIGHWA MAKAA

4. ADA CHAO MWASHUMBE

PLAINTIFFS

-VERSUS-

1. CHARLES M. MWAIZINGA

2. ESTHER N. MWAMBEO

3. GERALD M. KISHUSHU

4. MONICA M. MSITIRI

5. COSMAS M. MWANGOMBE

6. MANUEL M. KITOLOLO

7. EMILY S. MBUCHIA

8. PETER M. MANYASI

9. PETER M. MWACHONGO

10. **MERCY S. JUMA**
11. **HABEL K. MVOI**
12. **WILFRED I. MALEMBA**
13. **EVERLINE M. MWATATE**
14. **AYUB S. MWADALI**
15. **CHRISPUS M. SHINGIRA**
16. **MBULIA COMMUNITY LAND**
17. **COMMUNITY LAND REGISTRAR,
TAITA TAVETA COUNTY..... DEFENDANTS**

RULING

1. This is a ruling in respect to the Plaintiff's Amended Notice of Motion dated 22nd October 2026 which seeks for the following reliefs:-
 1. Spent...
 2. Spent...
 - 2 (a) Spent...
 - 2 (b) Spent...
 - 2 (c) Pending hearing and determination of this suit, the Defendants herein be and are hereby stopped,

suspended and/or barred from convening, holding and/or conducting Mbulia Community Land public meeting scheduled on the 31.10.2025 or any such other date unless and until otherwise authorized by this court.

2 (d) Pending hearing and determination of this suit, the Defendant be and are hereby stopped, barred and/or prevented from holding, convening, conducting any public meetings for Mbulia Community Land for purposes of electing new land management committee.

2 (e) That pending hearing and determination of this application, the Defendants be and are hereby stopped, barred and/or enjoined from continuing with plans to carve out a piece of the 16th Defendant's land, sub-divide it into plots and allocate the plots to individuals for commercial, business or residential purposes.

3. That pending hearing and determination of this application, orders in the nature of injunction do and

are hereby issue denying access and withdrawing of any money from the Mbulia Community Land Accounts in Absa Bank Voi and KCB Bank Voi and/or in any way dealing with said accounts by the 1st - 15th Defendants herein jointly and severally unless and until by an order of this court.

4. That pending hearing and determination of this suit, orders do and hereby issue denying access to and stopping withdrawing of any money from the Mbulia Community Land Accounts in Absa Bank Voi and KCB Bank Voi and/or in any way dealing with said accounts by the 1st - 15th Defendants herein jointly and severally unless and until by an order of this court.

5. That pending hearing and determination of this suit, an order do and hereby issue compelling the 1st - 15th Defendants herein jointly and severally to file before this court and serve the Plaintiffs herein the audited and certified books of accounts for Mbulia Community Land for the years 2021 to 2025.

6. Pending hearing and determination of this suit, an order do and hereby issue compelling the 1st - 15th Defendants jointly and severally file in court and serve the register of persons recruited as Mbulia Community Land members between 21.3.2021 and 22.7.2025.

7. That the costs of this application be provided for.

8. That such other orders the honourable court may issue in the interests of justice.

2. The application was premised on the grounds on the face and supported by the affidavit sworn by Johana Katembo on 23rd October 2026.
3. It was deposed that a public meeting has been called by the Defendants for the purposes of electing the Community Land Management Committee. The said election has been called in bad faith and it is a clear attempt to defeat the suit herein and render it nugatory.
4. It was deposed that it was the Plaintiff's position that before the elections could be conducted, the Defendants should have called for a general meeting to satisfy the new drafted constitution for the newly formed community land, verification

and ratification of the community land new recruited members, briefing on the financial aspects of the community land and other important matters as is evidenced by the bundle of letters marked as annextures JK4(a), (b), (c) and (d).

5. It was stated that the Defendants refused to heed, cooperate and or give attention to the Plaintiffs' cry and as such it is strange and hypocrisy on the part of the Defendants to wait until the filing of the suit and rush to call for a meeting when the suit is still pending. The rushed election is illegal, null and void if conducted without participation of the Plaintiffs herein who are over 3,500 original members of the Mbulia Community Land but has since been declared by the Defendants they are no longer members of the Mbulia Community as can be seen in social media posts marked as annexure "JK5(a), (b), (c) and the general public pronouncement by the 1st to the 15th Defendants.

6. It was further stated that the election will be illegal owing to the fact that the Defendants intents to use a newly recruited members register during voting and who are yet to be verified and ratified as the members of the Mbulia Community Land.

7. During the plenary hearing of the application Learned Counsel Mr. Mwinzi submitted on behalf of the Plaintiffs and added that the Plaintiffs have not been issued with any cards that are required for participation in the elections and the Defendants conduct is in violation of the law.
8. The court was urged to allow the application and grant the prayers sought.
9. The application was opposed by the 1st to 16th Respondents vide the affidavit dated 5th November 2025 sworn by Gerald Kishushu and written submissions dated 11th December 2025.
10. It was averred that the management committee of the 16th Respondent in its meeting held on 4th June 2025 resolved to plan and hold an Annual General Meeting in compliance with the requirements of the Act and the Community Land Regulations. Pursuant to the said resolution a formal communication was made to the Community Land Register vide a letter dated 10th June 2025 and the proposed date was indicated as 25th October 2025.

11. It was further averred that the communication for the meeting was made way in advance before the institution of the present suit on 1st August 2025.
12. It was also stated that upon receipt of the notification of the said meeting the Community Land Register requested to have the meeting held on 31st October 2025 instead of 25th October 2025 due to other prior official engagements. The Management Committee thus acted in good faith in accepting the Registrar's proposal to have the meeting held on 31st October 2025.
13. It was further stated that the Plaintiffs in their plaint dated 1st August 2025 had sought an order to have the 17th Respondent call for a meeting and hence they are stopped from faulting the call of the said meeting. No single member of the Applicant has been identified that he or she will be prejudiced by the Defendants actions.
14. It was contended that the alleged Whatsapp messages annexed to the Plaintiffs supporting affidavit are inadmissible in evidence for want of certification as required under Section 106B (4) of the Evidence Act.

15. It was further contended that the Applicants prayer for injunctive orders to restrain the withdrawal or utilization of community funds is unfounded and unsupported by evidence. The Applicants have not demonstrated any unlawful transaction, irregular withdrawal or intended misuse of funds or provided any evidence suggesting any mismanagement.
16. It was also averred that on 15th March 2025, a meeting was held concerning the proposed change of land use affecting part of Community Land and that the dispute before court is not about any genuine grievance affecting the community at large but rather a continuation of personal and managerial disagreements within the community leadership.
17. Learned Counsel Mr. Mburu submitted on behalf of the 1st to 16th Defendants/Respondents and added that the prayers sought in the amended Notice of Motion introduce new cause of action. They are not anchored on the plaint. They stand on nothing.
18. On the issue of the land, it was submitted that the same is not a conditional precedent for participation during the election.

19. The court was urged to dismiss the application with costs to the 1st to 16th Respondents.

20. Having considered the application dated 22nd October 2025, the rival affidavits filed and submissions made by the parties, the following issues arise for determination herein:-

(i) Whether the Applicants have established and demonstrated any procedural impropriety and or violation of the Community Land Act or Regulations to warrant the intervention of this court.

(ii) Whether the Applicants are entitled to the reliefs sought in their application dated 22nd October 2025.

21. It was the Defendants/Respondents contention that the Plaintiffs/Applicants have not demonstrated by way of any cognate evidence that there is any violation, procedural impropriety of any provisions of the Community Land Act or Regulations to warrant the intervention of this court.

22. The Plaintiffs on the other hand maintained that the Defendants in total disregard to the law and the pending suit

have called out a meeting meant to carry out elections of New Community Land Management Committee Members for the Mbulia Community Land which if allowed to proceed will lock out the Plaintiffs who are over 3,500 and are the original members of the Mbulia Community. It was also averred that the meeting and elections may proceed with the new members who are yet to be verified and ratified by the original members.

23. It was further contended that the 1st to 15th Defendants have come up with plans without involving the members of the 16th Defendant to carve out a portion of land of the 16th Defendant and have it divided into plots with intentions of allocating or dishing it to unknown individuals for building residential, commercial and or business houses which is in contract and detrimental to the policies of the 16th Defendant.
24. Since the 1st to 15th Defendants have denied any breach of the provisions of the Community Land Act and any malice and or procedural impropriety in their deals, then the onus of demonstrating the same lies with the Plaintiffs.

25. Under the applicable provisions of the Community Land Act and its Regulations, the Community Assembly is established as the supreme decision making body for a registered community. The Community Land Act distinguishes between initial registration related meetings often facilitated by the Community Land Register and ongoing meetings once a community is registered. The detailed procedures for calling and conducting meetings are supplemented by the Regulations.

26. It therefore follows that pursuant to Regulation 7(2) of the Community Land Act, the land Registrar in consultation with the National and County Government representations of the area, shall convene and oversee the process of election of Community Land Management Committee members.

27. The Community Land Registrar is expected to publish a notice inviting all members of the community to the said public meeting. The said notice must be in at least one Newspaper of nationwide circulation and radio station of nationwide coverage.

28. In the instant case, it is not in dispute that the 1st - 15th Defendants are the members of the Mbulia Community management Committee who were elected to office on 21st March 2021 for a period of 3 years; however the Plaintiffs contention is that while this suit was still pending, they have called for a meeting for election of a new Community Land Management Committee members which according to the Plaintiffs is being rushed without having no single Annual Meeting held since they took office. It was also the Plaintiffs contention that they will be isolated from the meeting and that the same is meant to defeat the suit.

29. From the evidence tendered vide the affidavits filed by the parties, it is evident that the Management Committee held a meeting on 4th June 2025 where it formally resolved to plan and convene an Annual General Meeting of its members strictly in compliance with the provisions of the Community Land Act, 2016 and the Community Land Registrar. There was also evidence tendered where a formal letter dated 10th June 2025 was issued to the Community Land Register of the intended Annual General Meeting and sought for his

facilitation. It is also evident that the Community Land Registrar requested for the said meeting to be held on 31st October 2025. Hence therefore the resolution to convene the Annual General Meeting was duly received well before the institution of the suit on 1st August 2025. A position which was not controverted by the Plaintiffs.

30. In view of the foregoing the Plaintiffs have not demonstrated any malice, procedural impropriety or breach of any of the applicable provisions of the Community Land Act and its regulations in convening the said meeting. No cogent evidence has been adduced to demonstrate the same. There is also no evidence adduced to demonstrate that the Plaintiffs will be barred from attending the Annual General Meeting and participating in the said elections.

31. While the Plaintiffs may have some concerns and or fears in respect to the intended meeting and election of the Community Land Management Committee members, the same can equally be addressed during the said meeting.

32. It therefore follows that on this particular issue, the Plaintiffs have failed to tender any cogent evidence to the effect that

the Defendants have acted unlawful and in contravention of the provisions of the Community Land Act and its regulations in calling for the said meeting.

33. The next issue for consideration is whether the Plaintiffs are entitled to the reliefs sought in their application dated 22nd October 2025.

34. In the said application the Plaintiffs sought for several reliefs which according to the Defendants were not anchored in the plaint.

35. It is trite law that an interlocutory or ancillary relief sought in an application must be anchored in and flow in the substantive prayers.

36. In the instance case, this court having found that the Plaintiffs have not adduced any cogent evidence nor demonstrated any violation and or breach of the provisions of the Community Land Act and its enabling regulations in respect to the convening of the meeting, it therefore follows that the Plaintiffs have failed to satisfy the requisite legal threshold for the grant of the reliefs sought and, in the circumstances, they are not entitled to the same.

37. In conclusion, it is the finding of this court that the application dated 22nd October 2025 is unmerited and the same is dismissed. Each party to bear own costs of the said application.

**SIGNED, DATED AND DELIVERED VIRTUALLY AT VOI THIS
18TH FEBRUARY 2026.**

E. K. WABWOTO
JUDGE

In the presence of: -

Mr. Mwinzi for the Plaintiffs/Applicants.

**Ms. Mwangi h/b for the 1st to 16th
Defendants/Respondents.**

N/A for the 17th Defendant/Respondent.

Court Assistant: Mary Ngoira.