



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC CASE NO. 6 OF 2019

**MERU WOOD INDUSTRIES
LTD.....PETITIONER**

=VERSUS=

**THE DISTRICT LAND ADJUDICATION AND
SETTLEMENTS OFFICER - MERU CENTRAL
RUIRI/RWARERA1ST
RESPONDENT**

**DIRECTOR OF LAND ADJUDICATION.....2ND
RESPONDENT**

**CHIEF LAND REGISTRAR.....3RD
RESPONDENT**

**THE HON ATTORNEY GENERAL.....4TH
RESPONDENT**

=AND=

**TERESIA KAARI.....1ST INTERESTED
PARTY**

**JOEL KIAMBI.....2ND INTERESTED
PARTY**

**JOYCE NTIRIITWA M'TIRIMANIA.....3RD INTERESTED
PARTY**

RULING

1. On 23/4/2019, M/s Meru Wood Industries Ltd brought a petition dated 16/4/2019 against the four respondents and the three interested parties seeking the following reliefs:

(a) a declaration that the 1st, 2nd, 3rd and the 4th respondents have breached the petitioner's right to property under Article 40 of the Constitution by registering and/or causing the petitioner's land registration numbers Meru Central/Ruiru Rwarera/2750; Meru Central Ruiru/Rwarera/1674; and Meru Central Ruiru Rwarera/4259 to be registered in the name of the interested parties.

(b) An order of certiorari do issue quashing the registration of land registration numbers Meru Central/Ruiru Rwarera/2750; Meru Central Ruiru/Rwarera/1674; and Meru Central Ruiru Rwarera/4259 in the names of Teresia Kaari, Joel Kiambi and Joyce Ntiritwa M'tirimania respectively.

(c) an order of mandamus compelling the Chief Land Registrar to register them [Meru Wood Industries Ltd] as the proprietor of land registration numbers Meru Central/Ruiru Rwarera/2750; Meru Central

Ruiri/Rwarera/1674; Meru Central Ruiri Rwarera/4259.

(d) general damages for breach of their right to property; and

(e) costs of this petition and interest on (d) above.

2. It was the petitioner's case that land parcel numbers **Meru Central/Ruiri Rwarera/2750; 1674; and 4259** [hereinafter referred to as "**the suit land**" or "**the suit property**"] were rightfully recorded in the petitioner's name after the hearing of Objection Nos 4984; 5083 and 5086 relating to the three parcels. The petitioners contended that the three interested parties did not prefer appeals to the Minister under **Section 29** of the **Land Adjudication Act**. The petitioner added that when they went to collect titles relating to the three parcels, they discovered that the parcels had been registered in the names of the 1st, 2nd and 3rd interested parties respectively. The petitioner stated that despite them writing to the respondent in an effort to have the registrations rectified, there was no response from the respondents. They contended that the actions and/or omissions of the respondents infringed on their right to property under Article 40 of the Constitution.

3. Upon filing the petition, the petitioner sought and obtained leave of the court to effect substituted service of the petition on the interested parties. The petitioners subsequently caused to be published a notice in the **Motorshow/Classifieds/Obituary** column of **The Standard**

Newspaper edition of 3/6/2019. No appearance was made in the petition by the interested parties.

4. Subsequent to that, on 4/11/2020, **Advocate D M Maranya**, acting for the petitioner and one **Emmanuel Kieti**, acting for the respondents, appeared before the Deputy Registrar of this court, **Hon E Tsimonjero**, and informed the Deputy Registrar that they had the following verbatim consent to record:

“BY CONSENT

- 1) **The Director of Land Adjudication do implement Objection Proceedings No 4984 relating to land parcel number Meru Central/Ruiri Rwarera/2750, whose decision was delivered on 19/7/2018 in the adjudication register.**
- 2) **The Director of Land Adjudication do implement Objection Proceedings No 5083 relating to land parcel number Meru Central/Ruiri/Rwarera/1674 whose decision was delivered on 28/8/2018 in the Adjudication register.**
- 3) **The Director of land Adjudication do implement Objection proceedings number 5086 relating to land parcel number Meru Central/Ruiri Rwarera/4259 whose decision was delivered on 28/8/2018 in the adjudication register.**
- 4) **Upon implementation of orders 1, 2 and 3 above, that an order of certiorari be and is hereby issued quashing the registration of**

land registration numbers Meru Central/Ruiru Rwarera/2750, Meru Central/Ruiru Rwarera/1674, Meru Central/ Ruiru Rwarera/4259 in the namess of TERESIA KAARI, JOEL KIAMBI AND JOYCE NTIRIITWA M'TIRIMANIA.

5) An order of mandamus be and is hereby issued compelling the Chief Land Registrar to register the petitioner herein MERU WOOD INDUSTRIES LTD as the proprietor of land registration numbers Meru Central/Ruiru Rwarera/2750, Meru Central/Ruiru Rwarera/1674, Meru Central/Ruiru Rwarera 4259.

6) The matter be marked as settled with no orders as to costs.

5. The Deputy Registrar of this court proceeded to adopt the consent in the following verbatim terms:

“The consent is adopted as an order of the court and the matter is marked as settled in terms of the said consent. File closed.”

6. On 24/10/2025, **Mr Joel Kiambi** [the 2nd interested party] brought a notice of motion dated 21/10/2025, seeking orders setting aside the above consent and granting him leave to file a response to the petition and to be heard in the petition. He also sought an order of inhibition relating to parcel number 1674 pending the hearing and disposal of the petition. The said application is the subject of this ruling.

7. The application was premised on the grounds outlined in the motion and in the applicant's supporting affidavit dated 21/10/2025. It was canvassed through written submissions dated 10/11/2025 and rejoinder submissions dated 14/1/2026, filed by **M/s Mungai, Kinyua & Njiru Law Advocates LLP**. The case of the applicant is that he was at all material times the registered proprietor and the title holder of land parcel number **Meru Central/Ruiri Rwarera/1674**, having been allocated the land in 1978 during the adjudication process in the area. He was recorded in the adjudication records as the proprietor of the land and he was subsequently issued with a title deed in 2017. He was not aware of this petition. He was not privy to the consent that annulled his title. The consent was entered into through collusion between the petitioner and the respondents and it does not reflect his wishes as the registered proprietor of the suit land. He learnt about the petition and the consent in 2025 while trying to transfer the suit land to his daughter.
8. The applicant adds that the post-registration objection proceedings which allegedly awarded the suit land to one **Francis Kithinji M'Rithara**, who allegedly sold the suit land to the petitioner, were illegal and nullities because: (i) he was not invited to participate in the proceedings; (ii) the suit land was registered and a title had been issued to him in 2017 and therefore the 1st respondent had no jurisdiction to conduct objection proceedings after conclusion of the adjudication process and after issuance of a title to him; and (iii) the 1st respondent had no jurisdiction to annul or cancel an issued title. He urged the court to allow the application.

9. The respondents opposed the application through grounds of opposition dated 6/11/2025 and written submissions dated 19/1/2026. The case of the respondents is that this petition has since been concluded and the order of the court has been executed, hence it cannot be re-opened. They fault the applicant for introducing new issues relating to the validity of objection proceedings under the Land Adjudication Act. They further fault the applicant for what they term as inordinate and unexplained delay in bringing the application.
10. The petitioner opposed the application through a replying affidavit sworn on 3/12/2025 by **Kimathi Charles John Ithula** and written submissions dated 4/12/2025, filed by **M/s D M Maranya & Co Advocates**. The case of the petitioner is that this court became *functus officio* the moment the consent was adopted on 4/11/2020. They add that the said consent was entered into freely by all the parties through their advocates on record and was duly adopted by the court as an order of the court. They add that the application does not meet the criteria for setting aside a consent. They further contend that the application is *res judicata* and term the application as a back-door appeal by the applicant.
11. The petitioner argues that the applicant was properly served through the notice that was published in the **Standard Newspaper**, adding that there was inordinate delay of 6 years which has not been explained. They further fault the applicant for attempting to overturn an adjudication process that was never challenged within the prescribed time. They add that the consent order was duly implemented.

- 12.** The petitioner further faults the applicant for trying to usurp the role of the principal parties to the petition yet he is only an interested party who should not raise substantive issues, adding that the participation of an interested party is limited to aiding the court in the determination of existing issues and not to reopen, vary or contest final judgments. They urge the court to reject the application.
- 13.** The court has considered the application, the responses to the application, and the parties' respective submissions. The key question to be determined in the application dated 21/10/2025 is whether a case has been made to warrant the setting aside of the consent order that was adopted by the Deputy Registrar of this court on 4/11/2020.
- 14.** The court has reflected on the arguments and counter-arguments presented in the application. The court has also looked at the evidence presented and the record before it. What was substantively before the Deputy Registrar was a petition brought under the **Bill of Rights** which is part of the Constitution of Kenya 2010. Proceedings of the court when exercising jurisdiction under the Bill of Rights are governed by the **Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013**. Settlement of a petition through a consent is provided for under **rule 29** which states as follows:

“The parties may, with leave of the court, record an amicable settlement reached by the parties in partial or final determination of the case.”

- 15.** This petition had one petitioner, four respondents and three interested parties. The petitioner exhibited three registered titles held by the interested parties. Through the petition, the petitioner sought an order annulling the three titles that belonged to the interested parties. It is strange that the petitioner designated the three registered proprietors merely as interested parties yet he sought an order annulling their titles. Suffice it to state that, the three interested parties qualified to be designated as substantive parties to the petition. I say so because it is their titles that the petitioner sought to annul. They could not have been mere interested parties when the key relief sought was an order annulling their titles.
- 16.** Secondly, my understanding of rule 29 is that, if a final consent settlement was reached and was to be recorded in the petition, all the parties to the petition, including the interested parties whose titles were the subject matters of the petition, were required to be privy to the consent. A valid consent settlement could not be recorded in the petition in the absence of the interested parties. If the petitioner satisfied the court on service of the petition on all the parties, and some parties failed to enter appearance in the petition, the only available route for the petitioner [if they wished to pursue the claim against the absent parties] was to take a hearing date for the petition and prosecute their petition as an undefended cause. The shortcut of a consent settlement annulling the interested parties' titles through a bilateral consent was not available to the two consenting parties in the absence of the three interested parties.

17. This is not the only fatal defect in the consent that is the subject of this ruling. Rule 29 contemplates the recording of a consent “with leave of the court”. Is the Deputy Registrar the court contemplated under rule 29? I do not think so. First, the Environment and Land Court was created as a superior court under **Article 162 (2) (b)** of the **Constitution**. The officer whom the consenting parties invited to grant them leave and adopt the consent was not a judge of the Environment and Land Court. He was a magistrate serving as a Deputy Registrar of the court. Secondly, under **Section 21** of the **Environment and Land Court Act**, the Environment and Land Court is constituted by a single judge or, on certification, by an uneven number of judges of the court as certified by the Chief Justice. **Section 21** of the Environment and Land Court Act provides thus:

“(1) The Court shall be properly constituted for the purposes of its proceedings under this Act by a single judge.

(2) Notwithstanding subsection (1), any matter certified by the Court as raising a substantial question of law —

(a) under Article 165(3)(b) or (d) of the Constitution; or

(b) concerning impact on the environment and land, shall be heard by an uneven number of judges, as determined by the Chief Justice.”

18. Hon Tsimonjero whom the two advocates invited to grant the consenting parties leave and adopt their bilateral consent as a

final judgment of the court and who purported to adopt the impugned consent as a final judgment/order of the court was not a judge of the Environment and Land Court. He had no jurisdiction to grant leave or to adopt the consent as a final judgment or final order of the court. Rule 29 vested that jurisdiction in a judge or a bench of judges of the court.

- 19.** For the above reasons, this court comes to the finding that there was no valid consent capable of adoption under **rule 29** of the **Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013**. Secondly, the Deputy Registrar who purported to adopt the purported consent was not the court contemplated under **rule 29** and did not have jurisdiction to grant leave nor to adopt the purported consent.
- 20.** Consequently, the court finds that the applicant has made out a case for the setting aside of the order of the Deputy Registrar dated 4/11/2020 purporting to finally determine this petition through a purported consent of the petitioner and the respondents. The said order of the Deputy Registrar stands to be set aside wholly.
- 21.** The applicant sought an inhibition order pending the hearing and disposal of the petition. The purpose of the inhibition order is to preserve the land register pending the hearing and disposal of the petition. Taking into account the nature of this dispute, there is a proper basis for granting of an inhibition order.
- 22.** In the end, for the above reasons, the application dated 21/10/2025 is allowed in the following terms:

- (a) The purported order issued by the Deputy Registrar on 4/11/2020 purporting to adopt the consent of the petitioner and the respondents is set aside wholly.**
- (b) The 2nd interested party shall file and serve his response to the petition within 14 days.**
- (c) The court shall fix this petition for disposal directions on a date to be fixed at the time of rendering this ruling.**
- (d) Costs of the application shall be in the petition.**

DATED, SIGNED AND DELIVERED AT MERU THIS 12TH DAY OF FEBRUARY, 2026.

**B M EBOSO [MR]
ELC JUDGE**