

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KISII

ELC PETITION NO.3 OF 2018

KENYA AGRICULTURAL AND LIVESTOCK RESEARCH ORGANIZATION

..... PETITIONER

VERSUS

KISII COUNTY GOVERNMENT & ANOTHER RESPONDENTS

RULING

1. The application before me is that dated 11 July 2025 filed by the County Government of Kisii, the 1st respondent in this petition. The application seeks the following orders :
 - (a) That this matter be referred to the National Land Commission.
 - (b) That the costs of the application be in the cause.
2. The application is opposed by the petitioner.
3. By way of background, the petitioner, a State Corporation established under the Kenya Agricultural and Livestock Research Act, filed this petition on 23 February 2028 against the applicant and the Member of County Assembly of Bobaracho Ward. She contended to be entitled to certain land identified as ‘C’ located in Kisii where she had been undertaking agricultural research activities. She came to court because the applicant allegedly wished to construct a feeder road through this land. She inter alia sought a permanent injunction to restrain the applicant from this activity and damages in the sum of Kshs. 7,000,000/=. The applicant did not file anything to oppose the suit. The case was heard by Mutungi J who delivered judgment on 29 August 2019 in favour of the petitioner.
4. There have been subsequent applications after the judgment but which are not material to the application. I however need to mention that the applicant has filed an appeal before the Court of Appeal against the judgment herein being Court of Appeal at Kisumu, Civil Appeal No. E163 of 2025.

5. It will be seen that in this application, the applicant wishes to have the suit referred to the National Land Commission. From what I can discern, the reason for this prayer is to have the National Land Commission mediate between the parties and other third parties claiming portions of the land in issue.
6. The petitioner filed a replying affidavit sworn by Dr. Eliud Kireger, the petitioner's Director General, to oppose the motion. Inter alia, it is contended that the court is functus officio having already delivered a judgment in the matter, and further, that the National Land Commission has no jurisdiction to reopen this court's judgment.
7. I have considered the application alongside the submissions filed and I will be very brief in my determination because to me the issue is clear.
8. It will be observed that there is already judgment delivered by this court, and the applicant has filed an appeal to the Court of Appeal. That being the case, the matter is now in the hands of the Court of Appeal. I have to agree with the respondent that this court is now functus officio and cannot refer the matter for mediation. Now that the matter is with the Court of Appeal, any reference to mediation will need to be upon the directions of the Court of Appeal and not by this court, for example under Rule 108 of the Court of Appeal Rules. For that simple reason, I find no merit in this application and it is hereby dismissed.
9. On costs, the parties are public corporations. Any award for costs will inevitably be from the public. In those circumstances, I will make no orders as to costs.
10. Orders accordingly.

DATED AND DELIVERED THIS 17 DAY OF FEBRUARY 2026

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT KISII

Delivered in the presence of :

No Appearance on part of counsel for the applicant

No Appearance on part of counsel for the petitioner/respondent

Court Assistant – Michael Oyuko.