



Katei & 6 others v County Government of Makueni & 3 others (Environment and Land Petition E002 of 2022) [2026] KEELC 1248 (KLR) (5 March 2026) (Ruling)

Neutral citation: [2026] KEELC 1248 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ENVIRONMENT AND LAND PETITION E002 OF 2022**

**EO OBAGA, J
MARCH 5, 2026**

BETWEEN

DAVID KAWINO KATEI & 6 OTHERS & 6 OTHERS PETITIONER

AND

COUNTY GOVERNMENT OF MAKUENI 1ST RESPONDENT

THE HON ATTORNEY GENERAL 2ND RESPONDENT

THE NATIONAL LAND COMMISSION 3RD RESPONDENT

THE COUNTY ASSEMBLY OF MAKUENI 4TH RESPONDENT

RULING

1. This is a ruling in respect of a notice of motion dated 11th September, 2025 in which the Petitioners/Applicant seek the following orders:
 1. That this matter be certified as urgent and be heard exparte in the first instance.
 2. That this honourable court be pleased to set aside the dismissing orders made by this honourable court on 14th May, 2025 dismissing the Applicant's/Petitioner's application dated 4th April, 2023 for non attendance and the same be reinstated for hearing and determination on merit.
 3. That upon grant of prayer 2 above the court be pleased to grant an order of status quo pending hearing and determination of the application.
2. The Applicants contend that after their advocates were allowed to cease acting for them, the court directed that court documents be served upon them in person. They state that the hearing notice for their pending applications were not served upon them in person as directed. They state that the notice was served via the 1st Applicant's email address but that he did not receive it.



3. The Applicants contend that they did not have an opportunity to be heard contrary to Articles 47, 48 and 50 of *the Constitution*. It is for this reason that they pray that the dismissal orders given on 14th May, 2025 be set aside and they be allowed to be heard on the two applications.
4. The Applicants' application was opposed by the 1st Respondent based on grounds of opposition dated 24th September, 2025. The 1st Respondent contends that the Applicants' application is an abuse of the process of the court. The Applicants were served through the same email which their advocates had used when they filed an application to cease acting for them. The 1st Respondent states that the Applicants have taken time to have the dismissed application heard and that they will not suffer any prejudice if the reinstatement is refused as the petition is still alive.
5. The parties were directed to file written submissions. The Applicants filed their submissions dated 11th January, 2025. The 1st Respondent filed submissions dated 9th December, 2025. The Applicants submitted that they were not served as per directions of the court and that if the applications are not reinstated, they will suffer prejudice as the 1st Respondent will go ahead to implement the development plan which is the subject of this petition.
6. The Applicants cited the case of Philip Chemwolo –vs- Augustine Kubende (1982 – 88) 103 at 1040 where Justice Apaloo (as he then was) stated that where a blunder is made, the party making it should not be punished. He should be given opportunity to be heard.
7. The 1st Respondent submitted that the Applicants had not shown any reason why an application filed in 2022 was still pending. The application for reinstatement was made after four months from the date of dismissal and that there will be no prejudice suffered by the Applicants if the applications are not reinstated.
8. I have carefully considered the Applicants' application as well as the opposition to the same by the 1st Respondent. I have also considered the submissions by the parties. The only issue for determination is whether the Applicants have demonstrated that they deserve the discretion of the court in setting aside the dismissal order.
9. The Applicants filed this petition on 4th April, 2022 in which they sought the following reliefs:
 1. A declaration be issued to the effect that the notice issued by the 1st Respondent on 21st January, 2022 and published on 23rd February, 2022 contravenes the provisions of *the Constitution* and the County Government Act and is therefore unconstitutional and void ab initio.
 2. A declaration be issued to the effect that the notice issued by the 1st Respondent on 21st January, 2022 and published on 23rd February, 2022 is unconstitutional null and void for lack of public participation.
 3. An order declaring that the Respondent's action in seeking to curtail, undermine and/or deprive the petitioners off their rights to their various properties within Sultan Hamud town without just cause and adequate compensation is unfair, unlawful and unconstitutional.
 4. An order preserving the petitioners parcels of land and properties.
 5. Any other further order that the honourable court may deem fit and just to grant.
 6. An order for payment of costs of this petition by the Respondents.
10. The Applicants contemporaneously filed an application in which they sought the following orders:
 1. Spent



2. Spent
 3. That this honourable court be pleased to issue an order of temporary injunction restraining the Respondents herein or their servants, agents and/or employees from implementing the notice issued by the 1st Respondent on 21st January, 2022 and published on 23rd February, 2022, whatsoever which is inconsistent with the petitioner's constitutional and property rights pending hearing and determination of the petition.
 4. A declaration be issued to the effect that the notice issued by the 1st Respondent on 21st January, 2022 and published on 23rd February, 2022 contravenes the provisions of *the Constitution* and the County Government Act and is therefore unconstitutional and void ab inito.
 5. A declaration be issued to the effect that the notice issued by the 1st Respondent on 21st January, 2022 and published on 23rd February, 2022 is unconstitutional null and void of lack of public participation.
 6. An order declaring that the Respondent's action in seeking to curtail, undermine and/or deprive the petitioner's/Applicants off their rights to their various properties within Sultan Hamud town without just cause and adequate compensation is unfair, unlawful and unconstitutional.
 7. An order preserving the petitioners/Applicants parcels of land and properties.
 8. Costs of this application.
11. On 18th May, 2023, the Applicants filed a notice of motion dated 17th May, 2023 in which they sought the following orders:
1. Spent
 2. That this honourable court be pleased to issue an order joining the proposed interested party to this proceedings as an interested party.
 3. An order of status quo be issued pending the hearing and determination of this application and the main petition.
 4. Costs of this application.
12. Prayer 2 of the notice of motion dated 17th May, 2023 was allowed on 6th June, 2023. The Applicants did not take any steps towards prosecuting the two applications. On 24th February, 2025 the Applicants' advocates sought for time to seek instructions from the Applicant on how to terminate the petition. On 1st April, 2025, the Applicants advocates indicated to court that they wanted to cease acting for the Applicants. They went ahead to file an application dated 10th April, 2025 which was allowed on 30th April, 2025. The court directed that hearing notice in respect of notice of motion dated 4th April, 2022 and that of 17th May, 2023 be served upon the Applicants in person as their advocates had been allowed to cease to act for them.
13. The two applications were set down for hearing on 14th May, 2025. The court having confirmed that the Applicants were served through the email address of the 1st Applicant dismissed the two applications for non attendance.
14. The Applicants contend that they were not served in person as directed by the court. The Applicants were served with application to cease acting using the same address. They cannot now turn around and claim that they never received the hearing notice.



15. As can be seen from the prayers in the application dated 4th April, 2022, except for injunction orders, they are seeking same orders as in the petition. In the application dated 17th May, 2023 the only pending issue is an order of maintenance of status quo. This petition was filed in 2022. There is nothing adverse which has happened since then to an extent that at some stage, they contemplated terminating the petition.
16. There is nothing pending in the dismissed application which will help the Applicants. The Applicants will be better having the main petition determined instead of dwelling on applications which will not further the interest of speedy disposal of this matter. I therefore find that the Applicants are not deserving of the discretion of the court. The Applicants' application is dismissed with costs to the 1st Respondent.

It is so ordered.

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HON. E. O. OBAGA

JUDGE

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 5TH DAY OF MARCH, 2026.

In the presence of:

Mr. Kiluva for Applicant.

Mr. Mungatu for 1st Respondent.

Court assistant Musyoki & Nyaanga

