



THE JUDICIARY



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANG'A
ELC CONSTITUTIONAL PETITION NO. E003 OF 2025

**IN THE MATTER OF ARTICLES 2, 10,19,20,21,22,23,26,27,28,40,43,53,60,62,63,64,66,67 AND 68
OF THE CONSTITUTION OF KENYA 2010**

AND

**IN THE MATTER OF: THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS AND
FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES, 2013**

AND

IN THE MATTER OF THE LAND ACT NO. 6 OF 2012

AND

IN THE MATTER OF THE LAND REGISTRATION ACT CAP 3 OF 2012

AND

**IN THE MATTER OF THE NATIONAL LAND COMMISSION ACT CAP 281 LAWS OF
KENYA**

BETWEEN

MURANG'A COUNTY INITIATIVE (MCI) COMPANY LIMITED.....PETITIONER

AND

DEL MONTE LIMITED1ST RESPONDENT

MURANG'A COUNTY GOVERNMENT 2ND RESPONDENT

RULING

(1) This ruling is on the notice of motion dated 30-6-2025. The motion which is brought under **Articles 19, 20, 21, 22 and 258** of the Constitution, Rule 4 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules and all other enabling provisions of law seeks two residual prayers.

- 3. That pending the hearing and determination of this petition and order to issue temporarily restraining the Respondents either by themselves, through their agents, servants, representatives and or anyone claiming under them from alienating, appropriating, subdividing, demarcating, fencing off, entering into and or in any other way interfering with the present use and access thereto of the parcels of land within the suit property, L.R. No. 12157/2, which have been demarcated, provided for**

an are being used for public utilities and social amenities including but not limited to Ndula Primary School, Ndula Secondary School, Pioneer Girls School, all churches and mosques together with the football/sports grounds.

4. That this Court be pleased to grant any orders and directions as it may deem fit in the circumstances and in the interests of justice.

- (2) The motion is based on fifteen (15) grounds and is supported by an affidavit sworn by David Njuguna Bernard who is a Director of the Petitioner. In summary, the gist of the grounds and the affidavit is as follows. One, the 1st Respondent is the registered proprietor of L.R. No. 12157/2 (suit property) by way of a leasehold title. The said land is situated within Murang'a County and is thereby within the jurisdiction of the 2nd Respondent with regard to planning, development and use. Two, one of the terms of the lease to the 1st Respondent was that it provides certain parcels of land within the suit property for schools, health centres, churches, mosques, sports and other social amenities, which it did. These parcels should be registered and preserved. Three, there is reasonable apprehension that the 1st Respondent may at any time redesignate and close the said public utilities within the suit property and this would be prejudicial to the public at large. Four, the 2nd Respondent should hold such land in trust for the public and should provide the necessary infrastructure that will improve the lives, livelihoods and welfare of the people and communities living in and around the suit property.
- (3) The 1st Respondent filed its own motion dated 17-7-2025 in which it seeks the discharge and setting aside of the order dated 8-7-2025 which restrained the 1st Respondent from interfering with Ndula Primary School, Ndula Secondary School, Pioneer Girls' School, all religious institutions and sports grounds. On 22-7-2025 the order was vacated in respect of Pioneer International Schools. Vide a consent order of the same date, the application by the 1st Respondent was treated as a response to the one by the Petitioner. The response is as follows. Firstly, as relates to Pioneer Girls School occupation of the suit land, the issue is res judicata as it has been heard and determined in **Nairobi ELC Case NO. 1245 of 2015 Del Monte Kenya Ltd. vs Goshen Gardens Limited and Pioneer International Schools Ltd.** In a judgment dated 10-7-2025, the Court ordered the said school to vacate the suit land by 10-12-2025. Secondly, there are no public schools or public amenities on the suit land and Ndula Primary and Secondary Schools are on L.R. No. 12158/5 which is located in Thika, Kiambu

County outside the geographical jurisdiction of this court. The land on which the schools are located has already been excised and ceded to the County Government of Kiambu. Thirdly, only Pioneer Girls School is located on the suit land and it is a private not public school. Fourthly, the 1st Respondent has already excised and ceded various properties for public use. They included the following.

- (i) L.R 12157/8 and 12157/11 to the 2nd Respondent.**
- (ii) L.R. No. 12157/12 to Ngati Police Station and Chief's camp.**
- (iii) L.R. No. 12157/13 to Kihunguro Primary School.**
- (iv) L.R. No. 12157/14 to be a public playground.**
- (v) L.R. No. 12157/15 to Del Monte Mixed Secondary School.**
- (vi) L.R. No. 12157/16 to Ithanga Water Supply.**
- (vii) L.R. No. 12157/17 Moi Primary Playground.**
- (viii) L.R. No. 12158/2 Nginyi Primary School.**
- (ix) L.R. No. 12158/5 Ndula Primary and Secondary Schools.**

Fifthly, the petition does not disclose any violation of the constitution, of the Petitioner's rights or of the rights of the people of Murang'a County by the 1st Respondent and it is therefore without basis, scandalous, frivolous and vexatious.

For the above and other reasons, the 1st Respondent prays for the dismissal of the motion dated 30-6-2025.

(4) Counsel for the parties filed written submissions dated 28-9-2025 and 22-12-2025 respectively.

The Petitioner identified four issues for determination.

- (i) Whether the petition satisfied the test for the grant of conservatory orders.**
- (ii) Whether portions of the suit land demarcated and used for public purposes constitute public land within the meaning of Article 62 of the Constitution.**
- (iii) Whether the continued registration of such land under private leasehold violates constitutional provisions on land management, public trust and socio-economic rights.**
- (iv) Whether the threatened interference with the public utilities amounts to a violation or threat of violation of fundamental rights and freedoms.**

On the other hand the 1st Respondent urged on the test for the grant of conservatory orders and whether this motion establishes a prima facie, violation of the constitution and public interest.

- (5) I have carefully considered the motion in its entirety including the grounds, the affidavits, the annexures and the submissions by the learned counsel for the parties. I find that the issues as framed above will determine the motion.
- (6) On the first issue of the motion satisfying the test for the grant of conservatory orders, I find that the Petitioner has not attached the evidence that shows that the 1st Respondent was to provide part of the suit land for public use. The document containing those particular conditions is not part of the evidence filed by the Petitioner. Secondly on this issue, I have not seen any supplementary material by the Petitioner to respond to the deposition by the 1st Respondent that there are no public amenities on the suit land and that Ndula Primary and Secondary Schools are in Kiambu County outside the jurisdiction of this court. Since the burden is on the Petitioner to prove that there is a prima facie case, failure to respond to this deposition by way of supplementary material means that a prima facie case is not made out. Failure to prove that Pioneer Girls School is a public institution compounds the situation for the petitioner especially when there is evidence on oath that it is the only school on the suit land.
- (7) Regarding the second issue, lack of evidence that there are public institutions on the suit means that the Petitioner has its work cut out. Let it file evidence to prove that we have public institutions within the suit land.
- (8) There is no evidence that the suit land is public land and the registration of the lease hold is said to have taken place in 2022. The registration of the leasehold being complete, it is up to the Petitioner to prove that there is ongoing registration of some or part of the suit land again. Such evidence is not currently on record. This determination on the Petitioner's third issue applies to the 4th issue because if there is no evidence that there are public utilities on the suit, there can be no evidence of any threatened interference.

(9) Given the above mentioned uncertainties on the part of the Petitioner. I find that the motion dated 30-6-2025 does not meet the threshold for the grant of conservatory orders as per the case of **Munya vs Kithinji and 2 Others [2014]** Supreme Court of Kenya where it was held that the Petitioner must establish an arguable case with inherent merit and public interest and violation of constitutional values must be proved before such orders can issue.

I find **no merit** in the motion and I **dismiss** it. Costs in the cause.

It is so ordered.

Dated, signed and Delivered virtually at Murang'a this 9th day of March, 2026.

**M.N. GICHERU
JUDGE.**

Delivered online in the presence of: -

Court Assistant – Jackline

Petitioner's Counsel – Mr Makhanu

1st Respondent's Counsel – Mr Michael Muriithi