

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISUMU

ELC PETITION NO. E001 OF 2024

CHARLES OMONDI OBUYA 1ST PETITIONER

JAMES OCHIENG OMWA 2ND PETITIONER

PETER ODUOR OJWANG 3RD PETITIONER

MATATU OWNERS ASSOCIATION KISUMU 4TH PETITIONER

VERSUS

COUNTY GOVERNMENT OF KISUMU..... 1ST RESPONDENT

CITY MANAGER, KISUMU CITY 2ND RESPONDENT

CHAIRMAN, KISUMU COUNTY

TRANSPORT & SAFETY COMMITTEE 3RD RESPONDENT

REGIONAL COMMISSIONER, KISUMU COUNT..... 4TH RESPONDENT

THE ATTORNEY GENERAL 5TH RESPONDENT

NATIONAL ENVIRONMENT &

MANAGEMENT AUTHORITY 6TH RESPONDENT

RULING

This ruling is in respect of the Notice of Motion application dated 28th May, 2025 expressed to be brought pursuant to the provisions of Section 1A, 1B, 3A, and Order 40 Rules 1 and 2 of the Civil Procedure Rules 2010.

It seeks orders that:

- (a) The honourable court be pleased to issue an order extending the scheduled joint committee meeting period to sit for an extended 180 days from 1st July 2025 to 30th December, 2025.
- (b) The 2nd Respondent and the member of the Executive for finance of the 1st Respondent be issued with an order to appear in court to show cause why they have not provided funds for operationalization of the secretariat agreed upon.
- (c) The honourable court be pleased to make such orders as it deems necessary to safeguard the ends of justice.
- (d) Costs of the application be provided for.

The grounds upon which the application was brought are that, as per the Mediation report, the Joint Committee was to sit for a period of 180 days from 1st December, 2025, to 31st May, 2025.

That the joint committee has not been composed, therefore making it impossible to comply with the mediation orders.

That it is the 1st and 2nd Respondents who are vested with the responsibility of providing space and all logistics required for a smooth process of public participation. That the County Government

of Kisumu is frustrating the process by its lack of interest in the matter.

That it is in the interest of justice that the joint committee period be extended by 180 days from 1st July 2025 to 30th November, 2025.

That the Respondent will not suffer any prejudice if the application is allowed.

The application was supported by the contents of the Supporting Affidavit sworn by James Ochieng Omwa on 28th May, 2025.

To the Supporting Affidavit was annexed a copy of the mediation report that resolved that a joint committee of interested parties be formed whose overall goal would be to oversee a process that would culminate in the operationalization of the contested Nyamasaria (Mowlem) satellite but park.

The application was heard orally on 23rd February, 2025. It was submitted on behalf of the Applicant that the process as contained in the mediation agreement is not going on as the 2nd Respondent has not provided the finances.

I have considered the application and the submissions made. The record shows that on 11th December, 2024, the court made an order that the Petition herein was settled in terms of the mediation

agreement dated 21st November, 2024, signed by the representative of the parties.

The court also granted liberty to either party to apply with regard to the timelines within which the various activities are to be undertaken in accordance with the mediation agreement. The court then gave a date for mention of the matter to confirm the progress made and for further directions.

A reading of the Mediation Agreement dated 21st November 2024, shows that the timelines agreed for conducting the various agreed activities have elapsed. The entire agreed period for the exercise, which was to run from December 2024 to May 2025, has since expired. Even the period of extension sought in the application herein, namely 1st July, 2025 to 30th December, 2025, has also expired.

Looking at the history of the petition and the contents of the Mediation agreement, it is in the interest of justice and particularly the interest of the public that the Mediation agreement, which has since been adopted as an order of the court, be implemented.

Further, with leave of the court, Counsel for the petitioners and Counsel for the 1st and 2nd Respondents did on the date hereof address the court and agreed that it was important that both parties

be summoned to attend court and show cause why implementation of the agreement has not taken place as a way of starting or quickening the process of implementation.

For these reasons, the court herein finds merit in the application, which, according to the applicant, was triggered by the need to implement the Mediation agreement.

The court, therefore, hereby summons the Plaintiffs and the Defendants to attend court to show cause why they have not taken steps to implement the agreement.

The matter will be mentioned on 6th May, 2026, for that purpose.

Each party to bear its own costs of the application.

Orders accordingly.

Ruling dated and signed at Kisumu, read this 5th day of March, 2026, virtually through Microsoft Teams Online Application.

E. ASATI

JUDGE

In the presence of:

Maureen: Court Assistant.

Mwamu for the Applicants.

Onsongo for the 1st and 2nd Respondents