



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KERUGOYA**

**MISC. CIVIL APPLICATION NO. 25 OF 2013**

**REPUBLIC ..... APPLICANT**

**VERSUS**

**MINISTER FOR LANDS ..... 1<sup>ST</sup> RESPONDENT**

**HON. ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**JOHN NJIRU NGURU (Representing KIURA**

**NGURU) ..... INTERESTED**

**PARTY**

**AND**

**EX-PARTE**

**MUTURI MWANIKI & 16 OTHERS .....**

**APPLICANTS**

**AND**

**LEONARD KIBUTI NGOCI & 36 OTHERS ..... NEW APPLICANTS**

**RULING**

1. The Preliminary Objection dated 29.7.2025 and the submissions by the parties herein have been considered.
2. **Article 162 (2) of the Constitution of Kenya**, read together with **Article 165 (5) of the Constitution**, has the effect of ousting the jurisdiction of the High Court in matters of ownership of land and other disputes relating to the environment and land.
3. **Section 13 (7) (b) of the Environment and Land Court Act** grants the Environment and Land Court the authority to grant orders in the nature of prerogative orders – Certiorari, Prohibition and Mandamus as sought in the Judicial Review application herein.
4. Although the application was filed in 2012 before the operationalisation of the Environment and Land Court established under **Act No. 19 of 2011**, the Court now

being fully established with a sitting Judge of the Court at Kerugoya, there cannot be any administrative justification for the High Court to retain the suit it not having been partly heard before the High Court and/or pending decision at its tail end.

5. All that High Court is shown to have done recently, on 2/8/2024 (Mwongo J.), is to allow an application for joinder of new applicants who were said to have acquired titles to the suit parcels of land by purchase ...and some after the award by the Minister on Appeal the subject of the Judicial Review proceedings herein.
6. Although the applicants in opposing the Preliminary Objection on the jurisdiction of the court presented the application as a Judicial Review application against **the process** of the decision relating to the suit lands, its core import is one of the ownership of the lands subject of the application.
7. Indeed, in seeking joinder of parties, called **NEW APPLICANTS** by an application dated 22/9/2023 filed by the Counsel for the *ex parte* applicant, justification was given as follows:
  - a) The disputed parcel of land Number MBEERE/KIAMBERE/1959 has been sub-divided into smaller plots of land specifically; MBEERE/KIAMBERE/2592-2599, 2600-2604, 2628, 2626, 2877, 2930, 3332, 3474, 3475, 3481, 3487, 3498, 3499, 3504, 3553, 3716, and 2316, which were further sub-divided into further small portions of land namely; MBEERE/KIAMBERE/2599, 2596, 3552, 2594, 2603, 2726, 2647, 2877, 2604, 2622, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2649, 2648, 2646, 2645, 2644, 2643, 2642, 2640, 2639, 2638, 2637, 4555, 2598, 4554, 2593, 2602, 2601, 4395, 2597, 2318.
  - b) The 1<sup>st</sup> to 32<sup>nd</sup> Proposed Respondents are the current registered proprietors of the disputed suit property and are in active possession and occupation of the disputed sub-divided parcels of land. The information became known to the Ex-Parte Applicants following a comprehensive search.
  - c) The inclusion of the 1<sup>st</sup> to 32<sup>nd</sup> Proposed Respondents in this suit is crucial as it will provide the Court and the proceedings with vital insights and perspectives necessary for the resolution of the issues raised in this case.
  - d) The said subdivisions were effected during pendency of the proceedings in the main suit, being a judicial review suit that was reinstated pursuant to orders of 14<sup>th</sup> October, 2021.

- e) Joinder of the proposed 1<sup>st</sup> to 32<sup>nd</sup> Respondents as parties to this suit is imperative to ensure that the Honourable Court can fully and effectively adjudicate and settle all matters pertaining to the case.
  - f) The orders that may be issued by this Honourable Court have the potential to directly or indirectly impact the 1<sup>st</sup> to 32<sup>nd</sup> Proposed Respondents.
  - g) Further, upon joinder of the proposed 1<sup>st</sup> to 32<sup>nd</sup> Respondents as parties to this suit, it will only be just and fair for this Honourable Court to issue a further order directing that the orders of 14<sup>th</sup> October, 2021 do apply to the proposed 1<sup>st</sup> to 32<sup>nd</sup> Respondents to preserve the subject of the suit.
  - h) Granting this motion will not cause prejudice to either the proposed 1<sup>st</sup> to 32<sup>nd</sup> Respondents or the 1<sup>st</sup> and 2<sup>nd</sup> Respondents and the Interested Party.
  - i) The Applicants are apprehensive that failure to allow joinder of the proposed parties will create hardship in executing the resultant Court orders if they eventually succeed in their case, potentially obstructing the cause if justice in implementation of Court orders.
  - j) The application herein has been filed timeously.
  - k) In the circumstances, it is only fair and just that the instant motion be allowed as prayer.
8. The Judicial Review application before the Court is, therefore, a matter within the provisions of **Article 165 (5)**, as a dispute relating to “*title to land*” under **Article 162 (2) (b)**, and therefore the High Court has no jurisdiction and the Environment and Land Court has authority under **Article 162 (2) (b)** and **Section 13 (7) of the Environment and Land Court Act** to issue the reliefs sought herein.
9. The second point taken on the Preliminary Objection goes to the merit of the application by way of procedure for initiating Judicial Review applications and it is, therefore, a matter for the Court that hears the application, now determined to be the Environment and Land Court, and this court does not make any findings so as not to embarrass that court at the hearing.

### **ORDERS**

10. Consequently, as prayed by the ex parte applicants, the order that commends itself to the Court is one of transfer of the suit to the appropriate court, the Environment and Land Court sitting at Kerugoya for hearing and determination.

11. The matter shall be mentioned before the Environment and Land Court on a date to be fixed.

*Order accordingly.*

**DATED AND DELIVERED THIS 20<sup>TH</sup> DAY OF FEBRUARY 2026.**

**EDWARD M. MURIITHI**

**JUDGE**

**APPEARANCES:**

Mr. Kiplimo for Mr. Njeru for New Applicants.

Ms. Chebet for Mr. Kamunda for the *Ex Parte* Appellant.

Mr. Leonard Kibuti Ngotho.