

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT KAPSABET

ELCL PETITION CASE NO. E006 OF 2025

HENRY KIBET MUTAI.....1ST

PETITIONER/APPLICANT

GERISHON MARITIM.....2ND

PETITIONER/APPLICANT

JOHN SONGOK.....3RD

PETITIONER/APPLICANT

WILLIAM TANUI.....4TH

PETITIONER/APPLICANT

EZEKIEL TUWEI.....5TH

PETITIONER/APPLICANT

VINCENT BOR.....6TH

PETITIONER/APPLICANT

JULIUS KOGO.....7TH

PETITIONER/APPLICANT

-VERSUS-

INSPECTOR GENERAL OF POLICE.....1ST

RESPONDENT

DIRECTOR OF CRIMINAL INVESTIGATION NANDI

COUNTY.....2ND RESPONDENT

COMMANDER OF THE GENERAL SERVICE UNIT.....3RD

RESPONDENT

THE HONOURABLE ATTORNEY GENERAL.....4TH

RESPONDENT

THE NATIONAL LAND COMMISSION.....5TH

RESPONDENT

THE CHIEF LAND COMMISSION.....6TH

RESPONDENT

TEAVIER SINGH RAI.....7TH

RESPONDENT

STEPEHN WERE OMAMO.....8TH

RESPONDENT

OTOLRYNGOLOGY ASSOCIATION LIMITED.....9TH

RESPONDENT

**KIPERE SOLAR PARK LIMITED.....10TH
RESPONDENT**

-AND-

**KIBOTU LIMITED.....INTENDED 11TH
RESPONDENT**

**AARON ROTICH TUIGONE.....INTENDED 12TH
RESPONDENT**

**JULIUS KIBIWOTT MELI.....INTENDED 13TH
RESPONDENT**

**UPPERHILL HOLDINGS LIMITED.....INTENDED 14TH
RESPONDENT**

**DR. DAVID MUGE.....INTENDED 15TH
RESPONDENT**

RULING

1. This ruling is in respect of an application by Ms Salim instructed by Mwetich learned counsel for the intended 11th 12th 13th 14th and 15th respondents to expunge from the record herein, the further affidavit sworn on 27th February 2026 by the 1st Petitioner/applicant herein and

the Chairman of Chebonet/Nyaroche Land Reclamation C.B.O duly authorized to swear the same on his own behalf and on behalf of his co-petitioners/applicants and on behalf of all the members of the Chebonet/Nyaroche Land Reclamation Community Based Organisation (C.B.O).

2. Notably, the further affidavit is in response to the grounds of opposition filed by the Intended 11th to 15th Respondents opposing the Petitioner's application for their joinder in this suit. It is averred, inter alia, even if what the applicants' Counsel is stating under Originating Summons Rule 14 of the Civil Procedure Rules 2010, leave ought to have been sought herein. That the grounds of opposition filed by the intended 11th to 15th Respondents improperly raise factual matters which cannot properly be determined without evidence.

3. Ms. Salim lamented that the further affidavit offends **Order 51 Rule 14 (3) of the Civil Procedure Rules 2010.**

4. Ms. Masaka learned counsel for the 1st 2nd 3rd 4th and 6th respondents stated that she had not seen the affidavit, Therefore, she urged the court to decide the matter.

5. Mr. Kosgey learned counsel for the petitioners/ respondents did concede to the application. Further, he sought leave of the court to file a fresh supplementary affidavit.
6. Having heard counsel for the respective parties as regards the further affidavit filed without leave under **Order 51 Rule 14 (3) (supra)**, I find the same irregular and ought to be expunged from the record; see also **Alwy & another -vs- Engroup (K) International Limited {2023} KEELC 16340 (KLR)**.
7. Thus, the application by learned counsel for the intended 11th to 15th respondents to expunge the further affidavit sworn on 27th February 2026 from the record herein, is merited and allowed accordingly.
8. So, the Notice of Motion dated 03/10/2025 be heard first before the Notice of Motion dated 04/9/2025 in light of their character and possible effect.
9. The Applicants/Petitioners' counsel granted leave to file and serve a fresh supplementary affidavit to the grounds of opposition dated 13th January 2026 as sought within the next seven days from this date.

- 10.** The other Respondents to the Notice Motion dated 03/10/2025 to file and serve response(s) to the Notice of Motion within the next seven days from this date.
- 11.** The Applicants' counsel to file and serve a rejoinder to the responses within the next seven days upon service of the responses to be filed with their submissions.
- 12.** The Notice of Motion dated 03/10/2025 be heard by way of written submissions. The applicant's counsel and the Respondent's Counsel to file and serve submissions within seven days from the date of service of responses as already noted and seven days upon service of the applicants' submissions respectively.
- 13.** The Notice of Motion dated 03/10/2025 is fixed for 21/5/2026 to confirm compliance and for further directions.
- 14.** It is so ordered.

Dated and Delivered at Kapsabet this 17th day of March 2026

Hon. G.M.A. Ong'ondo

JUDGE

In the presence of;

1. Ms. Kosgey learned counsel for the petitioners/respondents
2. Ms. Salim instructed by Mwetich learned counsel for the intended 11th 12th 13th 14th and 15th respondents
3. Ms. Masaka learned counsel for the 1st 2nd 3rd 4th and 6th respondents
4. Walter, court assistant