



General of the Salvation Army (Registered Trustees) v Chief Officer, Lands Physical Planning and Urban Development, Muranga County & 4 others (Environment and Land Petition E016 of 2024) [2026] KEELC 1879 (KLR) (5 March 2026) (Ruling)

Neutral citation: [2026] KEELC 1879 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND PETITION E016 OF 2024**

**JA MOGENI, J
MARCH 5, 2026**

BETWEEN

THE GENERAL OF THE SALVATION ARMY (REGISTERED TRUSTEES) PETITIONER

AND

CHIEF OFFICER, LANDS PHYSICAL PLANNING AND URBAN DEVELOPMENT, MURANGA COUNTY 1ST RESPONDENT

MURANG'A COUNTY GOVERNMENT 2ND RESPONDENT

AND

NATIONAL LAND COMMISSION 1ST INTERESTED PARTY

THE CHIEF LAND REGISTRAR 2ND INTERESTED PARTY

THE ATTORNEY GENERAL 3RD INTERESTED PARTY

RULING

1. The Preliminary Objection dated 20/01/2025 subject of this Ruling has been raised in response to the Petitioner’s Application dated 25/11/2024. The objection is raised upon the grounds that;
 - i. That vide the Judgment of the Environment and Land Court delivered on 6th July 2023 in Murang’a ELC Case No. 47 of 2020 (OS); Samuel Irungu Muiruri & 4 Others vs. Murang’a County Government & 2 Others, the Court made a finding that the Suit Property LR 9213/1 & 2 is a property belonging to the County Government of Murang’a within the provisions of Article 62 (2) of *the Constitution*.



- ii. That the issue of ownership of LR 9213/1 & 2 has thus been determined in rem by a Court of competent jurisdiction in favour of the 2nd Respondent.
- iii. That the Judgement of the Court in Murang'a ELC Case No. 47 of 2020 (OS); Samuel Irungu Muiruri & 4 Others vs Murang'a County Government & 2 Others has not been varied through an appeal or review.
- iv. That the Application and Petition is incompetent to the extent it seeks to overturn or vary Judgment in Murang'a ELC Case No. 47 of 2020 (OS); Samuel Irungu Muiruri & 4 Others vs Murang'a County Government & 2 Others through institution of a fresh cause
- v. That Petition is an invitation to the Court to determine a dispute with a likelihood that it may arrive at a finding contradictory to that of a Court of equal status over the same subject matter and thus embarrassing judicial process.
- vi. That the appropriate forum for the prayers sought would be vide an Appeal or review of Murang'a ELC Case No. 47 of 2020 (OS); Samuel Irungu Muiruri & 4 Others vs. Murang'a County Government & 2 Others
- vii. That the Petition is further incompetent and bad in law for offending provisions of Section 15 of the *Civil Procedure Act* on territorial jurisdiction noting that the Suit land is situate in Murang'a County hence the appropriate forum is Murang'a Environment and Land Court.
- viii. That in view of the foregoing the Application and the Petition before this Honorable Court are incompetent, misconceived and incurably defective and should be struck out with costs to the Respondents.
- ix. The Petitioner/Applicant had filed a Notice of Motion Application dated 25/11/2024 for orders that:
 - a. Spent
 - b. That the Honorable Court be and is hereby pleased to issue a temporary injunction stopping, prohibiting and forbidding the Respondents, their agents, servant, representatives, assignees and/or anyone acting under their instruction/directions jointly and severally entering, interfering, evicting, harassing, threatening, frustrating and/or in any way dealing with Applicant's ownership and enjoyment of the suit premises being Land Reference Number 10531, (Originally No. 9213/2), situate to the East of Thika Township pending the hearing and determination of this Application.
 - c. That the Honorable Court be hereby pleased to issue orders suspending the implementation of the "Tender Notice" advertised on the Daily Nation on Tuesday 19th of November 2024 pending the hearing and determination of this Application
 - d. That the Honorable Court be and is hereby please to issue a temporary injunction stopping, prohibiting and forbidding the Respondent, their agents, servants, representatives assignees and/or anyone acting under their instructions/directions jointly and severally from entering, interfering, evicting, harassing, threatening, frustrating and/or in any way dealing with Applicant's ownership and enjoyment of the suit premises being Land Reference Number 10531, (Originally No. 9213/2) situate to the East of Thika Township pending the hearing and determination of this suit.



- e. That the Honorable Court be and is hereby please to issue orders suspending the implementation of the “Tender Notice” advertised on the Daily Nation on Tuesday 19th of November 2024 pending the hearing and determination of this suit.
 - f. That costs be provided for.
2. The Application is premised on grounds on its face and on the Petitioner/Applicant’s Supporting Affidavit sworn on 25/11/2024 by Lt Col David Musyoki. He avers that the Petitioner/Applicant is the registered proprietor of the all that of the suit property LR No. 9213/2 for a term of 945 years starting from 1962. That the Petitioner has always been in possession and it runs the Church’s Officer Training College, residences for officers and agricultural extension farms and quarrying area.
3. That on 14/11/2024 the Officials of the 2nd Respondent led by the 1st Respondent unlawfully and illegitimately entered into the property claiming that it belongs to Murang’a County Government. Further that the 2nd Respondent even placed an advertisement in the Daily Nation of Tuesday 19/11/2024 for outsourcing quarry mining operations as for LR 9213/1 & 2. That this is an illegal and unconstitutional takeover of the suit property.
4. The Application is opposed by the 1st and 2nd Respondents vide their Preliminary Objection dated 20/01/2025, where they seek to have the Petition and Application struck out for being incurably defective for being res judicata. Further that the Petition and Application are seeking to overturn a valid Judgment issued by a Court of equal status which may cause embarrassment to judicial processes.
5. That this Court lacks jurisdiction to set aside/vary any portion of the Judgment delivered on 6th July 2023 in Murang’a ELC Case No. 47 of 2020 (OS); Samuel Irungu Muiruri & 4 Others vs Murang’a County Government & 2 Others, which made a determination that the suit property belongs to Murang’a County Government within the provisions of Article 62(2) of *the Constitution*.
6. As already stated the 1st and 2nd Respondents have contended that the issues herein are res judicata having been determined in the aforementioned Judgment.
7. The Interested Parties did not file any responses to the Application.
8. The issues raised were canvassed by way of written submissions. The Applicant’s submissions on the Notice of Motion are dated 20/02/2025 where they submitted on the issue of granting of a temporary injunction. They submitted that they have established a prima facie case being the proprietors of the suit property.
9. It was their submission that there are hundreds of people occupying the suit property who risk being displaced and losing their employment and which loss cannot be compensated by damages. They relied on the cases of Giella vs Cassman Brown & Co. Ltd [1973] EA 358, Mrao Ltd vs First American Bank of Kenya Ltd & 2 Others, Nairobi CA No. 39 OF 2002 [2003]eKLR, Waithaka vs Industrial & Commercial Development Corporation Civil Case No. 321 of 2001.
10. The Petitioner/Applicant also filed submissions in respect of the Preliminary Objection dated 20/02/2025 and submitted that the Preliminary Objection has not raised a pure point of law that the Court will need to examine the file of the case.
11. On the jurisdiction question they submitted that this Court has jurisdiction since the property is situate to the East of Thika Township and Article 162(2) (b) read with Section 13 of Environment and *Land Act* gives this Court jurisdiction. They cited the following cases amongst others, Mukisa Manufacturing Co. Ltd vs West End Distributor Ltd [1969] E.A, Attorney General & Another vs



- Andrew Maina Githinji & Another [2016]eKLR, and George Oraro vs Barak Eston Mbaya [2005] eKLR.
12. It was their submission that since the Preliminary Objection has not raised a pure point of law it should be dismissed.
 13. On the part of the 1st and 2nd Respondents they submitted that this Court lacks appellate jurisdiction and also that Section 26 of the *Environment and Land Court Act* read with Section 12 of the *Civil Procedure Act* sets territorial jurisdiction of Courts. They cited the case of Owners of the Motor Vessel “Lillian S” vs Caltex Oil (Kenya) Ltd [1989]eKLR.
 14. They also submitted that the Judgment in rem binds all parties dealing is effective the whole world. They cited the case of National Land Commission vs Registered Trustee of the Arya Pratinthi Sabha, Eastern Africa & Another [2019]eKLR. That the fact that the Applicant was not a party to the suit where the Judgment was delivered does not deprive it of the benefit and effect of the said order as long as the same was a decision in rem. They cited the cases of Abubakar Mohammed vs Independent Electoral & Boundaries Commission [2017]eKLR, George William Kateregga vs Commissioner for Land Registration & Others Kampala High Court Misc Appl No. 347 of 2023 and Japheth Nzila Muagi vs Kenya Safari Lodges & Hotels Ltd [2008]eKLR. That Judgment in rem determines the jural relation of the person or thing to the world generally.

Determination

15. I have considered the pleadings, the Application, the responses thereof and the rival submissions. I frame the issues falling for determination as follows;
 - a. Whether the 1st & 2nd Respondents’ Preliminary Objection dated 20/01/2025 merited.
 - b. Have the Applicants established grounds for an injunction restraining the Respondents from interfering with their possession

Land Reference Number 10531, (Originally No. 9213/2)

16. The ground of the Preliminary Objection is that the Court lacks appellate jurisdiction to set aside and or review a decision from a Court of equal status. The Court has considered the said Judgment where the Court decreed that the suit property belongs to Murang’a County. Now although this is not one of the grounds raised I cannot ignore to mention the fact that a matter already canvassed and a Judgment issued becomes res judicata. In the circumstances, though not pleaded I find that the issue of ownership of the suit property was heard and determined.
17. The Court of Appeal in John Florence Maritime Services Limited & Another V Cabinet Secretary for Transport and Infrastructure & 3 Others [2015] eKLR the Court as follows:

“From the above, the ingredients of res judicata are firstly, that the issue in dispute in the former suit between the parties must be directly or substantially be in dispute between the parties in the suit where the doctrine is pleaded as a bar. Secondly, that the former suit should be the same parties, or parties under whom they or any of them claim, litigating under the same title and lastly that the Court or tribunal before which the former suit was litigated was competent and determined the suit finally.”
18. In the circumstances, I opine that the Court considered the issue of occupation thus this Court is mute on that issue.



19. The Respondents have also stated that the Judgment in Murang'a ELC Case No. 47 of 2020 (OS); Samuel Irungu Muiruri & 4 Others vs Murang'a County Government & 2 Others was Judgment in rem. This being the case, the Petitioner/Applicant even if they were not a party that does not deprive the Judgment of the benefit and effect of the said order since it was a decision in rem. As already stated the Judgment determines the jural relation of the person or thing to the world generally – and Murang'a and Thika are the world generally.
20. It would be absolute chaos and an abuse of the Court process if every person residing in the Land Reference Number 10531, (Originally No. 9213/1 & 2) was allowed to file fresh claims as and when they deem fit!. In the case of Pop-In (Kenya) Ltd & 3 Others vs Habib Bank AG Zurich [1990] eKLR, the Court of Appeal quoted the following passage from the case of Yat Tung Investment Co Ltd vs Dao Heng Bank Ltd and Another [1975] AC 581;
- “But there is a wider sense in which the doctrine may be appealed to, so that it becomes an abuse of process to raise in subsequent proceedings matters which could and therefore should have been litigated in earlier proceedings.”
21. In the case of Belgo Holdings Limited vs National Land Commission & another; Nairobi HC Const. Pet. 21 of 2016, [2017] eKLR Justice Onguto J in discussing the Judgment in rem principle held:
- “
- “54. . According to Halsbury's Laws of England, Vol. 15 (4th Ed), the meaning of a Judgment in rem is defined in paragraph 351 as:
- “Judgment of the Court of competent jurisdiction determining the status of ... a thing, or the disposition of a thing as distinct from particular interest in it of a party to the litigation.”
22. Further that at paragraph 366, the most important distinction between Judgments in rem and Judgments in personam or inter partes is given as:
- “Judgments inter partes are only binding between the parties thereto and those who are privy to them. The Judgment in rem of a Court of competent jurisdiction is as regards...property situate within the jurisdiction of the Court pronouncing the Judgment, conclusive against all the world in whatever it settles as to the status of the property, or as to the right or title to the property, as to whatever disposition it makes of the property itself.”
23. The above principles may not be subject to any contest.
24. In the case of ET vs Attorney General & Another (2012) eKLR, cited in Daniel Mesiri Kasoo & 7 Others vs Fredrick Nkonge Mutwiri & another [2020] eKLR, the Court stated thus;
- “The Courts must always be vigilant to guard litigants evading the doctrine of res - judicata by introducing new causes of action so as to seek the same remedy before the Court. The test is whether the plaintiff in the second suit is trying to bring before the Court in another way and in form of a new cause of action which has been resolved by a Court of competent jurisdiction.”
25. To this end, I find that the principle of Judgment in rem can be raised through a Preliminary Objection since it is a pure point of law. The same applies to issues of res judicata which is a pure point of law. Not to mention that issuance of the order sought herein would also have the effect of varying the Judgment in the other suit.



26. At this juncture, I pose the questions; Where were the Applicant/Petitioners all this time that the hearing on the issue of ownership of the suit property was going on in the hearing when the Court was hearing Murang'a ELC Case No. 47 of 2020 (OS); Samuel Irungu Muiruri & 4 Others vs Murang'a County Government & 2 Others? How comes that this suit was only filed after the delivery of the Judgment? What will stop other claimants from coming up now and then to claim various portion/acres out of LR 9213/1 & 2, if the Court allows this suit to see the light of the day? Both justice and equity abhor a claimant's indolence or sloth and stale claims prejudice and negatively impact the efficacy and efficiency of the administration of justice; See Joshua Ngatu v Jane Mpinda & 3 Others [2019] eKLR (Mbugua J).
27. In the end, I find that the 1st and 2nd Respondents' Preliminary Objection succeeds wholly. It then therefore follows that the Notice of Motion dated 25/11/2024 and the Petition herein are not merited.
28. One concluding observation is that even without the Application, this suit would still have landed in the judicial graveyard, taking into account that one of the prayers sought is a declaration that the Petitioner is the legally registered owner of the suit property. I pose the question; how can that be so yet this is public land which was declared so on 6th July 2023 in Murang'a ELC Case No. 47 of 2020 (OS); Samuel Irungu Muiruri & 4 Others vs Murang'a County Government & 2 Others which has not been set aside, reviewed or appealed against.
29. In light of the foregoing analysis, the Application and the Petition are hereby struck out with costs to the Respondents.

Orders Accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 5TH DAY OF MARCH 2025
VIA MICROSOFT TEAMS.**

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MOGENI J

JUDGE

In the presence of:-

Ms. Aguti holding brief for Mr. Wabuge for Petitioner

Mr. Rono holding brief for Mr. Waiganjo for 2nd Respondent

No appearance for the 1st Respondent

Melita - Court Assistant

