



# THE JUDICIARY



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MURANG'A**  
**ELCL PET E006 OF 2025**

**KARIRA KIMARA**  
**(Suing on behalf of KANDARA RESIDENT'S**  
**ASSOCIATION .....PETITIONER**

**VERSUS**

**NATIONAL LAND COMMISSION.....1<sup>ST</sup> RESPONDENT**  
**MURANG'A COUNTY GOVERNMENT.....2<sup>ND</sup> RESPONDENT**  
**THE GOVERNMENT OF MURANG'A COUNTY ..... 3<sup>RD</sup> RESPONDENT**  
**MINISTRY OF LANDS AND PHYSICAL PLANNING.....4<sup>TH</sup> RESPONDENT**  
**THE ATTORNEY GENERAL..... 5<sup>TH</sup> RESPONDENT**  
**DEL MONTE KENYA LIMITED.....INTERESTED PARTY**

**RULING**

(1)This ruling is on the notice of motion dated 9-10-2025. The motion which is by the Petitioner is brought under Sections **1A, 1B, 3A** of the **Civil Procedure Act, Sections 3(1), 8,14,19,20,22 and 26** of the Judicature Act, **Order 51** of the **Civil Procedure Rules**, Articles **2(4), 10, 22, 23, 40, 47, 60, 61 and 67** of **Constitution of Kenya 2010** and all other enabling provisions of the law.

(2)The motion seeks the following residual orders.

**4. That conservatory orders be and are hereby issued restraining, stopping or in any other way preventing the Respondents, their agents, servants, employees, assigns and any person acting under their authority from processing, approving, issuing or implementing any lease agreements, land alienation, issuance of title deeds or any form of transfer or development over the disputed land parcels by virtue of the Newspaper advertisement at pages 5 and 16 of the Daily Nation of 7<sup>th</sup> October 2025 pending the hearing and determination of this petition.**

**5. That an order of temporary injunction be and is hereby issued restraining the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents, their agents and assign from proceedings with any land lease allocations or allotment, sales or developments arising from the advertisement**

**at pages 5 and 6 of the Daily Nation Newspaper of 7<sup>th</sup> October 2025 pending the hearing and determination of this petition.**

**6. That the costs of this application be borne by the Respondents jointly and severally.**

(3)The motion is based on twelve (12) grounds and is supported by an affidavit dated 9-10-2025 sworn by the Petitioner who is the Chairman of Kandara Residents' Association. The gist of the motion is to the following effect. Firstly, the 1<sup>st</sup> Respondent ordered the resettlement of the Petitioners on land held by the interested party. The determination by the 1<sup>st</sup> Respondent was on 1-3-2019. Secondly, the 2<sup>nd</sup> Respondent has delayed the implementation of the resettlement of the Petitioners and this delay is in bad faith. Thirdly, the Petitioners have learnt of recent reported developments of the land on which the Petitioners were to be settled yet they have not been consulted. Fourthly, the petitioners stand to be prejudiced if the land that they claim will be alienated. That is why they have filed this petition and the motion dated 9-10-2025.

(4)The motion is opposed by the second Respondent whose County Attorney has sworn a replying affidavit dated 3-11-2025 in which he states as follows. One, the award and recommendations by the 1<sup>st</sup> Respondent to award the Petitioners land were quashed by this court in **Murang'a ELC Petition No. 3 of 2020, Del Monte Kenya Ltd vs. Natural Land Commission and 5 Others**. On 28-4-2022 the Petitioners thereafter filed Nyeri Court of Appeal suit No. E163 of 2022 and EO48 of 2022. The Court of Appeal issued an order dated 8-11-2022 that the status quo be maintained. Two, as per the recommendations of the 1<sup>st</sup> Respondent, resurvey of the Interested Party's land was conducted and it revealed that there was no residue land available for allocation to the Petitioners and/or its affiliates. The Petitioner did not challenge the outcome of the resurvey and cannot now litigate afresh over the same claim which is pending determination in the Court of Appeal. This would offend the **Section 6 of the Civil Procedure Act**.

(5)In addition to the replying affidavit by its County Attorney, the 2<sup>nd</sup> Respondent filed a preliminary objection dated 5-11-2025 in which it states as follow.

- (i) **The issues raised in the Petition are res judicata the Judgement in ELC Petition No. 3 of 2020.**
- (ii) **The issues raised in this petition are pending before the Court of Appeal in Civil Appeal No. E163 of 2022 and Civil Application No E084/22 all at the Court of Appeal in Nyeri.**
- (iii) **That this court is *functus officio* and cannot thus re-litigate the issues raised in his petition.**

(6) In a replying affidavit dated 17-11-2025, the Petitioner has rejoined as follows. Firstly, this petition and the application of 9-10-2025 have been precipitated by the advertisement complained of, touching on the suit parcels. Secondly, the judgment in case No. 3 of 2020 succeeded partially with a finding that the interested party did not participate in the proceedings before the National Assembly. Thirdly, the Court of Appeal in case No. E163 of 2022 issued a status quo order preserving the subject land. Case No. E048 of 2022 is already closed and no longer pending. Fourthly the Petitioners are citizens of this Republic entitled to equal protection before the law under **Article 27 of the Constitution** and the doctrine of common good cannot be applied in a manner that muzzles the rights of the Petitioners. Fifthly, this petition is a new cause of action based on fresh violations by the 2<sup>nd</sup> Respondent. The conservatory orders are necessary to preserve the subject matter. Sixthly the 2<sup>nd</sup> Respondent is engaging in selective implementation of the “*quashed recommendations*” by denying the Petitioners land yet it uses the same “*quashed recommendations*” to obtain land from the Interested Party and use it for its own purposes.

(7) Counsel for the parties filed written submissions dated 20-3-2026 and 26-3-2026 respectively. The issues identified by the 2<sup>nd</sup> Respondent are as follows.

- (i) **Whether this Court has jurisdiction to hear and determine the petition and the application dated 9-10-2025.**
- (ii) **Whether the orders sought by the Petitioner should be granted.**

On the other hand, the petitioner identified the following issues,

- (a) **Whether the doctrine of res judicata has been established.**
- (b) **Whether the petition is *res judicata*.**
- (c) **Whether the court is *functus officio*.**

(8)I have carefully considered the motion dated 9-10-2025 in its entirety including the grounds, the supporting affidavit, the replying affidavit by the County Attorney of the 2<sup>nd</sup> Respondent, the Preliminary Objection and the second affidavit by the Petitioner. I have also considered the written submissions by the learned counsel for the parties, the issues raised therein as well as the law cited. I agree that the issues as identified will resolve the dispute.

(9)I find that this Court has jurisdiction to hear this petition and it is not *res judicata* for the following reasons. Firstly, it should not be lost that the 1<sup>st</sup> Respondent in their recommendations dated 7-2-2017 stated as follows.

**“Should it be found that there is no residue, then on expiry of the lease, a stable amount of land should be set aside and held in trust by the County Governments of Kiambu and Murang’a for purposes of resettlement and public utilities.”**

The resettlement of the Petitioners was therefore not dependent on the availability of residual land. It was a duty imposed upon the 2<sup>nd</sup> Respondent whatever the outcome of the resurvey. Secondly, it is not in dispute that the Petitioners have an active appeal at the Court of Appeal being case No. E163 of 2022 at Nyeri. It is also not in dispute that the Court of Appeal has ordered for the status quo to be maintained. Thirdly, it is admitted by the 2<sup>nd</sup> Respondent that they have advertised for activities that will result in alienation of the suit land. In the event that the Petitioners appeal to the Court of Appeal is successful, where will they be settled if the land that they claim is alienated? Fourthly, everything was alright until the move by the 2<sup>nd</sup> Respondent to alienate the subject land. I find that the intended alienation of the land claimed by the Petitioners when there is a pending appeal, creates a new cause of action and undermines the petitioners’ right to land awarded to them by them by the 1<sup>st</sup> Respondent. The Court has jurisdiction to entertain the new cause of action.

(10) This Court is not *functus officio* because the issues in question in **ELC Petition No. 3 of 2020** related to the interested party’s right to a fair hearing before a committee of the National Assembly while the issue in contention in this Petition is leasing of 1050 acres of land which the Petitioners claim to be their ancestral land and which was awarded to them by the 1<sup>st</sup> Respondent.

(11) In summary and for the reasons given, I **dismiss** the preliminary objection dated 5-11-2025 as well as the motion dated 4-11-2025. I **allow** the motion dated 9-10-2025 in terms of prayers 4 and 5 .

Costs in the cause.

**Dated, Signed and Delivered virtually at Murang'a this 28<sup>th</sup> day of April, 2026.**

**M.N. GICHERU  
JUDGE.**

**Delivered online in the presence of; -**  
Court Assistant – Jackline  
Petitioners' Counsel – Miss Wangari  
2<sup>nd</sup> Respondent's Counsel – Miss Munyua  
4<sup>th</sup> and 5<sup>th</sup> Respondent's Counsel –  
Interested Party's Counsel – Mr Thuo