



THE JUDICIARY



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANG'A
ELCL PET E007 OF 2025

**IN THE MATTER OF THE ESTATE OF AN APPLICATION UNDER ARTICLES 22(1) AND 23
ON THE ENFORCEMENT OF THE FUNDAMENTAL RIGHTS AND FREEDOMS UNDER
THE CONSTITUTION OF KENYA 2010**

AND

**IN THE MATTER OF CONTRAVENTION OF THE FUNDAMENTAL RIGHTS AND
FREEDONS UNDER ARTICLES 10, 27 (1) & (2), 40, 48 AND 50 (1) OF THE CONSTITUTION
OF KENYA 2010**

AND

**IN THE MATTER OF SECTIONS 13(2) (b), (3), (4) AND 5 OF THE ENVIRONMENT AND
LAND COURT ACT CAP 8D**

AND

IN THE MATTER OF THE LAND REGISTRATION ACT, 2012

AND

**IN THE MATTER OF THREATENED AND ILLEGAL COMPULSORY ACQUISITION OF
PLOT NUMBERS 3 MAKUYU MARKET, 112 MAKUYU TOWNSHIP, B.C.R PLOT10
MAKUYU TOWNSHIP, 94 MAKUYU TOWNSHIP, 95 MAKUYU TOWNSHIP, 96 MAKUYU
TOWNSHIP, 97 MAKUYU TOWNSHIP, 15 MAKUYU TOWNSHIP, 108 MAKUYU
TOWNSHIP, 60 MAKUYU TOWNSHIP, 8 MAKUYU TOWNSHIP, 39 MAKUYU TOWNSHIP,
A56 MAKUYU MARKET, D56 MAKUYU MARKET, D MAKUYU TOWNSHIP, LR NO 24905
MAKUYU TOWNSHIP, 73 MAKUYU TOWNSHIP, 2 MAKUYU MARKET, 6 MAKUYU
MARKET, C MAKUYU MARKET, 107 MAKUYU TOWNSHIP, A MAKUYU TOWNSHIP, B
MAKUYU TOWNSHIP, 49 MAKUYU TOWNSHIP, 1 MAKUYU MARKET, 5 MAKUYU
MARKET, 58 MAKUYU TOWNSHIP, 59 MAKUYU TOWNSHIP, 67 MAKUYU TOWNSHIP, 70
MAKUYU TOWNSHIP, 69 MAKUYU TOWNSHIP, 61 MAKUYU TOWNSHIP, 105 MAKUYU
TOWNSHIP, 110 MAKUYU TOWNSHIP, E(54) MAKUYU TOWNSHIP, 51 MAKUYU
TOWNSHIP, IR 261682 MAKUYU TOWNSHIP, IR 261683 MAKUYU TOWNSHIP, LR 32983,
LR 33301, 65 MAKUYU TOWNSHIP, 101 MAKUYU TOENSHIP, F MAKUYU TOWNSHIP, 16
MAKUYU TOWNSHIP, 35 MAKUYU TOWNSHIP, C MAKUYU TOWNSHIP, 54 MAKUYU
TOWNSHIP (FORMERLY LAND PARCEL NUMBER 11674/2)**

BETWEEN

MARY WANJIKU MWIRIGI.....1ST PETITIONER
FRANCIS KINYORO.....2ND PETITIONER
JANET NDUNGU.....3RD PETITIONER
KIKOSH WELFARE GROUP.....4TH PETITIONER
SAMUEL MANUA NJUGUNA.....5TH PETITIONER
SEVENTH DAY UNION LIMITED CHURCH.....6TH PETITIONER
AGELICA WANJIKU MWANGI.....7TH PETITIONER

ANN WANJIRU MWANGI.....	8TH PETITIONER
AGNES WAMBUI MAMICHA.....	9TH PETITIONER
JOSEPH MACHARIA MUHUHI.....	10TH PETITIONER
PATRICK KIBATHI NJOROGE.....	11TH PETITIONER
DOUGLAS WAINAINA MWAURA.....	12TH PETITIONER
PETER NJUGUNA KIMAMA.....	13TH PETITIONER
JAMES NDIRANGU WANJOHI.....	14TH PETITIONER
MARGARET MAMICHA NGARI.....	15TH PETITIONER
IRENE WANJIRU KARURU KAMAU.....	16TH PETITIONER
PAULINE NJERI.....	17TH PETITIONER
PETER MAKARA KAMUNDE.....	18TH PETITIONER
BERNARD KARIUKI MWAURA.....	19TH PETITIONER
GRACE WATUKU.....	20TH PETITIONER
CYRUS KIMANI.....	21ST PETITIONER
JOSEPHINE NJERI MWIRIGI.....	22ND PETITIONER
JOSEPHINE MUNGAI.....	23RD PETITIONER
DAVID KAMAU.....	24TH PETITIONER
AMOS MBOGO.....	25TH PETITIONER
ONESMUS MAKANGA GICHU.....	26TH PETITIONER
KIBANDI MBURU.....	27TH PETITIONER
A.C.K MAKUYU CHURCH.....	28TH PETITIONER
PETER MWAURA MAINA.....	29TH PETITIONER
GABRIEL MAITHA KILONZO.....	30TH PETITIONER
HENRY KIMANI NYAGA.....	31ST PETITIONER
AGNES NYAKINYUA WAMBUGU.....	32ND PETITIONER
JULIUS WACHIRA GITONGA.....	33RD PETITIONER
RUTH GATHONI MATHENGE.....	34TH PETITIONER

AND

THE PRINCIPAL SECRETARY, MINISTRY OF LANDS, PUBLIC WORKS, HOUSING AND URBAN DEVELOPMENT AND PHYSICAL PLANNING.....	1 ST RESPONDENT
THE PRINCIPAL SECRETARY, MINISTRY OF INTERIOR AND NATIONAL ADMINISTRATION.....	2ND RESPONDENT
THE DIRECTOR OF SURVEYS.....	3RD RESPONDENT
THE CHIEF LAND REGISTRAR.....	4TH RESPONDENT
THE DEPUTY COUNTY COMMISSIONER MARAGUA SUB COUNTY.....	5TH RESPONDENT
THE ASSISTANT COUNTY COMMISSIONER MARUYU DIVISION.....	6TH RESPONDENT
THE ATTORNEY GENERAL OF THE REPUBLIC OF KENYA.....	7TH RESPONDENT
HON MARY WAITHIRA (WAMAUA).....	8TH RESPONDENT

AND

THE COUNTY GOVERNMENT OF MURANG'A.....	INTERESTED PARTY
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RULING

(1)This ruling is on the notice of motion dated 16-10-2025. The motion which is by the 34 Petitioners is brought under **Articles 22(2) (b)** and **rules 3,4,5,13,19** and **23** of the

Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013.

(2)The motion seeks the following residual orders.

- 2. Pending the hearing and determination of this petition this Court to issue a conservatory order of injunction to restrain the Respondents, their agents, servants and employees from evicting the Petitioners from Plot Numbers Makuyu Market 1,2,3,5,C, A56 and D56 and Makuyu Township 8,10,15, 16,35,39,49, 51,54, 58, 59, 60, 61, 65, 67,69,70,73,94,95,96,97,101,105,107,108,110,112,A,B,C,D and E [54], LR No. 24905, 32983 and 33301, IR Nos.261682 and or in any other manner interfering with the Petitioners' quiet and peaceful enjoyment of the plots.**
- 3. That pending the hearing and determination of this petition, the court issues a conservatory order of injunction to the restrain the Respondents, their agents, servants and employees from carrying out a resurvey exercise on the 45 suit plots and/or in any other manner interfering with the petitioners' quiet and peaceful enjoyment of the plots.**
- 4. That pending the hearing and determination of this petition, the court issues a conservatory order of injunction to restrain the 4th Respondent, his agents, servants and employees from creating new mutations and registering new titles over the 45 suit plots and or in any other manner interfering with the Petitioners' quiet and peaceful enjoyment of the plots.**
- 6. That the costs of this application be provided.**

(3)The motion is premised on fourteen (14) grounds and is supported by an affidavit sworn by the 1st Petitioner dated 16-10-2025. The gist of the grounds and the affidavit is as follows. Firstly, the Petitioners are the allottees of the suit plots. They have letters of allotment issued to them. Others have certificates of lease. Secondly, the Petitioners have been in occupation of the suit plots since the year 1996. The plots were officially allocated to them by the defunct Makuyu Urban Council which was the precursor to the County Government of Murang'a. Since allotment, the Petitioners have been paying their respective annual rates to the interested party. Thirdly on 16-6-2025, the 6th Respondent issued a public notice directed to the Petitioners requiring them to present their ownership documents. They dutifully complied. On 17-7-2025, the Petitioners attended a meeting at the 5th Respondent's office at Makuyu township where they were told that they had encroached on public land. They defended themselves by explaining how they lawfully acquired the suit property. Fourthly,

the Petitioners complained to the interested party through a petition dated 17-7-2025. The interested party said it would visit the land to ascertain the reality on the ground but it did nothing to stop the intended illegal acquisition of the suit land. Fifthly, on 24-9-2025 the 3rd Respondent's officers visited the suit land and commenced a resurvey without involving the Petitioners or seeking their participation. Finally the 6th and 8th Respondents have been publically saying that the suit plots are public land earmarked for construction of affordable houses. Aggrieved by the intended acquisition of their lawfully allocated land, the Petitioners filed this petition and the current motion.

(4)The motion is opposed by the 1st to 7th Respondents who have filed grounds of opposition dated 24-11-2025 which read as follows. One, the notice of motion is fundamentally flawed, prima facie baseless and patently without merit. Two, it does not raise any arguable legal right capable of constitutional protection because the purported allocation of the suit land is tainted with illegalities, fraud and is outrightly unprocedural, null and *void ab initio*. Three, it discloses no prima facie constitutional violation because the Petitioners alleged allocation of the suit land is prima facie flawed, irregular and legally indefensive. Four, the 1st to 7th Respondents' action is meant to recover unlawfully or illegally allocated or acquired public land and utilize it for public purposes. Finally, the Respondents add that the suit land allocation was based on an unregistered deed plan; the Petitioners have no legitimate claim thereto; granting conservatory orders would impede the performance of a legal duty and that the petitioners do not stand to suffer irreparable harm.

(5)Counsel for the parties filed written submissions dated 19-2-2026 and 3-3-2026. The issues raised therein are as follows.

- (i) Whether the suit land is public land.**
- (ii) Whether the Petitioners have made out a prima facie case with a probability of success.**
- (iii) Whether there is a real danger of the Petition being rendered nugatory.**
- (iv) Public interest considerations.**

- (6)I have carefully considered the motion in its entirety including the grounds, the supporting affidavit, the grounds of opposition, the written submissions and the law cited therein. I making the following findings on the issues raised.
- (7)On the 1st issue, I find that so far, there is no evidence to prove that the suit plots are public land. This is because the Respondents have not filed any affidavit or response to the petition. Tangible evidence in reply is necessary to enable the court determine whether the suit land is public land. Prima facie, it is already private land allocated to the Petitioners.
- (8)It is my finding, at this preliminary stage, that the petitioners have made out a prima facie case with a probability of success because of the letters of allotment and leases as well as their long occupation of the land.
- (9)Regarding the third issue, I find that the petition will be rendered nugatory if the land which the Petitioners have occupied for about 30 years is alienated without them being heard on the said alienation.
- (10) For the above stated reasons, I find **merit** in the motion dated 16-10-2025 which **I allow** in terms of **prayers 2,3 and 4.**

Costs in the cause.

Dated, signed and Delivered virtually at Murang'a this 12th day of May, 2026.

**M.N. GICHERU
JUDGE.**

Delivered online in the presence of: -
Court Assistant – Antony
Petitioners' Counsel – Mr Kariuki
1st to 7th Respondents' Counsel – Mr Mwandeje holding brief