



REPUBLIC OF KENYA



KENYA LAW
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**Rotich & 7 others v Yator & 14 others (Environment and Land Petition
12 of 2020) [2025] KEELC 5432 (KLR) (22 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5432 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ELDORET

ENVIRONMENT AND LAND PETITION 12 OF 2020

EO OBAGA, J

JULY 22, 2025

IN THE ATTER OF ARTICLE 22(1) OF THE CONSTITUTION OF KENYA, 2010

AND

**THE ALLEGED CONTRAVENTION OF RIGHTS OR FUNDAMENTAL
FREEDOMS UNDER ARTICLE 19, 27, 29, 33 (2)(3), 35, 40,
47, 48 AND 50(1) OF THE CONSTITUTION OF KENYA 2010**

AND

**THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS AND
FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES MADE
PURSUANT TO ARTICLE 22(3) O THE CONSTITUTION OF KENYA 2010**

AND

THE MARAKWET DEVELOPMENT ASSOCIATION (MDA)

AND

**THE KIPLOMBE/KIPLOMBE BLOCK 13 (GREENFIELD) WITHN KIBULGENY
LOCATION, SOY DIVISION, SOY SUBCOUNTY, COUNTY OF UASIN GISHU**

AND

THE ALLEGED KIPLOMBE GREENFIELD FARM GROUP BENEFICIARY LIST 2017

AND

**THE ALLEGED SEPTEMBER, 2017 BENEFICIARY LIST
OF THE ALLEGED KIPLOMBE GREENFIELD GROUP**

AND

**THE TITLES REGISTERED (GREENCARDS OPENING) AND ISSUANCE BASED
ON THE ALLEGED SEPTEMBER, 2017 BENEFICIARY LIST AGAINST THE
MEMBERS/LANDOWNERS OF THE MARAKWET DEVELOPMENT ASSOCIATION**



BETWEEN

SAMUEL KIMOSOP ROTICH 1ST PETITIONER
DONALD KIPROP BETT 2ND PETITIONER
JOHN EKIRU KELAI 3RD PETITIONER
ANDREW CHEMWENO 4TH PETITIONER
ERICK CHERUIYOT KIPKORE 5TH PETITIONER
DAVID KIBIWOT ACHIKWA 6TH PETITIONER
SAMUEL CHEMEITOI KIPKIROR 7TH PETITIONER
ABRAHAM KIPKOSGEI CHELANG'A 8TH PETITIONER

AND

JOHN KIPCHUMBA YATOR 1ST RESPONDENT
MICHAEL KIPTANUI TALAM 2ND RESPONDENT
NIXON KIPCHIRCHIR MURREY 3RD RESPONDENT
THE KIPLOMBE GREENFIELD FARM GROUP 4TH RESPONDENT
THE MARAKWET DEVELOPMENT ASSOCIATION (MDA) 5TH
RESPONDENT
THE CHIEF – KIBULGENY LOCATION 6TH RESPONDENT
THE ASSISTANT COUNTY COMMISSIONER, SOY DIVISION 7TH
RESPONDENT
THE DEPUTY COUNTY COMMISSIONER, SOY SUBCOUNTY 8TH
RESPONDENT
THE COUNTY COMMISSONER, UASIN GISHU COUNTY . 9TH RESPONDENT
THE LAND REGISTRAR, COUNTY OF UASIN GISHU 10TH RESPONDENT
THE CHIEF LAND REGISTRAR, NAIROBI 11TH RESPONDENT
THE PERMANENT SECRETARY, INTERIOR AND COORDINATION OF
NATIONAL GOVERNMENT 12TH RESPONDENT
THE PERMANENT SECRETARY, MINISTRY OF LANDS .. 13TH RESPONDENT
THE ATTORNEY GENERAL 14TH RESPONDENT
THE NATIONAL LAND COMMISSION 15TH RESPONDENT

RULING

1. This is a ruling in respect of a Notice of Motion dated 10th May, 2024 in which the 1st, 3rd, 4th and 5th Respondents/Applicants seek the following orders;



1. Spent
2. That the honourable court be pleased to grant leave to the firm of Mark Mwendwa & Co. Advocates to come on record for the Applicants herein.
3. That the costs of this application be provided for.
2. The Applicants were initially being represented by the firm of Akenga Kimutai & Associates advocates. The Petition herein was concluded by way of mediation by the County Commissioner Uasin Gishu which agreement was adopted as order of the court on 20th April, 2022 effectively bringing the Petition to a closure.
3. The Applicants state that their former advocates have sued them through an application dated 25th March, 2024 in which they are seeking to stay the execution of the judgment of 20th April, 2022 and have them pay costs of the Petition. They therefore argue that they need another advocate to represent them as their former advocates cannot represent their interests in a matter they have sued them.
4. The Applicants state that in view of the fact that their new advocates are seeking to come on record post judgment, there is need for them to be granted leave to do so.
5. The Applicants' application was opposed by the 2nd Respondent who contends that he is the Chairman of the 5th Applicant and that the firm of Akenga Kimutai & Associates have never been appointed as the advocates of the 5th Applicant. He states that as far as he is aware, the 5th Applicant was being represented by the firm of Joseph C. K. Cheptarus and Company Advocates. He states that the firm of Akenga Kimutai and Associates advocates only came in to represent the 1st Applicant in a criminal case which was facing him.
6. The Petitioners/Respondents opposed the Applicants' application through a replying affidavit sworn on 3rd July, 2024. This affidavit is in response to the Notice of Motion dated 10th May, 2024 and Chamber Summons dated 25th March, 2024. However as this ruling is in respect of the Notice of Motion dated 10th May, 2024, I will only pick the grounds which answer to that application only. The Respondents seem to be arguing on whether the 1st Applicant together with one Allan Chelimo and Elizabeth Cheruiyot are valid Chairman, Secretary and Treasurer of the 5th Applicant respectively. They contend that the Applicants cannot seek to appoint advocates as they are not valid officials of the 5th Applicant.
7. In a further affidavit sworn on 19th September, 2024, the 2nd Respondent states that the 5th Applicant has never appointed either the firm of Akenga Kimutai & Associates advocates or Mark Mwendwa & Company Advocates to represent the 5th Applicant. He states that the firm of Joseph C. K. Cheptarus & Co. Advocates have been and remains the legal advisors of the 5th Applicant.
8. The parties were directed to file written submissions. It is only the Petitioners/Respondents who filed their submissions dated 26th September, 2024. The Respondents submit that the Applicants' application has been filed too late in the day and that they should not be allowed to participate in a concluded matter.
9. I have carefully considered the Applicants' application as well as the opposition to the same by the Respondents. I have also considered the submissions by the Petitioners/Respondents. The only issue for determination is whether the firm of Mark Mwendwa & Co. Advocates should be allowed to come on record for the Applicants.



10. There is no contention that there is a judgment in this matter which was entered on 20th April, 2022 by the court adopting the report of the County Commissioner Uasin Gishu. There is also no contention that the Applicants were initially being represented by the firm of Akenga Kimutai & Associates Advocates. Order 9 Rule 9 of the Civil Procedure Rules provides as follows:

“When there is a change of advocate, or when a party decides to act in person having previously engaged an advocate, after judgment has been passed, such change or intention to act in person shall not be effected by order of the court—

- a. upon an application with notice to all the parties; or
- b. upon a consent filed between the outgoing advocate and the proposed incoming advocate or party intending to act in person as the case may be”.

11. In the case of S. K. Tarwadi –vs- Veronica Muchleemann (2019) eKLR Justice Korir (as he then was) underscored the importance of Order 9 Rule 9 of the Civil Procedure Rules as follows:

“.....the essence of Order 9 Rule 9 CPR is to protect advocates from mischievous clients who will wait until judgment has been delivered and then sack the advocate and either replace him with another advocate or act in person. The provision is therefore an important one and cannot be wished away.....”

12. The Applicants are seeking to comply with the provisions of Order 9 Rule 9 of the Civil Procedure Rules. The firm which is being sought to be replaced is not complaining about their removal otherwise they will have opposed the Applicants’ application. The issue of delay does not arise as there are pending applications which touch on the Applicants who are entitled to be heard on the same. I therefore allow the application dated 10th May, 2024 as prayed.

It is so ordered.

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HON. E. O. OBAGA

JUDGE

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 22ND DAY OF JULY, 2025.

In the Presence of:

Mr. Cheptarus for Petitioners

Mr. Oguttu fro proposed Interested Party and for Mr. Mwendwa for Applicant.

Court assistant – Steve Musyoki

