



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MURANG'A**

**PETITION NO 4 OF 2017**

**IN THE MATTER OF : ALLEGED CONTRAVENTION OF RIGHTS AND FUNDAMENTAL FREEDOMS IN ARTICLES 2,10,19,20,21,22,23,27,35,40(1), 47 OF THE CONSTITUTION OF THE REPUBLIC OF KENYA.**

**AND**

**IN THE MATTER OF: ALLEGED CONTRAVENTION OF ARTICLES 67**

**AND**

**IN THE MATTER OF: THE NATIONAL LAND COMMISSION ACT**

**AND**

**IN THE MATTER OF: MATHENGETA FARMERS COMPANY LIMITED**

**AND**

**IN THE MATTER OF: THE PETITION OF DISHON MUTHAMA NZINA & 26 OTHERS**

**BETWEEN**

<b>DISHON MUTHAMA NZINA</b>	<b>1<sup>ST</sup> PETITIONER</b>
<b>JOSEPH NJOROGE WAWERU</b>	<b>2<sup>ND</sup> PETITIONER</b>
<b>SAMUEL M. MUNGUTI</b>	<b>3<sup>RD</sup> PETITIONER</b>
<b>VERONICAH WANGARI KARANJA</b>	<b>4<sup>TH</sup> PETITIONER</b>
<b>PHILIP MAKAU MULWA</b>	<b>5<sup>TH</sup> PETITIONER</b>
<b>SAMUEL KIMANI NDUBU</b>	<b>6<sup>TH</sup> PETITIONER</b>
<b>PHELIS NDUNGE KITUUNGO</b>	<b>7<sup>TH</sup> PETITIONER</b>
<b>MBATHA MUEMA</b>	<b>8<sup>TH</sup> PETITIONER</b>
<b>LUCY WAITHERA KINYENI</b>	<b>9<sup>TH</sup> PETITIONER</b>
<b>MUTUKU KIKONDE</b>	<b>10<sup>TH</sup> PETITIONER</b>
<b>GRACE MBOKA</b>	<b>11<sup>TH</sup> PETITIONER</b>
<b>NG'ANG'A MUTAHI</b>	<b>12<sup>TH</sup> PETITIONER</b>
<b>JOHN MUCHINA NGUGI</b>	<b>13<sup>TH</sup> PETITIONER</b>

MARY WANJIRU WAKABA	14 <sup>TH</sup> PETITIONER
BETH WANJIKU WAKABA	15 <sup>TH</sup> PETITIONER
SAMUEL KAMAU CHOMBA	16 <sup>TH</sup> PETITIONER
MARY NDUNGE	17 <sup>TH</sup> PETITIONER
LITHA MWELU KAHILIRO	18 <sup>TH</sup> PETITIONER
MUKII MUTUKU	19 <sup>TH</sup> PETITIONER
HANNAH WAITHERA	20 <sup>TH</sup> PETITIONER
SIMON MWANGI GATERE	21 <sup>ST</sup> PETITIONER
JOSEPH MUSKA MATHA	22 <sup>ND</sup> PETITIONER
SIMON NDUNGU	23 <sup>RD</sup> PETITIONER
WILSON KATHINI KABUTI	24 <sup>TH</sup> PETITIONER
TERESIA NJERI NDUNG’U	25 <sup>TH</sup> PETITIONER
MILICAH MUTHONI NDUNG’U	26 <sup>TH</sup> PETITIONER
JOSEPH NJUGUNA	27 <sup>TH</sup> PETITIONER

VS

THE HONOURABLE ATTORNEY GENERAL	1 <sup>ST</sup> RESPONDENT
REGISTRAR OF TITLES	2 <sup>ND</sup> RESPONDENT
THE CHIEF LAND REGISTRAR	3 <sup>RD</sup> RESPONDENT
NATIONAL LAND COMMISSION	4 <sup>TH</sup> RESPONDENT
THE CHIEF REGISTRAR OF COMPANIES	5 <sup>TH</sup> RESPONDENT

AND

FRANCIS NGIGI	1 <sup>ST</sup> INTERESTED PARTY
DANIEL MWAURA	2 <sup>ND</sup> INTERESTED PARTY
JACOB MUTUA	3 <sup>RD</sup> INTERESTED PARTY

#### RULING

1. On the 11/10/18 this matter was placed before the Judge for the hearing of the application dated 30/7/18. All the parties and their Counsels were absent. The date had been mutually taken by consent on 20/9/18. The Court dismissed the application for non-attendance/want of prosecution.

2. On 1/11/18 the Petitioners filed a Notice of Motion seeking the reinstatement of the application of 30/7/18 and the setting aside of the dismissal orders issued by this court on 20/9/18. The application is supported by the grounds attached thereto and the Supporting Affidavit of Elizabeth Were Advocate for the Petitioners sworn on 1/11/18. In it she deponed that she arrived late to Court due to a traffic snarl up at Murang’a which was occasioned by high traffic which included presidential motorcades which was attending the burial of a prominent musician namely John Kamaru. She urged the Court to allow the application and take into consideration the fact that the Petitioners have been ready to prosecute the petition and the prayer requesting the list of members from the Registrar General of Companies was vital to its case.

3. On 21/11/18 Mr. Wetaba for the Petitioners argued the application orally and relied on the aforementioned supporting affidavit sworn by Learned Counsel Elizabeth Were. He prayed that the mistake of Counsel should not be visited on the clients.

4. The application is not opposed by the Respondents. They were duly served as stated in the affidavit of service dated 19/11/18.

5. I have considered the application in totality and hereby allow it on the following grounds;

a. The overriding objective of the Court is to do substantive justice to litigants. See Article 159(2) (d).

b. The application was filed without delay i.e. 10 days after dismissal.

c. The reasons given by Counsel are plausible. I have no reason to doubt Counsel for the Petitioners and I am satisfied that her arrival to Court late was not intentional nor intended to subvert or delay the course of justice.

d. The application is unopposed.

6. I therefore direct that the application dated 30/7/2018 be listed for hearing within the next 10 days in default it shall be dismissed.

7. I make no orders as to the costs.

**DELIVERED, DATED AND SIGNED AT MURANG'A THIS 22<sup>ND</sup> NOVEMBER 2018**

**J G KEMEI**

**JUDGE**

**Ruling read in open Court in the presence of;**

Nganga HB for Ms. Were for Petitioners/Applicants (1<sup>st</sup> – 20<sup>th</sup>)

1<sup>st</sup> – 5<sup>th</sup> Respondents – All Absent

Ms.Irene and Ms Njeri, Court Assistants