



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT MACHAKOS**

**PETITION NO. 280 OF 2011**

**JOSEPH MULOVE MUINDI.....1<sup>ST</sup> PETITIONER**  
**JOSEPHINE WAYUA MWANTHIA.....2<sup>ND</sup> PETITIONER**  
**STEPHEN MUINDI MULOVE.....3<sup>RD</sup> PETITIONER**  
**STEPHEN M. KTAHUKYA.....4<sup>TH</sup> PETITIONER**  
**SUSAN M. MUTETI.....5<sup>TH</sup> PETITIONER**  
**SOLOMON MUTUA MUNGUTI.....6<sup>TH</sup> PETITIONER**  
**EUNICE MBULA MWANZA.....7<sup>TH</sup> PETITIONER**  
**PATRICK SAUSA MUTUNGI.....8<sup>TH</sup> PETITIONER**

**VERSUS**

**THE ATTORNEY GENERAL.....1<sup>ST</sup> RESPONDENT**  
**JAMES MURIUKI NTUARA.....2<sup>ND</sup> RESPONDENT**  
**JULIUS KYALO MWANTHI.....3<sup>RD</sup> RESPONDENT**  
**EVEREST LIMITED.....4<sup>TH</sup> RESPONDENT**  
**CITY CARTON WELFARE ASSOCIATION.....5<sup>TH</sup> RESPONDENT**

**RULING**

1. The two Applications before me are dated 22<sup>nd</sup> June, 2015 and 19<sup>th</sup> June, 2015.
2. In the Application dated 22<sup>nd</sup> June, 2015, the Petitioners are seeking for reinstatement of the orders that were issued on 5<sup>th</sup> July, 2012 and extended on 1<sup>st</sup> October, 2012.
3. The Application is premised on the grounds that the Petitioners have been physically in occupation of

plots numbers 337/855, 337/858 and 337/859 since 1961 and that although the neighboring land was also occupied by the Petitioners, they were pushed into the three (3) suit properties.

4. In the Application dated 19<sup>th</sup> June, 2015, the Defendants are seeking for an order that the Petitioner's suit be struck out with costs.

5. The Defendants' Application is premised on the ground that the Petitioners herein are the same Plaintiffs who had filed Machakos CMCC No. 474 of 2011 which was heard by the court and dismissed; that this suit is *res judicata* and is an abuse of the court process and that the Respondents were never served with the Petition.

6. In response to the Respondents' Application, the 1<sup>st</sup> Petitioner deponed that the Plaintiffs in the Machakos CMCC No. 474 of 2011 are not the Petitioners herein; that the suit property in CMCC NO. 474 of 2011 is different from the suit property herein and that the Petitioners do not occupy the land that has been developed by the 3<sup>rd</sup> Respondent.

7. According to the 1<sup>st</sup> Petitioner, he represents a group known as City Carton Squatters Welfare Group and not City Carton Welfare Association.

8. In response to the Petitioners Application for reinstatement of the orders of the Court, the 2<sup>nd</sup> and 4<sup>th</sup> Respondents filed Grounds of Opposition in which they averred that there has been inordinate delay in filing the Application; that the said orders were last extended on 1<sup>st</sup> October, 2012 and that the Petitioners have not demonstrated why those orders should be reinstated. The parties filed brief written submissions which I have considered.

9. The Application by the 2<sup>nd</sup> and 4<sup>th</sup> Respondents seeks to strike out the Petition on the basis that the same is *res judicata*.

10. I have perused the Complaint that was filed in Machakos CMCC NO. 474 of 2011.

11. The Plaintiffs in that matter were Peter Wane and Paul Munguti who sued seven Defendants.

12. The Plaintiffs in CMCC NO. 474 of 2011 described themselves as the Chairman and Secretary of City Carton Welfare Association respectively.

13. In that suit, the Plaintiffs sought for a permanent injunction restraining the Defendants from dealing with L.R.NO. 14949 Athi River.

14. Although the Defendants herein have deponed that CMCC NO. 474 of 2011 was heard and finalized, the Judgment of the court was not annexed on the Supporting Affidavit.

15. Even if it is true that the claim in CMCC.NO. 474 of 2011 was heard and determined, the perusal of the pleadings shows that the suit property herein is different from the suit property in CMCC NO. 474 of 2011.

16. It is also obvious that the Plaintiffs in CMCC.NO. 474 of 2011 are different from the Petitioners herein.

17. Until evidence is called at trial, this court cannot at this stage ascertain the relationship of the Plaintiffs in CMCC NO. 474 of 2011 and the Petitioners in the current suit, or whether the suit properties are inter-related in any way.

18. For those reasons, I find the Defendants' Application dated 19<sup>th</sup> June, 2015 to be unmeritorious and I dismiss it with costs to the Petitioners.

19. In the Application dated 22<sup>nd</sup> June, 2015, the Petitioners are seeking for reinstatement of the orders of 4<sup>th</sup> June, 2012 which were extended on 1<sup>st</sup> October, 2012.

20. The record shows that when the Petitioners sought for the extension of the orders of 4<sup>th</sup> July, 2012 on 12<sup>th</sup> October, 2012, Dulu J. declined to extend those orders on the ground that the Petitioners had not served the said orders on the Respondents.

21. The court having declined to extend those orders, I find that the issue of extending the orders now cannot arise.

22. Indeed, no good reason has been given why this court should review the orders of Dulu J. In any event, the Application to reinstate the said orders has been made after the lapse of more than four (4) years, which in my view is an inordinate delay.

23. For those reasons, I dismiss the Petitioners' Application dated 22<sup>nd</sup> June, 2015 with costs.

**DATED AND DELIVERED AT MACHAKOS THIS 3<sup>RD</sup> DAY OF MARCH, 2017**

**OSCAR A. ANGOTE**

**JUDGE**