



**Wambua & 59 others v Attorney General & 3 others (Environment & Land
Petition 3 of 2023) [2024] KEELC 6687 (KLR) (26 September 2024) (Ruling)**

Neutral citation: [2024] KEELC 6687 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND PETITION 3 OF 2023**

**MD MWANGI, J
SEPTEMBER 26, 2024**

BETWEEN

**THOMAS WAMBUA & 59 OTHERS & 59 OTHERS & 59
OTHERS PETITIONER**

AND

**THE HON ATTORNEY GENERAL 1ST RESPONDENT
THE COUNTY GOVERNMENT OF NAIROBI 2ND RESPONDENT
THE NAIROBI METROPOLITAN SERVICES 3RD RESPONDENT
THE NATIONAL LAND COMMISSION 4TH RESPONDENT**

RULING

(In respect to the 2nd and 3rd Respondents’ application dated 15th April, 2024 seeking to set aside the orders issued on 26th January, 2024).

Background

1. On 24th January 2024, when this matter was scheduled for directions on the hearing of the Petition herein, Mr. Amolo, Advocate for the Petitioners informed the court that he had filed an application dated 22nd January, 2024, seeking conservatory orders to preserve the status quo pending hearing and determination of the Petition. He was however categorical that he was amenable to the expedited hearing of the Petition and was willing to compromise the application to give way to the hearing of the Petition as long as status quo orders were issued.
2. Mr. Lerionka, the Advocate who was holding brief for Dr. Kamotho, Advocate for the 2nd Respondent informed the court that he was not ‘averse’ to the maintenance of status quo pending hearing and determination of the petition. It was on that understanding that the court gave directions in form of



the order given on 24th January 2024 and issued on 26th January 2024, maintaining the status quo, with a view to expediting the hearing of the petition.

3. On 6th May, 2024, in an interesting turn of events, rather than confirm compliance with the directions of the court of 24th January, 2024, aimed at the expedited hearing of the petition, Mr. Lerionka, Advocate for the 2nd Respondent informed the court that he had been instructed to file the current application seeking to set aside the orders issued on 24th January 2024.
4. The application is opposed by the Petitioners. The other parties in this case informed the court that they would not participate in the application since they were not directly affected by the orders sought to be set aside by the 2nd Respondent.

Court's Directions.

5. The court's directions were that the application be canvassed by way of written submissions. The 2nd Respondent and the petitioners filed their respective submissions which I have had the opportunity to read and consider.

Issues for Determination

6. Having considered the application by the 2nd Respondent and the submissions filed herein, the sole issue for determination is whether the application is merited.

Analysis and Determination

7. In exercising its judicial authority, this court is enjoined, under Article 159 of Constitution to amongst other issues do justice to all irrespective of status and ensure that justice shall not be delayed.
8. The court is further called upon, under the provisions of Sections 1A, and 1B of the [Civil Procedure Act](#), Section 19 of the [Environment and Land Court Act](#) and Rules 3, 4, and 5 of [the Constitution](#) of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013, to give effect to the overriding objective which is aimed at facilitating the just, expeditious, proportionate and affordable resolution of disputes. Parties and their advocates too are called upon to assist the court to further the overriding objective.
9. In handling constitutional petitions, as the one before me, Rule 3(8) reserves the court's inherent power to make such orders as the ends of justice demand and to prevent the abuse of the process of court.
10. Coming at the time and point at which it was filed, I do not consider the 2nd Respondent's application as intended to further the overriding objective or facilitate the expedited hearing of this matter. It has the opposite effect of unduly delaying the conclusion of the matter. The time spent in considering this application should have been spent on the Petition. In any event, the order of maintenance of status quo, pending the hearing and determination of the Petition was granted by the court in exercise of the inherent jurisdiction and was intended to give way to the hearing of the Petition rather than spending time on the interim application filed by the Petitioners.
11. Consequently, I disallow the 2nd Respondent's application dated April 15, 2024 but with no orders as to costs. I will grant the parties a date to highlight their written submissions in regard to the main Petition without further ado.

It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 26TH DAY OF SEPTEMBER, 2024.



M.D. MWANGI

JUDGE

In the virtual presence of:

Mr. Lerionka h/b for Dr. Kamotho for the 2nd and 3rd Respondents

N/A by the Petitioners, the 1st & 4th Respondents

Court Assistant: Yvette

M.D. MWANGI

JUDGE

