



**Muthamia v Government (County) Surveyor Urru & 2 others;
Mutwiri (Intended Interested Party) (Environment & Land Petition
E005 of 2023) [2024] KEELC 13873 (KLR) (19 December 2024) (Ruling)**

Neutral citation: [2024] KEELC 13873 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ENVIRONMENT & LAND PETITION E005 OF 2023

CK NZILI, J

DECEMBER 19, 2024

**IN THE MATTER OF THE PROTECTION OF THE RIGHT TO PROPERTY
UNDER ARTICLE 40 OF THE CONSTITUTION OF KENYA 2010**

AND

**IN THE MATTER OF ABUSE OF ADMINISTRATIVE ACTION
CONTRARY TO ARTICLE 47 OF THE CONSTITUTION OF KENYA 2010**

AND

**IN THE MATTER OF CONTRAVENTION OF NATIONAL
VALUES AND PRINCIPLES OF GOVERNANCE AS PROVIDED
UNDER ARTICLE 10 OF THE CONSTITUTION OF KENYA 2010**

AND

**IN THE MATTER OF THE CONTRAVENTION OF PRINCIPLES OF PUBLIC SERVICE
AS PROVIDED UNDER ARTICLE 232 OF THE CONSTITUTION OF KENYA 2010**

AND

**IN THE MATTER OF SECTIONS 22 AND 23 OF THE
SURVEY ACT, CAP 299 OF THE LAWS OF KENYA**

AND

IN THE MATTER OF SECTION 15 OF THE LAND REGISTRATION ACT 2012

AND

**IN THE MATTER OF SECTIONS 3 AND 4 OF
THE FAIR ADMINISTRATIVE ACTION ACT, 2015**

BETWEEN

JOSEPH KITHINJI MUTHAMIA PETITIONER



AND

THE GOVERNMENT (COUNTY) SURVEYOR URRU 1ST RESPONDENT

THE LAND REGISTRAR URRU 2ND RESPONDENT

THE ATTORNEY GENERAL 3RD RESPONDENT

AND

ARPHAXARD KIRIMI MUTWIRI INTENDED INTERESTED PARTY

RULING

1. This matter is listed for sentencing this afternoon. After the court adjourned the matter yesterday on 18.12.2024 an application dated 16.12.2024 was filed by Ms. J.O Ondieki for the 1st intended interested party, which this court certified urgent and listed for directions today.
2. This morning five other intended interested parties have sought to be joined in the matter by an application dated 18.12.2024. They have attached copies of title deeds showing that they own parcels of land in the vicinity where the decree of this court is to be effected.
3. In *Meme vs Republic* 2004 1 E.A 124, the court observed that a party can be included in a suit if his presence will result in complete settlement of all the questions involved in the proceedings, to provide protection for the right of a party, who would otherwise be adversely affected in law and to avoid proliferated litigation.
4. In *Elton Homes vs Davis & others* (2019) eKLR, the court allowed the joinder of an interested party after judgment had been entered between two principals without involving him, yet he was in occupation of the property from which he was being evicted since he had a constitutional right to be heard.
5. The court said that *the Constitution* of Kenya is clear that one property cannot be arbitrarily taken away without being heard or accorded an opportunity to ventilate his case.
6. From the reports tendered by the 1st and 2nd respondents including the recent one dated 17.12.2024, it is now quite clear that irregularities and illegalities have been detected in some of the title deeds issued to third parties for the same land that the petitioner wants the court to implement its decree. The intended interested parties are the ones to be affected.
7. The 1st and 2nd respondents have now owned up that some of these errors arose at the demarcation stage, yet there was a decree of this court staying the implementation of objection proceedings.
8. In order to safeguard the rights of all interested parties and other potential claimants who are likely to be affected by the recommendations in the report by the 1st & 2nd respondents dated 17.12.2024, I am constrained to stay the implementation of the decree of this court until all questions on execution and on the holders of title deeds thereof, become part of the petition under Section 34 of the *Civil Procedure Act* are settled. As to the question of setting aside the decree the court is functus officio. There is already a notice of appeal against the ruling.
9. I, therefore, allow all pending applications for joinder of interested parties. The matter be listed for hearing on 10.2.2025 to avoid multiplicity of applications. Any other party with parcels of land to



be affected by the implementation of the decree shall be equally served by the petitioner by affixing a notice in the named parcel(s) of land or residence thereto within 7 days from the date hereof.

Orders accordingly.

**DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON
THIS 19TH DECEMBER, 2024**

In presence of

C.A Kananu

Land registrar

Land surveyor

Mr. Kimathi for the petitioner

Juma for 1st -3rd respondents

Ondieki for the 1st intended interested party

Mr. Maranya for the 2nd – 6th interested parties

HON. C K NZILI

JUDGE

