



Mwaisama & 158 others v Ndara B Community & 2 others (Environment & Land Petition E001 of 2023) [2024] KEELC 13667 (KLR) (Environment and Land) (6 December 2024) (Ruling)

Neutral citation: [2024] KEELC 13667 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VOI
ENVIRONMENT AND LAND
ENVIRONMENT & LAND PETITION E001 OF 2023
EK WABWOTO, J
DECEMBER 6, 2024**

BETWEEN

GABRIEL MNYAMBO MWAISAMA & 158 OTHERS & 158 OTHERS & 158 OTHERS & 158 OTHERS PETITIONER

AND

**NDARA B COMMUNITY 1ST RESPONDENT
TRUSTEES OF DIASPORA UNIVERISTY 2ND RESPONDENT
UNIVERSAL RESOURCES INTERNATIONAL LIMITED 3RD RESPONDENT**

RULING

1. On 7th November 2024, this Court gave directions in respect to the hearing and disposal of the main petition herein. This Court directed that the same be canvassed by way of affidavit evidence and written submissions. The Court further proceeded to set the matter for highlighting of written submissions on 28th January 2025.
2. The Petitioners have now moved this court vide their application dated 25th November 2024 seeking for the following reliefs: -
 - a. ... spent.
 - b. That this Court be pleased to stay the proceedings and directions of 7th November 2024 pending the hearing and determination of this Application.
 - c. That this Court be pleased to set aside the proceedings and directions of 7th November 2024 and parties do take fresh directions.
 - d. That costs of the application be provided for.



3. The application is premised on the grounds on its face and the Supporting affidavit sworn by Mwazighe Micar on 25th November 2025.
4. The application was opposed by all the Respondents. The 1st and 2nd Respondents filed a Replying Affidavit sworn by Ronald Mwang'ombe a member of Ndara B Community on 28th November 2024 while the 3rd Respondent filed a Replying Affidavit sworn by Mark Lloyd Stephenson, the CEO of the 3rd Respondent on 27th November 2024.
5. During the plenary hearing of the application, Learned Counsel Mr. Mwazighe made oral submissions on behalf of the Petitioners while Learned Counsel Mr. Onido submitted on behalf of the 1st and 2nd Respondents and Learned Counsel Mr. Kago submitted on behalf of the 3rd Respondents.
6. The Court has considered the application, the rival affidavits and oral submissions made by the parties and the main issue for determination is whether the application is merited to warrant the grant of the reliefs sought.
7. The Petitioners contends that they were not present when the directions were issued on 7th November 2024. That counsel misdiarized the said date and as such the said mistake should not be visited upon them.
8. Rule 20(1)(a) of the *Constitution of Kenya (Protection of Rights and Fundamental Freedoms and Enforcement of the Constitution) Practice and Procedure Rules* (Mutunga Rules) provides that the hearing of the Petition shall be by way of affidavits and oral submissions unless the court directs otherwise.
9. It is worth noting that in this era of e-filing that was officially launched by the Judiciary on 1st July 2020 the e-filing court systems usually sends parties automated notifications either emails or Short Message Services (SMS) notifying parties of upcoming court dates and any changes in the schedule. Through the said platform parties also receive instant notification of any activities or updates on the Case Tracking System (CTS) in respect to their cases. Parties have always been urged time without number to embrace the said technology. The proceedings that Counsel for the Petitioners seeks to set aside were definitely post the launch/commencement of Court's e-filing system. This Court had also an opportunity to pronounce itself on the said issue in the cases of *Maina v J.K. Horeria t/a Horeria & Company & another* (Environment & Land Case 1928 of 2007) [2023] KEELC 16919 (KLR) (23 March 2023) (Ruling) and *Afyare Enterprises Company Ltd v Mugambi & 2 others; Mugambi (Interested Party)* (Environment & Land Case 1626 of 2016) [2023] KEELC 17892 (KLR) (25 May 2023) (Ruling).
10. In the instant case, the Court has considered the Petitioners averments together with the affidavit and submissions by all the parties. This Court is also guided by Article 50(1) of the *Constitution* which provides that every person has a right to have any dispute that can be resolved by the application of the law decided in a fair and public hearing before a court or an independent and impartial tribunal or body. The hearing of the Petition is yet to commence and there will be no prejudice suffered by the Respondents if the prayers sought in the application are granted.
11. In view of the foregoing, this Court will exercise its discretion and grant prayer 3 of the said application with an order that the Petitioners do pay throw away costs of Ksh 10,000/- to the 1st and 2nd Respondents and Ksh 10,000/- to the 3rd Respondents.
12. In the end, the Petitioners' application dated 25th November 2024 is determined as follows: -
 - i. The proceedings and directions issued on 7th November 2024 are hereby set aside to enable parties take fresh directions.



- ii. The Petitioners shall pay throw away costs of Ksh 10,000/- to the 1st and 2nd Respondents and Ksh 10,000/- to the 3rd Respondents before the next date for further proceedings before this Court.
- iii. Each party to bear own costs of the application.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 6TH DAY OF DECEMBER 2024.

E. K. WABWOTO

JUDGE

In the presence of: -

Mr. Mwazighe for the Petitioners.

Mr. Onindo for the 1st and 2nd Respondents.

Ms. Kimeo h/b for Mr. Kago for the 3rd Respondent.

Court Assistant: Mary Ngoira.

