



REPUBLIC OF KENYA



KENYA LAW
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**Wanjau & another v National Land Commission & 4 others (Environment & Land
Petition E032 of 2022) [2023] KEELC 15846 (KLR) (27 February 2023) (Ruling)**

Neutral citation: [2023] KEELC 15846 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND PETITION E032 OF 2022
EK WABWOTO, J
FEBRUARY 27, 2023**

BETWEEN

MUTAHI WANJAU 1ST PETITIONER

TIMOTHY MAINA 2ND PETITIONER

AND

NATIONAL LAND COMMISSION 1ST RESPONDENT

NAIROBI METROPOLITAN SERVICES 2ND RESPONDENT

NAIROBI CITY COUNTY 3RD RESPONDENT

CHRISTIAN LIFE COMMUNITY KENYA 4TH RESPONDENT

CHIEF LAND REGISTRAR 5TH RESPONDENT

RULING

1. This ruling is in respect to the 4th Respondent's application dated January 27, 2023. The Application sought the following orders:
 - i. Spent.
 - ii. The 4th Respondent be granted leave to file a cross petition and the cross petition filed herein be deemed properly filed and served upon payment of the requisite Court fees.
 - iii. The Honourable Court be pleased to grant any further orders it may deem fair and appropriate for a just and conclusive determination of the dispute herein.
 - iv. That the costs of this Application be provided for.



2. The Application was opposed by vide a Relying Affidavit dated February 15, 2023 sworn by Mutahi Wanjau the 1st Petitioner herein in which it was averred that the cross petition was not filed judiciously and allowing the same would lead to unnecessary delay in the pursuit of justice.
3. Having perused the submissions and evidence, it is evident that the issue for determination before this Court is whether the 4th Respondent should be granted leave to file its cross petition.
4. Rule 10(2) of Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice And Procedure Rules, 2013 stipulates as follows:

' The petition shall disclose the following—

- (a) The petitioner's name and address;
- (b) The facts relied upon;
- (c) The constitutional provision violated;
- (d) The nature of injury caused or likely to be caused to the petitioner or the person in whose name the petitioner has instituted the suit; or in a public interest case to the public, class of persons or community;
- (e) Details regarding any civil or criminal case, involving the petitioner or any of the petitioners, which is related to the matters in issue in the petition;
- (f) The petition shall be signed by the petitioner or the advocate of the petitioner;
- (g) the relief sought by the petitioner.

5. Additionally, Rule 15(3) stipulates that:

' The respondent may file a cross-petition which shall disclose the matter set out in rule 10(2).'

6. In the case of *Nick Githinji Ndichu v Clerk, Kiambu County Assembly & another [2014] eKLR* it was held that:

' In terms of Rule 15(3), the Respondent may file a cross-petition disclosing the matters set out in Rule 10(2). Rule 15(3) is silent on the time frame within which the Respondent may file a cross-petition.'

7. I have also considered that should the Petitioners' prayers be allowed, the 4th Respondent would be prohibited from accessing the property to which they allege ownership. From my perusal of the cross petition, I find that it is the 4th Respondent's/Applicant's aim to have the Court determine conclusively the dispute as to the ownership of the suit property –LR NAIROBI BLOCK/60/493 LANGATA and therefore does not introduce a new cause of action.

8. In view of the foregoing, this Court finds that the Notice of Motion application dated January 27, 2023 is merited and the same is allowed under the following terms:

- i. The 4th Respondent is hereby granted leave to file and serve a cross-petition within 7 days of delivery of this ruling.
- ii. Costs will abide determination of the petition.



9. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 27TH DAY OF FEBRUARY 2023.

E. K. WABWOTO

JUDGE

In the presence of: -

N/A for the Petitioners.

Ms. Cecilia Masinde for the 1st Respondent.

N/A for the 2nd Respondent.

Mr. Kabue for the 3rd Respondent.

Mr. Kimathi for the 4th Respondent.

N/A for the 5th Respondent.

