



Case Number:	Environment and Land Constitutional Petition E002 of 2020
Date Delivered:	16 Dec 2020
Case Class:	Civil
Court:	Environment and Land Court at Chuka
Case Action:	Ruling
Judge:	Peter Muchoki Njoroge
Citation:	William Mutuura Kairibia & another v Inspector General of Police & 8 others [2020] eKLR
Advocates:	Kabathi for the Petitioners Momanyi for the 1st and 2nd Respondents Atheru for the 8th Respondent
Case Summary:	-
Court Division:	Environment and Land
History Magistrates:	-
County:	Tharaka Nithi
Docket Number:	-
History Docket Number:	-
Case Outcome:	Consent adopted as order of the Court.
History County:	-
Representation By Advocates:	One party or some parties represented
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-
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**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT CHUKA**

**CHUKA ELC CONSTITUTION PETITION CASE NO. E002 OF 2020**

**IN THE MATTER OF MARIMANTI MAGISTRATES COURT CRIMINAL CASE NO. 540 OF 2020**

**AND**

**IN THE MATTER OF ARTICLES 2(1), 3(1), 10, 19, 20, 21, 22, 23, 25, 27,**

**48, 50, 157, 165(6) AND 245 OF THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF VIOLATION OF ARTICLES 50(2) ( C) AND 40 OF THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF THE LAND ADJUDICATION ACT, CAP 284 LAWS OF KENYA**

**BETWEEN**

**WILLIAM MUTUURA KAIRIBIA.....1<sup>ST</sup> PETITIONER**

**FELIX GITONGA NTHIGA MUTUURA.....2<sup>ND</sup> PETITIONER**

**VERSUS**

**INSPECTOR GENERAL OF POLICE.....1<sup>ST</sup> RESPONDENT**

**DIRECTOR OF PUBLIC PROSECUTIONS.....2<sup>ND</sup> RESPONDENT**

**SENIOR PRINCIPAL MAGISTRATE, MARIMANTI.....3<sup>RD</sup> RESPONDENT**

**THE COUNTY LAND REGISTRAR THARAKA NITHI COUNTY.....4<sup>TH</sup> RESPONDENT**

**THE COUNTY SURVEYOR THARAKA NITHI COUNTY.....5<sup>TH</sup> RESPONDENT**

**COUNTY GOVERNMENT OF THARAKA NITHI.....6<sup>TH</sup> RESPONDENT**

**THE DIRECTOR OF SURVEYS.....7<sup>TH</sup> RESPONDENT**

**ELIJAH MUTHURI MURIUNGI.....8<sup>TH</sup> RESPONDENT**

**DISTRICT LAND ADJUDICATION AND SETTLEMENT OFFICER...9<sup>TH</sup> RESPONDENT**

**RULING**

1. On **16.12.2020**, advocate Kabathi, for the petitioners told the court that the petitioners and the 1<sup>st</sup> and 2<sup>nd</sup> respondents had a consent which they wanted the court to adopt as its order. The consent reads as follows:

**Consent**

Mr. Kabathi for the 1<sup>st</sup> and 2<sup>nd</sup> petitioners

Mr. Momanyi for the 1<sup>st</sup> and 2<sup>nd</sup> respondents

**By consent**

That the petition be marked as settled as against the 1<sup>st</sup> and 2<sup>nd</sup> respondents on the following terms.

1. That the proceedings in Marimanti Criminal Case No. 540 of 2020 be withdrawn under section 87 (a) of the Criminal Procedure Code.
2. That the 1<sup>st</sup> and 2<sup>nd</sup> Respondents be removed from these proceedings.
3. There be no order as to costs.

**Signed by Mr. Kabathi for the petitioners**

**Signed by Mr. Momanyi for the 1<sup>st</sup> and 2<sup>nd</sup> respondents**

**Dated at Chuka this 16<sup>th</sup> day of December, 2020**

2. Mr. Atheru, the 8<sup>th</sup> respondents' advocate told the court that he had filed a Notice of Preliminary objection. The Notice reads as follows:

**NOTICE OF PRELIMINARY OBJECTION**

**TAKE NOTICE** that the 8<sup>th</sup> respondent shall on 16<sup>th</sup> December, 2020 or so soon thereafter when this suit shall come up for any hearing raise preliminary objection on points of law persuading this honourable court to dismiss the entire suit with costs to him on the grounds that:-

1. The honourable court lacks jurisdiction to hear this case for being res judicata both Chuka High Court ELC Case No. 8 of 2018 (William Mutuura Kairiba –vs- Samuel Nkari, Samuel Kathiga & Daniel Mugao) and Chuka ELC Suit No. 13 of 2019 William Mutuura Kairiba – versus – Samuel Nkari, Samuel Kathiga, Daniel Mugao, Francis Ruteere & The County Government of Tharaka Nithi).
2. The honourable court lacks jurisdiction to hear this case for lack of the mandatory statutory consent to file this case by dint of section 8 of the Land Consolidation Act, Cap 283 and section 30 of the Land Adjudication Act, Cap 284 Laws of Kenya.
3. The plaintiff did not exhaust the remedies set out at sections 13, 14 and 26 of the Land Consolidation Act, Cap 283 and Section 26 and 29 of the Land Adjudication Act, Cap 284 Laws of Kenya.
4. The application dated 25.11.2020 is fatally defective.

**DATED AT MERU THIS 15<sup>TH</sup> DAY OF DECEMBER, 2020**

**SIGNED.....**

**FOR: THURANIRA ATHERU & CO.**

**ADVOCATES FOR THE 8<sup>TH</sup> RESPONDENT**

3. Upon hearing the parties, the following orders are issued:

**a)The** Preliminary Objection filed by the 8<sup>th</sup> respondent and dated 15<sup>th</sup> December, 2020 be heard first with the proponent who is the 8<sup>th</sup> respondent filing and exchanging his written submissions within 21 days of today and the other parties doing so within 21 days after receipt of the 8<sup>th</sup> respondent's submissions.

**b)The** consent between the petitioners and the 1<sup>st</sup> and 2<sup>nd</sup> respondents dated 16.12.2020 is adopted as an order of this court.

**c.Interim** orders extended pending interpartes hearing of the application.

**d.Mention** for directions on **1.2.2021**.

**Delivered in open Court at Chuka this 16<sup>th</sup> day of December, 2020 in the presence of:**

**CA: Ndegwa**


**Kabathi for the petitioners**

**Momanyi for the 1<sup>st</sup> and 2<sup>nd</sup> respondents**

**Atheru for the 8<sup>th</sup> respondent**

**P. M. NJOROGE,**

**JUDGE.**

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