



Wainaina & another (Suing as administrators of the Estate of Clement Wainaina alias Wainaina Ndirangu) v Molyn Credit Limited & 2 others; Achieng (Interested Party) (Environment & Land Case 5 of 2022) [2025] KEELC 1374 (KLR) (20 March 2025) (Ruling)

Neutral citation: [2025] KEELC 1374 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 5 OF 2022
LC KOMINGOI, J
MARCH 20, 2025**

BETWEEN

CHRISTINE NJERI WAINAINA & SARAH MUTHONI NGWIRI (SUING AS ADMINISTRATORS OF THE ESTATE OF CLEMENT WAINAINA ALIAS WAINAINA NDIRANGU) PLAINTIFF

AND

MOLYN CREDIT LIMITED 1ST DEFENDANT

THE LAND REGISTRAR KAJIADO 2ND DEFENDANT

THE DISTRICT LAND REGISTRAR, NGONG 3RD DEFENDANT

AND

BRENDA BERYL ACHIENG INTERESTED PARTY

RULING

1. This is the Notice of Motion dated 9th December 2024 brought under;

(Section 1,1B, 3, 3 & 63 of the *Civil Procedure Act*, Order 1 rule 3 and 10, Order 12 Rule 7, Order 40 Rules 1 & 2, Order 45 rule 1, Order 51 Rule 1 of the Civil Procedure Rules 2010 as amended, Section 68 of the *Land Registration Act*, Section 13 (7) (a) of the Environment & Land Court Act, 2011 and all other enabling provisions of the Law)

2. It seeks orders;

a. Spent.

b. Spent.



- c. That the judgement of this court entered on the 11th April, 2024 be set aside in its entirety.
 - d. That the Interested Party herein be granted leave and an opportunity to present her case and defend this matter on merits.
 - e. That the cost of this application be borne by the Respondents.
3. The grounds are on the face of the Application and are set out in paragraphs 1 to viii.
 4. The Application is supported by the Affidavit of Brenda Beryl Achieng, the Interested Party/Applicant sworn on the 9th December 2025.
 5. In response, the Plaintiff filed a Preliminary Objection dated 28th January 2025 on the grounds that the Judgement of this Honourable Court is the subject of an Appeal in the Court of Appeal.
 6. The Preliminary Objection and the Notice of Motion were canvassed by oral submissions on the 11th February 2025.
 7. I have considered the Notice of Motion, the affidavit in support, the Preliminary Objection and the rival submissions.

The issues for determinations are;

- i. Whether the Preliminary Objection is merited.
 - ii. Whether the Notice of Motion dated 9th December 2024 is merited
 - iii. Who should bear costs?
8. It is not in dispute that the Judgement dated 11th April 2024 is a subject of Appeal in the Court of Appeal. It has also been stated that there is an application for stay pending Appeal in the Court of Appeal.

I agree with the Plaintiffs counsel's submissions that there is no suit pending in this court hence the Applicant cannot be enjoined. This court is functus officio. I find merit in the Preliminary Objection and the same is upheld.
 9. This therefore means that I find no merit in the Notice of Motion dated 9th December 2024. The Interested Party/Applicant can apply to be enjoined in the Appeal in the Court of Appeal.
 10. I consequently the Notice of Motion dated December 9, 2024 is hereby dismissed with costs to Plaintiff.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 20TH DAY OF MARCH 2025.

L. KOMINGOI

JUDGE.

In The Presence Of:

Mr. Mageto for the Plaintiffs/Respondents.

Mr. Kinyua for Mr. Njenga for the 1st Defendant.

Mr. Ochieng for the Interested Party/Applicant.

Court Assistant - Mutisya

