



REPUBLIC OF KENYA



**Komen & 18 others v Lorho Properties Limited & 8 others (Environment & Land  
Case 190 of 2015) [2023] KEELC 19935 (KLR) (21 September 2023) (Ruling)**

Neutral citation: [2023] KEELC 19935 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT & LAND CASE 190 OF 2015  
EO OBAGA, J  
SEPTEMBER 21, 2023**

**BETWEEN**

**CHRISTOPHER KIPLAGAT KOMEN ..... 1<sup>ST</sup> PLAINTIFF**  
**PHILIP KIPCHIRCHIR KIMAIYO ..... 2<sup>ND</sup> PLAINTIFF**  
**WILFRED KIPKOSGEI CHEPSIROR ..... 3<sup>RD</sup> PLAINTIFF**  
**DANIEL KAKUSHA KIMUTAI ..... 4<sup>TH</sup> PLAINTIFF**  
**MARY NANJALA KAYANDA ..... 5<sup>TH</sup> PLAINTIFF**  
**LENA JEMESUNDE ..... 6<sup>TH</sup> PLAINTIFF**  
**RAEL JEMELI ROP ..... 7<sup>TH</sup> PLAINTIFF**  
**BETTY JELAGAT ..... 8<sup>TH</sup> PLAINTIFF**  
**NICHOLAS KIPCHIRCHIR ROTICH ..... 9<sup>TH</sup> PLAINTIFF**  
**HILDA CHERUTO ..... 10<sup>TH</sup> PLAINTIFF**  
**JOHN KIPLAGAT KOSKEI ..... 11<sup>TH</sup> PLAINTIFF**  
**GLADYCE JEPNGETICH CHERUIYOT ..... 12<sup>TH</sup> PLAINTIFF**  
**JOHN KIPKOECH EGO ..... 13<sup>TH</sup> PLAINTIFF**  
**JANE CHERUTICH TANUI ..... 14<sup>TH</sup> PLAINTIFF**  
**LUCY JEPKOECH MWEI ..... 15<sup>TH</sup> PLAINTIFF**  
**ANN JESANG KOECH ..... 16<sup>TH</sup> PLAINTIFF**  
**RUTH JEPKEMEI AMWAYI ..... 17<sup>TH</sup> PLAINTIFF**  
**ROSEMARY CHELIMO MAIYO ..... 18<sup>TH</sup> PLAINTIFF**  
**STEPHEN KURGAT KOSGEI ..... 19<sup>TH</sup> PLAINTIFF**



**AND**

<b>LORHO PROPERTIES LIMITED .....</b>	<b>1<sup>ST</sup> DEFENDANT</b>
<b>LONRHO AGRIBUSINESS EAST AFRICA LIMITED .....</b>	<b>2<sup>ND</sup> DEFENDANT</b>
<b>ELISHA CHUMO .....</b>	<b>3<sup>RD</sup> DEFENDANT</b>
<b>DAVID RONO .....</b>	<b>4<sup>TH</sup> DEFENDANT</b>
<b>JOSEPH METTO (T/A CHEPKATET SELF HELP GROUP) .....</b>	<b>5<sup>TH</sup> DEFENDANT</b>
<b>JOSIA K MAGUT .....</b>	<b>6<sup>TH</sup> DEFENDANT</b>
<b>CHRISTOPHER K SUMBAEI .....</b>	<b>7<sup>TH</sup> DEFENDANT</b>
<b>DAVID CHEPSIROR .....</b>	<b>8<sup>TH</sup> DEFENDANT</b>
<b>THE LAND REGISTRAR, UASIN GISHU COUNTY .....</b>	<b>9<sup>TH</sup> DEFENDANT</b>

**RULING**

**Introduction;**

1. This is a ruling in respect of a Notice of motion dated April 28, 2023 in which the Plaintiffs/Applicants seek the following orders:-
  1. Spent
  2. That the application dated December 14, 2022 dismissed for non-attendance be reinstated and be heard on merits.
  3. That costs be provided for.

**Background;**

2. The Applicants had filed a suit against the Defendants/Respondents in which they sought among other prayers stay of execution of the decree in Eldoret CMCC No 516 of 2005 and to stop their eviction from LR No Pioneer/Ngeria Block 1 (EATEC) 7081.
3. The 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants/Respondents filed a notice of motion dated August 25, 2021 in which they sought to have the Applicant's suit dismissed for being an abuse of the process of court and for being *res-judicata*. The application was fully heard and the Applicants' suit was struck out for being an abuse of the process of court and for being *res-judicata* vide ruling of November 3, 2022.
4. On December 14, 2022, the Applicants filed a notice of motion in which they sought review and setting aside of the ruling of November 3, 2022. When this application came up for hearing on March 8, 2023, the Advocate for the Applicants did not attend court virtually. The application was dismissed for non-attendance. It is the dismissal of the application dated December 14, 2022 which prompted the Applicants to file the present application.

**Applicant's Contention;**

5. The Applicants' lawyer contends that on March 8, 2022 when the application dated December 14, 2022 came up for hearing, he tried to log into the court virtual hearing but was unable to do so due to



technical challenges on his part. He sent his clerk to the registry to inquire on what happened but was informed that the application had been dismissed for non attendance.

6. The advocate states that his mistakes should not be visited upon his clients and that as this is a land matter, the same ought to be heard on merit.

### **3rd, 4th and 5th Respondents' contention;**

7. The Applicants' application was opposed based on grounds of opposition filed on May 19, 2023. The Respondents contend that the Applicants' application was brought two months after the dismissal of the application for review and that it was brought on a day the matter had been set down for taxation of party and party bill of costs. The Respondents further contend that the Applicants' application is frivolous, vexatious and an abuse of the process of court and that the Applicants have come to court with unclean hands.

### **Analysis and Determination;**

8. The applicants' counsel stated that he was not going to submit. The Respondents filed their submissions on July 6, 2022. I have carefully considered the applicants' application as well as the opposition to the same by the Respondents. I have also considered the submissions by the Respondents. The only issue for determination is whether the Applicants have shown a case to warrant the exercise of the court's discretion in their favour.
9. In as much as I have no doubt that Mr Miyienda had technical challenges, this is not the only consideration in seeking to exercise my discretion. Mr Miyienda has deponed that on March 8, 2023 when he was unable to log in, he sent his clerk to come to the registry to ascertain what happened to the application dated December 14, 2022. The clerk went to the registry and was informed that the Applicants' application of December 14, 2022 had been dismissed with costs for non attendance.
10. The Applicants did not bother to file an application to set aside the dismissal order until after almost two months later. The application was filed on the day the matter was fixed for taxation of the party and party bill of costs.
11. I have looked at the application which was dismissed for non attendance. This application was seeking for review of the ruling of November 3, 2022. That application does not cite any of the grounds for review known in law. The Applicants have zeroed in on one ground; that is that the struck out suit was not *res-judicata*. This is a good ground for appeal but certainly not a ground for review. Even if the court were to set aside the dismissal order, the application dated December 14, 2022 will not see the light of the day. Litigation must come to an end. The main suit which was struck out was also seeking to stay execution of a judgement given in a different suit. It would not have also seen the light of the day even if it were not struck out.

### **Disposition;**

12. From the above analysis, it is clear that the Applicants' application is devoid of merit. The same is dismissed with costs to the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents.

It is so ordered.

**DATED, SIGNED and DELIVERED at ELDORET on this 21<sup>st</sup> day of SEPTEMBER, 2023.**

**E. O. OBAGA**

**JUDGE**



In the virtual presence of;

Rotich for Mr. Njuguna for 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants.

Court Assistant -Laban

**E. O. OBAGA**

**JUDGE**

**21<sup>ST</sup> SEPTEMBER, 2023**

