



**Kombo & 2 others v Uhutta Properties Limited & another; Rahasi & 4 others
(Interested Parties); Maisha Mabati Mills Limited (Objector) (Environment
& Land Case 89 of 2021) [2025] KEELC 3115 (KLR) (4 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3115 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KWALE
ENVIRONMENT & LAND CASE 89 OF 2021**

AE DENA, J

APRIL 4, 2025

BETWEEN

DZOMBO M KOMBO 1ST PLAINTIFF

KOMBO W MWAMUMBO 2ND PLAINTIFF

SOMBO K KOMBO 3RD PLAINTIFF

AND

UHUTTA PROPERTIES LIMITED 1ST DEFENDANT

THE LAND REGISTRAR KWALE 2ND DEFENDANT

AND

MDOE TUNGWA RAHASI INTERESTED PARTY

JUSTUS MANGALE MUDZOMBA INTERESTED PARTY

LUBANDO BAHASI NGWAYA INTERESTED PARTY

JIRA KARUNGWA NJONGOLI INTERESTED PARTY

EINSTEIN CHARON GAZA INTERESTED PARTY

AND

MAISHA MABATI MILLS LIMITED OBJECTOR



RULING

The Applications

1. Two applications form the basis of this ruling. The 1st Defendants application dated 16th August 2024 and the objector's application dated 1st October 2024.

1st Defendants Application

2. The 1st Defendant seeks the following orders; -
 1. Spent
 2. Spent
 3. A stay of execution of the courts judgement delivered on 24th June 2024 and any consequential orders emanating therefrom including the decree dated 1st July 2024 pending hearing and determination of this application.
 4. Review of the judgement delivered on 24th June 2024 to the extent that the Plaintiff/ Respondent suit be dismissed and the Defendant counterclaim be allowed with costs and interest accordingly
 5. That in the alternative an order for stay of execution of the judgement issued pending hearing and determination of the Appeal at the court of Appeal that has emanated from the said judgement accordingly.
 6. Costs of the application.
3. The application is premised upon grounds highlighted on its face and the supporting affidavit of Mr Shimaka N Leonard Advocate. Key among the grounds is that the judgment cannot be executed as the title and the property no longer belongs to the 1st Defendant. That the same has been transferred to a third party who has since developed the property extensively and is in occupation of the same. That the said third party was not a party to the suit and that the Plaintiff failed to do his due diligence to ascertain the ownership of the suit property at the time of instituting the suit, That the orders if enforced will occasion great loss and the person will be condemned unheard. That the 2nd Defendant cannot also revoke the title since it is not registered in the name of the 1st defendant but a third party. The grounds are reiterated in the said supporting affidavit.

Response

4. The application is opposed by a replying affidavit dated 25th September 2024 sworn by the Plaintiffs jointly. It is averred that all the parties in the suit have been granted an opportunity to be heard as provided for under Article 50 of *the Constitution* 2010. That none of the parties who allege to have been affected by the judgement has approached the court but instead it is Mr Shimaka who represents the 1st Defendant that has sworn the affidavit. That Counsel does not have any legal right whatsoever to purport to present an application for stay of execution pending appeal.
5. It was averred that the third parties have not disclosed any appeal filed and the 1st Defendant is thus engaging in an exercise in futility. That the judgement of the court was to the effect that the titles to the suit properties were illegal, irregularly and fraudulently acquired and are to be cancelled and the



property to revert to its owner. That the effect of the judgement on the third parties has not been explained.

6. The application dated 16th August 2024 is termed as an abuse of the court process and the court is urged to dismiss the application. That the judgement has already been executed and the application is thus an academic process.

Objectors Application

7. The Objector Maisha Mabati Rolling Mills application is dated 1st October 2024 and seeks the following verbatim orders; -
 1. Spent
 2. That this Honourable court be pleased to grant a stay of execution of its judgement delivered on 24th June 2024 and further and/or consequential orders emanating therefrom, including but not limited to the resultant decree dated 1st July 2024 pending the hearing and determination of this application interpartes. (Spent)
 3. That this Honourable court be pleased to vacate and altogether set aside its judgement delivered on 24th June 2024 and any further and/or consequential orders emanating therefrom, including but not limited to the resultant decree dated 1st July 2024.
 4. That in the event that there have been any steps taken by the Plaintiffs/Respondents or the 2nd defendant/respondent to effect the judgement of the court dated 24th June 2024 and the resultant decree of 1st July 2024, the Honourable court be pleased to issue an order reversing any such actions
 5. That the costs of this application be provided for
8. The application is premised on grounds on its face and the supporting affidavit of Mercy Kendi Mberia the Company Secretary of the Objector applicant.
9. It is averred that the objector is the bonafide purchaser of the suit properties known as Kwale/South Samburu/90 since 10th September 2020 having purchased the same from the 1st defendant. That the objector was never made aware of the proceedings before court and the order for cancellation of title took them by surprise. That the decision of the court was made 4 years after occupation of the suit property by the objector.
10. That the judgement of the court has divested the applicant off its ownership of the suit property without any hearing and the same is a great prejudice to them. The court is urged to stay the execution of its judgement delivered on 24th June 2024 pending the hearing and determination of the objector's application.
11. The court is further urged to set aside its judgement pending determination of the application by the objector.

Replying Affidavit

12. In response to the Objector's application, the Plaintiffs/Respondents filed a replying affidavit jointly sworn by all the three Plaintiffs. It is averred that the application is an abuse of the court process and the same should be dismissed with costs.



13. That the Objector cannot set aside a judgement and or review a judgement where it is not a party to proceedings. Further that the objector has not laid a basis for seeking the order for stay of execution of the judgement delivered on 24th June 2024. That the Plaintiff has already executed the judgement and decree therein on 25th July 2024 when the same was registered with the county land registrar Kwale.

Supplementary Affidavit

14. The Objector further filed a supplementary affidavit in response to the plaintiffs replying affidavit sworn on 18th November 2024. It was averred that the objector was the registered owner of all that property known as Kwale/South Samburu/90 the suit property since 10th September 2020 having purchased the same from Uhutta Properties Limited.
15. That the Plaintiffs had all along been aware of the objector's registration of the suit property as evidenced by the green card attached to their affidavit. The plaintiffs therefore intentionally failed to inform the court that the objectors were the registered owners of the suit property from the onset. The said action led to the eventual loss of the property by the objectors through the plaintiff's intentional and systematic withholding of the crucial and material information.
16. That the plaintiffs are thus guilty of non-disclosure of material facts and information. That the objector is entitled to the prayers sought in the application as they have been condemned unheard and execution levied against their property. That the court is clothed with the jurisdiction to grant the orders sought.

Plaintiffs Preliminary Objection

17. The Plaintiffs raised a preliminary objection to the objector's objection based on the following verbatim grounds;
 1. The objector's application dated 1st October 2024 is fatally defective and incurable by amendments and therefore the same should be dismissed with costs
 2. The orders sought in the objector's application dated 1st October 2024 have been overtaken by events as judgement has already been fully executed and there is nothing to stay/set aside
 3. The objectors cannot seek joinder into a suit which has been fully heard and a judgement rendered. The current proceedings amount to abuse of the court process
 4. The Honourable court lacks jurisdiction to hear and determine the objector's application dated 1st October 2024 as the orders sought by the objector have been fully executed and the court is functus officio.
18. Mr. Mwanje state counsel appearing for the Land Registrar Kwale the 2nd defendant informed the court, they would not participate in these specific proceedings.
19. The 1st Defendant supports the objectors application dated 1/10/2024.

Submissions

20. The applications and preliminary objection were disposed of concurrently by way of written submissions. The Objector's written submissions are dated 13/12/2024, the Plaintiffs 3/12/2024 and the 1st Defendants on 25/12/2024. The firm of Havi & Company Advocates filed a Notice of change of advocates on 5/11/2024. The court has considered all the submissions on record for the applications and in opposition of the same in preparation of this ruling.



Analysis And Determination

21. I will determine the applications in the order they were filed before court, that is the 1st Defendants application filed on 16/08/2025 and the Objectors on 3/10/2025.

1st Defendants Application Dated 16/08/2024

22. The court has noted the 1st Defendants submission that the application dated 16/08/2024 should be allowed for being unopposed on the ground that the notice of preliminary objection only makes reference to the Objectors application herein. Firstly, the Plaintiffs responded by way of the replying affidavit dated 25th September 2024 sworn by the Plaintiffs jointly. Secondly the application must still undergo merit review by the court.
23. The 1st Defendants application is brought before court under the provisions of Section 1A,1B &3A of the Civil Procedure Act, Orders 45 and 42 of the Civil Procedure Rules 2010. Prayers number 1, 2,3 of the 1st Defendant's application have now been overtaken by events and I don't find it necessary to dwell on them.
24. The court is however invited under prayer 5 of the application to stay execution of the courts judgement delivered on 24th June 2024 and any consequential orders emanating therefrom including the decree dated 1st July 2024 pending appeal at the Court of Appeal
25. Order 42 is on appeals. I note that the applicant did not identify the specific rule/s under which the application has been brought. Be that as it may I will highlight the relevant provisions
26. Order 42 Rule 6 of the Civil Procedure Rules, the relevant part states as follows:

“(1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but, the Court Appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.

- (2) No order for stay of execution shall be made under subrule (1) unless—
- a. the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and
 - b. such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.

(3) ...



(4) For the purposes of this rule an appeal to the Court of Appeal shall be deemed to have been filed when under the Rules of that Court notice of appeal has been given.

27. The above provisions of the law prescribe three (3) conditions precedent before grant of orders of stay of execution pending appeal, establishment of a sufficient cause, satisfaction of substantial loss and the furnishing of security. Has the applicant met the prerequisite for grant of orders of stay of execution pending appeal?
28. The Plaintiffs have deponed that the decree and the orders therein have already been enforced and or executed. That therefore there is nothing to stay. The Plaintiffs in their replying affidavit sworn on 25/09/2024 have annexed copies of application for registration and green card. My perusal of the green card indeed reveals entry number 9 made on 25/7/2024 confirms the cancellation pursuant to the court decree herein.
29. I will now consider the prayer for orders of stay of execution pending appeal vis a vis the evidence placed before this court that the titles have been cancelled. In this regard I will be guided by the case of Stephen Kipkebut T/A Riverside Lodge and Rooms & another v Natali Ogola & another [2013] eKLR where the Court of Appeal faced with an application for stay of execution where the orders of the court cancelling the grants in respect of the suit property had already been effected stated thus; -
- ‘With regard to order No.4, the Superior Court cancelled the Grant number I.R. 86311 over L.R. NO.209/14318 issued by the Government of Kenya under the Registration of Titles Act (now repealed) to Stephen Kipkebut trading as Riverside Lodge and Rooms and registered on 21st June 2001. Like the dismissal of the suit and counter-claim, the cancellation in order No.4 has occurred. It is notional. It is not a physical act. Having occurred, it cannot be stopped or stayed. Similarly, the cancellation of the transfer of the interest in the said title registered on or about 23.04.2008 in favour of Ammu Investments Company Limited cannot be stayed or stopped as it has already occurred and has been declared to be of no legal effect. With regard to order No.6 directing the Registrar of Titles to cancel the title and reconvey it to the Attorney General, Mr. Mungla conceded that he was not in a position to confirm whether or not the Registrar had effected the cancellation in the Registers. It was incumbent upon the applicants to show whether the Registrar has effected the cancellation. If cancellation has not been effected, the court can stop it. But the court cannot make orders in absence of evidence showing what the position obtaining is. If it transpires that pursuant to the order of the Superior Court the register has been amended, it would be futile for us to order stay. It would be like trying to lock the stable door after the horse has bolted. It is our finding that the applicants have failed to satisfy us with regard to the second requirement for the Grant of an order of stay under Rule 5 (2) (b) (supra). (emphasis is mine)
30. Applying the above pronouncement which is binding upon this court I make a finding that the orders of stay of execution are not available the decree having been executed and the titles cancelled.
31. The applicant further seeks a review of the judgement under the provisions of Order 45 of the Civil Procedure Rules and wants the Plaintiffs suit to be dismissed and the Defendants counterclaim be allowed.
32. The right to apply for review is provided for in Section 80 of the *Civil Procedure Act* and elaborated by Order 45 of the Civil Procedure Rules.
33. Section 80 provides;
- Any person who considers himself aggrieved—



- (a) by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or
 - (b) by a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.
34. The provisions of [Order 45, rule 1 are on Application for review of decree or order and provide that; -
- “ 1.
- (1) Any person considering himself aggrieved—
 - (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or
 - (b) by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.
35. My understanding of the provisions of section 80 (1) of the *Civil Procedure Act* is that where a party has taken the option to appeal to the Court of Appeal, then they cannot apply for review to the court which passed the decree. I have noted the plaintiff’s deposition that Mr Shimaka does not have any legal right whatsoever to purport to present an application for stay of execution pending appeal, in my view this would be a matter for the court where the appeal is lodged to determine. However this court recognises the provisions of article 48 of *the Constitution*. It goes without say that this is a matter where appeal to the court of appeal is allowed. In the present case a Notice of Appeal to the Court of appeal has been annexed at paragraph 12 of Mr. Shimaka’s replying affidavit as SNL-2. Consequently, there would be no audience for the 1st Defendant before this court for purposes of the orders for review.
36. But assuming that this court is wrong on the above, I will discuss the courts discretion to review its own judgement. From the provisions of section 80 cited above, the powers to review is discretionary. However further guidance on the exercise of this discretion is provided under Order 45 herein which requires that there be discovery of a new and important matter or evidence which after the exercise of due diligence, was not within the knowledge of the applicant at the time the decree was passed or the order was made; or there was a mistake or error apparent on the face of the record; or Any other sufficient reasons; and the application must be made without unreasonable delay.
37. I do not wish to belabour this point. I say so because the applicant 1st Defendant desires that the Plaintiffs suit be dismissed and the Defendants counterclaim be allowed under an application for review. Clearly these are substantive orders that can only be issued on appeal at the Court of Appeal.



To allow such orders under this forum would be tantamount to the court sitting on appeal of its own judgement. See the case of Republic V Cabinet Secretary for Interior and Co-Ordination of National Government Exparte Abdullahi Said Salad [2019] eKLR where the court emphasized that review proceedings are not an appeal.

38. It is submitted on behalf of the applicant that section 45 of the *Civil Procedure Act* (sic) provides for review of judgement on the basis of error apparent on the face of the record or sufficient cause. It is posited that at the time of filing the suit the property belonged to the objector as evidenced by records presented by the objector. Mr. Shimaka has not alluded to such error in his supporting affidavit. That notwithstanding it is trite that an error on the face of the record or omission must be self-evident and should not require an elaborate argument to be established see *Nyamongo & Nyamongo V Kogo* [2001] EA 170 and *Veleo [K] Limited V Barclays Bank of Kenya Limited* [2008] eKLR
39. Based on the pleadings the facts and materials that were presented the court has not seen any error that is self evident for correction.
40. I think I have said enough to show why the 1st Defendants' application cannot be allowed.

THE OBJECTOR'S APPLICATION

41. The Objectors application is the Notice of Motion application dated 1/10/2024 accompanying the Notice of Objection of even date, the details of which have already been summarised earlier in this ruling. A number of objections have also been raised against the application by the Plaintiffs. I will consider the application and the objections raised to it concurrently.
42. The objections raised by the Plaintiffs are largely on three fronts namely 1) the court is functus officio, 2) that there is nothing to stay the decree having been enforced and 3) that the objector cannot purport to be joined and set aside a judgement in a suit which it was never a party. The joinder is termed as atheistic and cosmetic. That parties cannot be added to introduce new issues and or a new cause or take a role of a primary litigant. That the Objector could only apply to be joined and seek such orders during the pendency of the suit and not after judgment has been delivered. To buttress its position the Plaintiffs places reliance on Justice Nambuye's holding in *Kingori Vs. Chege & 3 Others* (2002) 2KLR 243 and *Nairobi Environment and Land Court ELC No. 663 of 2005, Mohamed Siaka Ali Vs. Sunpalm Limited & 4 Others*, Supreme court of Kenya decision in *Communication Commission of Kenya & 3 Others Vs. Royal Media Services Limited & 7 Others* (2014)eKLR; *Mombasa Environment and Land Court ELC no.160 of 2024 Javan Lewa Muye Vs Shiva Enterprises Ltd & 4 Others* and *Mombasa Environment and Land Court ELC no 323 of 2017 Edgar Gear Investments Limited Vs. Guido Pallada & Another*.
43. I think the starting point should be to understand the nature of the proceedings brought by the Objector before court. The first port of call should be the provisions under which the proceedings are brought. The Objector has captured the nature of its proceedings herein as hinged on Order 22 Rules 51 of the Civil Procedure Rules. These provisions state as follows; -
Objection to attachment [Order 22, rule 51]
 1. Any person claiming to be entitled to or to have a legal or equitable interest in the whole of or part of any property attached in execution of a decree may at any time prior to payment out of the proceeds of sale of such property give notice in writing to the court and to all the parties and to the decree-holder of his objection to the attachment of such property.



- (2) Such notice shall be accompanied by an application supported by affidavit and shall set out in brief the nature of the claim which such objector or person makes to the whole or portion of the property attached.
 - (3) Such notice of objection and application shall be served within seven days from the date of filing on all the parties.
44. In light of the above provisions, it is clear that any person may file objection proceedings as long as they can demonstrate their legal or equitable interest in the subject matter of the decree in execution. Additionally, an objector must prove that he is not the person against whom the decree was issued and therefore not liable in respect thereof. It is therefore not a requirement that an objector must have been party to the suit from which the decree emanated from. There is no contestation that Maisha Mabati Rolling Mills Limited was not a party to the main suit. This is all buttressed in the case of Odhiambo Owiti & Company Advocates Vs. Dominion Farms Limited; Sukari Industries Limited Objector (2021)eKLR cited by the Objector.
45. The Objector alleges it has had proprietary interest over the suit property since the year 2020 when they purchased the same from the 1st Defendant and as at the time the orders attaching the suit property were issued. The Objector has annexed in proof copies of a title deed in its name issued on 10/9/2020, certificate of official search dated 29/9/2020 and corresponding green cards (see entry numbers 3&4 and 7&8). Prima facie it seems the objector was the immediate previous proprietor of the suit property the subject of the objection proceedings. This court is being careful not to pronounce itself on the legal ownership of the suit property by the Objector for the reason that this is not the forum to determine who is the legal owner of the suit property. All an objector is required is to establish its legal or equitable interest in the suit property
46. But the above is not enough as there is still another hurdle to surpass under the provisions of Order 22 rule 51(1). The law requires that the notice issued by an Objector should be prior to payment out of the proceeds of sale.
47. It is contended by the Plaintiffs' that the orders sought in the objector's application have been overtaken by events as judgement has already been fully executed and there is nothing to stay/set aside. This argument appears to be informed by the above requirement in rule 51(1). While we don't have proceeds in this case, the reference is to finalisation of the execution process as I understand it.
48. In the present case the objector has deponed at paragraph 4 of its supporting affidavit that an entry has already been entered on 25/7/2024 in the proprietorship section of the suit property pursuant to the decree of the court dated 1/07/2024. They have annexed a copy of a green card search taken out on 24/09/2024. I have seen the said green card, entry number 9 made on 25/7/2024 confirms the cancellation pursuant to the court decree herein. This is further corroborated in the replying affidavit of the Plaintiffs sworn on 25/09/2024 where they annex copies of application for registration and a copy of the same green card. This would therefore mean the requirement of rule 51(1) has not been fully met by the Objector as they admit the judgement has been executed.
49. The Objector has put in a spirited fight through the application dated 1st October 2024 as supported by the two affidavits sworn by its company secretary. It is their case that they were not aware of the proceedings and that the 1st Defendant being aware it had sold the property to the Objector failed to disclose this material fact to the court and failed to join the Objector as a party.



50. I think for purposes of Rule 51(1) herein the courts hands are tied and in this regard I will still be guided by the Court of Appeal decision in Stephen Kipkebut T/A Riverside Lodge and Rooms & another v Natali Ogola & another (supra). The judgement and its decree have already been enforced.
51. The court has also been invited by the Objector to vacate and altogether set aside its judgement delivered on 24th June 2024 and any further and/or consequential orders emanating therefrom, including but not limited to the resultant decree dated 1st July 2024. The court is further invited in the event there have been any steps taken by the Plaintiffs/Respondents or the 2nd defendant/respondent to effect the judgement of the court dated 24th June 2024 and the resultant decree of 1st July 2024, the Honourable court be pleased to issue an order reversing any such actions.
52. The Plaintiffs response and objection is that like the stay of execution above equally there is nothing to set aside. But more importantly the Plaintiffs take the view that during the pendency of the suit none of the litigants sought to have the objector/applicant be joined to the suit. That were they to be joined it would serve no purpose as the suit having been heard, the judgement terminates and concludes the issue in dispute. After judgement what remains is auxiliary proceedings such as execution and enforcement proceedings. That parties cannot be added to introduce new issues.
53. I have keenly looked at the prayers sought in the Notice of Motion application dated 1/10/2024. There is no prayer for joinder in the strict sense of the word. But what the Objector is saying is that the Plaintiffs failed to join the objector in the proceedings to hide the critical information of the Objectors alleged ownership. That they have proved their registration as owners of the suit property and the court must make an order raising the attachment as to the whole or a portion of the property subject to the attachment. That consequently the court must restore the property rights back to the objector.
54. The court is not persuaded by the above proposition for the following reasons. The court cannot determine the ownership of the suit property under these proceedings as between the Objector and the Plaintiffs.
55. For me the fundamental issue that arises from the application filed by the Objector Maisha Mabati Rolling Mills is that they were not party to the proceedings in the suit that led to the judgement and cancellation of their title. Basically, in my understanding this is an application to set aside but brought under objection proceedings. Setting aside a judgement cannot be made under objection proceedings. The proper procedure in my view would have been for the objector to file a proper application for setting aside the judgement of the court for purposes of setting aside the judgement but also firstly seek to be joined to the proceedings. And I think this is the basis for the arguments about joinder having been raised by the Plaintiff.
56. The Plaintiffs have referred the court to the decision of Ali v Sunpalm Limited & 3 others; Siaka & 2 others (Interested Parties); Mugambi (Intervener) (Environment & Land Case 663 of 2005) [2024] KEELC 5722 (KLR) (29 July 2024) (Ruling) where my learned brother Justice Ogutu Mboya pointed out; -
- ‘Suffice it to point out, that the Applicants herein, who are knowledgeable of the existence of the judgement, are not seeking to vary, set aside and/or quash the judgement. Simply put, the Applicants are only keen to be joined as Interested Parties and upon such joinder, a decree issue directing the transfer and registration of the suit property in their name.’
57. I’m persuaded by the above dictum to the extent that it resonates with the procedure that ought to have been followed by the objectors as understood by this court. I will restrain myself from going into the merits of a joinder application and setting aside of the judgement. All I would point out is that the



law allows the discretion to set aside a judgement except that it would be unprocedural to set aside a judgement if at all under objection proceedings.

58. I think have said enough on why this court cannot allow the prayers sought in the applicants Notice of Motion dated 1/10/2024.
59. What orders should therefore issue in the circumstances of this case.
60. The 1st Defendants application has to be dismissed for the reasons already enumerated and I have already explained why the orders sought by the Objector cannot issue.
61. The court notes that there is a need to preserve the parcel register by maintenance of status quo to avoid further mutation. The status quo indeed is that the register has already been amended by the land registrar pursuant to the judgement delivered on 24th June 2024 and dated 1st July 2024.
62. Orders of status quo need not necessarily be prayed by the parties but can be given by the court based on the circumstances of a suit and under its general jurisdiction. This was outlined in the case of Thugi River Estate Limited & another Vs National Bank of Kenya Limited & 3 others [2015] eKLR

“Firstly, an order of status quo will issue through a judicial process. Where the court in exercise of its general or statutory jurisdiction grants orders for maintenance in situ of a particular state or set of facts... the second or alternative order for status quo is the one issued by the court as a case management strategy. It is issued to provide assistance to the case. It also maintains a particular state of affairs or set of facts. Unlike a conservatory order or injunctive order, it is not descriptive. It is originated either by the court or by the consent of the parties. Often the court would not have been moved by either party. The court then expects an existing state of affairs or facts be preserved until a particular occurrence or until the courts’ further orders. It is intended to also freeze the state of affairs.’

63. It is this courts view that in the interest of justice the status quo is maintained should the Objector choose to move the court appropriately.
64. The following orders therefore issue to dispose of the applications dated and August 16, 2024 and October 1, 2024.
 1. The 1st Defendant’s application dated 16th August 2024 is hereby dismissed with costs to the Plaintiffs
 2. The application dated October 1, 2024 is hereby struck out with costs to the Plaintiffs.
 3. The Objector Maisha Mabati Rolling Mills Ltd may move the court appropriately as they may deem necessary within 45 days of the date of this ruling.
 4. Status quo orders do hereby issue to maintain the parcel register as at 24/09/2024 when the decree was registered. The Land Registrar Kwale shall make no further entries in the register except this order of the court and or any further orders as may subsequently be issued by the court.
 5. The status quo orders in (4) above shall subsist for the period of 45 days and failure to comply with the order 3 above the orders of status quo shall lapse automatically.
 6. Leave to appeal this ruling is granted if required.

Orders accordingly



It is so ordered.

RULING DATED SIGNED AND DELIVERED THIS 4TH DAY OF APRIL 2025.

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A.E DENA

JUDGE

Ruling delivered virtually through Microsoft teams Video Conferencing Platform in the presence of: -

Mr. Ondabu for the Plaintiffs/Respondents

Mr. Havi for the 1st Defendant/Applicant

Mr. Wambua for Objector/Applicant

Mr. D.Disii – Court Assistant

