



REPUBLIC OF KENYA



KENYA LAW
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**Chepkwony v Rono & 3 others (Environment & Land Case
46 of 2017) [2025] KEELC 3045 (KLR) (3 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3045 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERICHO
ENVIRONMENT & LAND CASE 46 OF 2017**

LA OMOLLO, J

APRIL 3, 2025

BETWEEN

JOSEPH KIPYEGON CHEPKWONY PLAINTIFF

AND

PHILEMON KIPKORIR RONO 1ST DEFENDANT

RICHARD KIPYEGON RONO 2ND DEFENDANT

DAVID KIPKIRUI RONO 3RD DEFENDANT

SAMUEL KIBII LANGAT 4TH DEFENDANT

RULING

Introduction.

1. This ruling is in respect of the Defendants/Applicants Notice of Motion application dated 17th July, 2023 and the Plaintiff/Applicant's Notice of Motion application dated 9th October, 2024.
2. The Defendants/Applicants application dated 17th July, 2023 is expressed to be brought under Order 9 Rule 9, Order 22 Rule 22, Order 45 Rule (1) & (2) of the Civil Procedure Rules, Sections 1A, 1B, 3 & 3A of the Civil Procedure Act and Articles 22, 25, 50 & 159 * of the Constitution of Kenya 2010.
3. The Defendants/Applicants seek the following orders;
 - a. Spent
 - b. Spent
 - c. Spent
 - d. That this Honourable Court be pleased to vacate, set aside and/or vary its judgement dated 10th November, 2022 and issued on the 17th January, 2023 ex debito justitiae.



- e. That this Honourable Court be pleased to allow the Defendants/Applicants a right to be heard.
4. The application is based on the grounds on its face and the supporting affidavit of David Kipkirui Rono the 3rd Defendant/Applicant.
5. The Plaintiff/Applicant's Notice of Motion application dated 9th October, 2024 is expressed to be brought under Section 3A of the Civil Procedure Act, Section 13 of the Environment and Land Court Act, Order 22 Rule 29 & Order 51 Rule 1 of the Civil Procedure Rules.
6. The application seeks the following orders;
 - a. Spent
 - b. That this Honourable Court do issue an eviction order against the Defendants, their servants, agents or any other person claiming through them to remove them from the suit land parcel comprised in title No. Kericho/Tebesonik/310 measuring 4.45 Ha.
 - c. That an order do issue that Jewo Auctioneers be duly appointed Court bailiffs to undertake the eviction exercise.
 - d. That the OCS, Roret Police Station do provide security to the Plaintiff for purposes of enforcing peace during the eviction exercise to be carried out on LR No. Kericho/Tebesonik/310.
 - e. That directions on the costs of this application and the costs of the eviction exercise do issue.
7. The application is based on the grounds on its face and the supporting affidavit of Joseph Kipyegon Chepkwony sworn on 9th October, 2024.

Factual Background.

8. The Plaintiff commenced the present proceedings vide the Plaint dated 2nd May, 2017 which plaint was amended on 9th April, 2018. The Plaintiff sought the following prayers;
 - a. An order of permanent injunction restraining the Defendants by themselves, their agents, servants and any other person claiming through them from remaining on, cultivating, planting, putting into use, and/or in any manner whatsoever interfering with exclusive use, ownership, peaceful and quiet possession and occupation of the Plaintiff's land LR No. Kericho/Tebesonik/310, measuring 4.45 Hectares.
 - b. An order of eviction to remove the Defendants by themselves, their agents, servants and any other person claiming through them from the suit land parcel LR No. Kericho/Tebesonik/310, measuring 4.45 Hectares.
 - c. General and exemplary damages for trespass to be assessed by this Honourable Court.
 - d. Cost of this suit.
 - e. Any other further relief that deems fit and just for grant by this Honourable Court.
9. The Defendants filed their statement of defence dated 19th May, 2017. Subsequently, it was amended on 14th March, 2018. They also sought the following prayers in their Counterclaim;
 - a. An order (sic) injunction to permanently restrain the Plaintiff (now Defendant) either (sic) himself, his servants, agents, employees or anybody else claiming through him from remaining



on, cultivating, planting, putting into use, and/or in any manner whatsoever interfering with exclusive use, ownership, peaceful and quiet possession of the Defendants' (now Plaintiffs') land LR No. Kericho/Tebesonik/240.

- b. An order restraining the Plaintiff (now Defendant) from claiming ownership remaining on, cultivating, planting, putting into use, and/or in any manner whatsoever interfering with exclusive use, ownership, peaceful and quiet possession of the Defendants' (now Plaintiffs') land LR No. Kericho/Tebesonik/240.
 - c. Cost and interest.
 - d. Such other reliefs this Court may deem fit to (sic) and just to grant.
10. The Court in its judgement delivered on 10th November, 2022 issued the following orders;
- a. An order of permanent injunction is hereby issued restraining the Defendants by themselves, their agents, servants and any other person claiming through them from remaining on, cultivating, planting, putting into use, and/or in any manner whatsoever interfering with exclusive use, ownership, peaceful and quiet possession and occupying of the Plaintiff's land LR No. Kericho/Tebesonik/310, measuring 4.45 Hectares.
 - b. Defendants by themselves, their agents, servants and any other person claiming through them do forthwith vacate land parcel LR No. Kericho/Tebesonik/310, measuring 4.45 hectares within 30 days upon delivery of this judgement and if they fail to so vacate, an order of eviction be issued against them.
 - c. The Defendants shall pay to the Plaintiff KShs. 100,000/= as general damages for trespass with interest from the date of this judgement, at Court rates, till payment in full.
 - d. On the other hand, I hold the Plaintiffs' claim in the counterclaim lacks merit and the same is dismissed with orders that the transfer of title LR No. Kericho/Tebesonik/240 from the deceased Simon Kipkorir Chepkwony to the Plaintiffs in the Counterclaim as well as the issuance of a title deed to the Plaintiffs in the Counterclaim on 20th February, 2014 is hereby canceled and title restored back to Simon Kipkorir Chepkwony.
 - e. The County Land Registrar Kericho County or the Land Registrar in charge of the area which the suit parcel is situate shall be served with these orders for compliance.
 - f. Cost is herein awarded to the Plaintiff in the main suit.
11. The application dated 17th July, 2023 first came up for directions on 24th July, 2023 when the Court directed that it be served upon the Plaintiff/Respondent.
12. The application came up for hearing on 25th July, 2023 when the Court granted the Plaintiff/Respondent leave to file a response. The Defendants/Applicants were also granted corresponding leave to file a supplementary affidavit.
13. The matter came up for mention for further directions on 16th October, 2023 and the Court granted prayer 2 of the application i.e. leave was granted to the firm of M/s Oyugi Ombui to come on record for the Defendants/Applicants.
14. On 16th November, 2023 the Court issued directions that the application be heard by way of written submissions.



15. While the application dated 17th July, 2023 was pending, the Plaintiff/Applicant filed the application dated 9th October, 2024.
16. The application dated 9th October, 2024 first came up for directions on 21st October, 2024 when the Court directed that it be served upon the Defendants/Respondents.
17. On 7th November, 2024 the Court issued directions that the applications dated 17th July, 2023 and 9th October, 2024 shall be heard together.
18. On 12th November, 2024 both applications were reserved for ruling.
The Defendants/Applicants contention in their application dated 17th July, 2023.
19. The affidavit in support of the application dated 17th July, 2023 is sworn by one David Kipkirui Rono the 3rd Defendant/Applicant.
20. He contends that on 3rd December, 2018 the Defendants/Applicants appointed the firm of M/S W.K Ng'enh Lessan & Company Advocates to act on their behalf.
21. He also contends that on 10th April, 2018 the said firm of advocates, on their behalf, filed a written statement (sic) and counterclaim together with written statements and adds that both were dated 20th December, 2018.
22. He further contends that their advocates were served with a hearing notice on 22nd July, 2021 which stated that the matter was coming up for hearing on 29th September, 2021 at 8:30 am.
23. It is his contention that they attended Court but the Court was not sitting. He adds that all the parties were present in Court on the said date.
24. It is also his contention they were later informed that the matter had been closed without the Defendants/Applicants being given an opportunity to present their case.
25. It is further his contention that on the same day, their advocates on record wrote a letter to Court highlighting their predicament and requesting for a date for defence hearing.
26. He contends that on 25th April, 2023 the Plaintiff/Respondent served them with a letter captioned "penal notice" informing them that this Court had proceeded ex parte and delivered a judgement on 10th November, 2022. He adds that on 17th January, 2023 the court issued a decree which showed that an order of permanent injunction had been issued against them.
27. He also contends that the 4th Defendant died on 25th October, 2021 and further contends that he is advised by his advocates on record that the Civil Procedure Rules provides for the procedure to be followed in the event a party to a suit dies. He adds that an application is filed and a legal representative of the deceased Defendant is made a party to the suit.
28. It is his contention that no such application has been made in this matter to date.
29. It is also his contention that the Court proceedings were unlawful since the suit proceeded and judgement obtained against them and the deceased 4th Defendant without an effort being made to have the legal representative of the deceased Defendant being made a party to the suit.
30. It is further his contention that unless the orders sought are granted, they stand to be condemned unheard contrary to the rules of natural justice since their nonattendance at the hearing was not deliberate.



31. He contends that the orders sought are extremely necessary as they will prevent their eviction from the suit property where they have lived on for more than fifteen years. He adds that their deceased parents and siblings are buried on the suit parcel with the knowledge of the Plaintiff/Respondent.
32. He ends his deposition by stating that their statement of defence raises triable issues and urges the Court to accord them an opportunity to be heard.

The Plaintiff/Respondent's Response.

33. The Plaintiff/Respondent filed a Replying Affidavit sworn on 6th December, 2023.
34. He deposes that he instituted the present suit vide the Plaint dated 2nd May, 2017 which was amended on 9th April, 2018. He adds that he instructed the firm of Bett & Co. Advocates to represent him.
35. He also deposes that the main prayers sought in the Plaint were an order of permanent injunction to restrain the Defendants/Applicants from interfering with his occupation of land parcel No. Kericho/ Tebesonik/310 and an order of eviction.
36. He further deposes that the Defendants/Applicants entered appearance and filed a Statement of Defence and Counterclaim dated 14th March, 2018. He adds the said pleadings were filed by Mr. W.K Ng'eno Lessan trading as W.K Ng'eno Lessan & Co. Advocates.
37. It is his deposition that the matter proceeded for hearing on 24th November, 2021 when the Defendants/Applicants gave their evidence and their case closed.
38. It is also his deposition that the Defendants/Applicants counsel on record informed the Court that the 4th Defendant was deceased and he wanted to proceed with the 1st to 3rd Defendants/Applicants.
39. It is further his deposition that he is advised by his advocates on record that the Defendants/Applicants are brothers and reiterates that they filed a joint statement of Defence, called witnesses and duly closed their case. He adds that their pleadings and evidence were considered by the Court in its judgement delivered on 10th November, 2022.
40. He deposes that the 4th Defendant's estate did not suffer any prejudice when the matter was finally disposed of.
41. He also deposes that he has been advised by his advocates on record that none of the Defendants/Applicants would have led a better case than the other.
42. He further deposes that re-opening this matter on account of the 4th Defendant's death would only occasion delay and undue prejudice to him.
43. It is his deposition that in the circumstances, the Defendants/Applicants contention that the proceedings that led to the delivery of the judgement was illegal cannot lie.
44. It is also his deposition that it was not true that the Defendants/Applicants were condemned unheard and that the said contention is only aimed at misleading the Court. He adds that the proceedings of 26th October, 2021 clearly show that the Defendants/Applicants were duly heard.
45. It is further his deposition that the Defendants/Applicants have not submitted any cogent ground for this Court to exercise its discretion to vacate and/or set aside the judgement delivered on 10th November, 2022.



46. He ends his deposition by stating that the instant application is not only frivolous but also designed to deny him the fruits of his judgement and therefore ought to be dismissed with costs.
The Plaintiff/Applicant's Contention in the application dated 9th October, 2024.
47. The Plaintiff/Applicant contends that the Court delivered judgement in his favour on 10th November, 2022. He adds that the Court issued an order of eviction for the Defendants/Respondents to vacate the suit parcel.
48. The Plaintiff/Applicant also contends that an order of permanent injunction was issued restraining the Defendants/Respondents from interfering with his possession of the suit parcel.
49. The Plaintiff/Applicant further contends that the Court ordered the Defendants/Respondents to vacate the suit parcel within thirty days but despite the said order, the Defendants/Respondents have not vacated the land. He adds that the Defendants/Respondents are aware of the said judgement as they have lodged a Notice of Appeal dated 22nd November, 2022.
50. It is his contention that the Defendants/Respondents have in total disregard to the judgement of this Court persisted in their acts of trespass despite being served with the decree.
51. It is also his contention that he is advised by his advocates on record that the Defendants/Respondents continued occupation of the suit parcel constitutes disobedience of Court orders. He adds that they have denied him the right to use his parcel of land.
52. It is further his contention that the Defendants/Respondents have not instituted an appeal against the said judgement.
53. He ends his deposition by stating that he has been advised by his Advocates on record that the judgement has never been stayed, varied and/or set aside.
54. The Defendants/Respondents did not file any response to this application.

Issues for determination.

55. The Plaintiff/Respondent filed submissions on 7th December, 2023 in response to the Defendants/Applicants application dated 17th July, 2023. The Defendants/Applicants did not file any submissions.
56. The said submissions are also in respect of the Plaintiff/Respondent's application dated 29th June, 2023 that was withdrawn on 7th November, 2024.
57. The Plaintiff/Respondent's submissions are on whether the judgement in this matter should be set aside.
58. The Plaintiff/Respondent relies on the decision in James Kanyiita Nderitu & another vs Marios Philotas Ghikas & another [2016] eKLR and submits that the Defendants/Applicants were served with the pleadings in this matter.
59. He also submits that the Defendants/Applicants have not relied on any ground for review and since the Court is functus officio, it should dismiss their application.
60. Neither of the parties filed submissions to the application dated 9th October, 2024, which application seeks orders of eviction against the Defendants/Respondents.



Analysis and determination.

61. I have considered the applications dated 17th July, 2023 and 9th October, 2024, the response to the application dated 17th July, 2023 and the Plaintiff's submissions.
62. It is my view that the following issues arise for determination;
 - a. Whether the judgement delivered on 10th November, 2022 should be set aside.
 - i. The legal effect of the Notice of Appeal lodged on 22nd November, 2022.
 - ii. Whether the defendants' case was closed without giving them an opportunity to be heard
 - b. Whether an eviction order should issue against the Defendants/Respondents to be evicted from land parcel No. Kericho/Tebesonik/310.
 - c. Whether Jewo Auctioneers should be appointed to carry out the eviction.
 - d. Who should bear costs of the applications.

A. Whether the judgement delivered on 10th November, 2022 should be set aside.

63. The Defendants/Applicants are seeking that this Court sets aside its judgement delivered on 10th November, 2022 on the ground that they were not given an opportunity to be heard.
64. The Defendants/Applicants contend that the suit came up for hearing on 29th September, 2021 and they attended Court but the Court was not sitting.
65. The Defendants/Applicants also contend that they did not receive any other information until they heard that the matter was closed without them being given an opportunity to present their case.
66. The Defendants/Applicants further contend that on 25th April, 2023 they were informed that the Court had delivered judgement in this matter.
67. It is the Defendants/Applicants contention that the matter proceeded without their participation and that the 4th Defendant 4 died while the case was still pending.
68. The Defendants/Applicants urge the Court to set aside the judgment and they be given an opportunity to be heard as their defence raises triable issues.
69. In response, the Plaintiff/Respondent contends that the Defendants/Applicants participated in the proceedings.
70. He also contends that the Defendants/Applicants filed their statement of defence and Counterclaim dated 14th March, 2018 and they called witnesses who gave evidence on 24th November, 2021.
71. He further contends that the Court in its judgement delivered on 10th November, 2022 took into consideration their evidence and adds that they have not made a case for the setting aside of the judgement.
72. It is important to note that among the provisions, pursuant to which this application is brought, the Defendants/Applicants cite Order 45 Rule (1) and (2) of the Civil Procedure Rules. This order provides for review. However, the substance of the Defendants/Applicants application is that they are seeking orders of setting aside of the Judgment delivered by this Court on 10th November, 2022.



73. In the judicial decision of *TKR v JMM* [2021] KEHC 1054 (KLR) the Court held as follows;
- “ 36. The instant application has been brought under Articles 50(2) and 159(2) (a) and (d) of *the Constitution* of Kenya 2010; Sections 1A (1) (2) and 1B (1) (a) of the *Civil Procedure Act*; and Order 45 and order 51, Rule 1 of the Civil Procedure Rules, 2010.
37. The respondent submits that Order 45 of the Civil Procedure Rules provides for review yet the instant application seeks to set aside ex-parte proceedings and grant leave to the applicant to file his response to the respondent’s Originating Summons out of time. Does that render this application incompetent?...
44. It is has (sic) not been demonstrated that Order 45 was cited in bad faith. In fact the applicant has cited the correct provision of the law despite the apparent error. That error in my mind does not render the application incompetent. Guided by the above authorities it is only proper that the application be considered on its merits and I proceed to do so.”
74. My view is that although the application has been brought under Order 45 of the Civil Procedure Rules, the substance of the application is that the Defendants/applicants are seeking orders for setting aside judgement. I shall proceed to determine the application as an application seeking orders to set aside judgment.
75. It is also significant to point out that the Defendants/Applicants lodged a Notice of Appeal on 22nd November, 2022.
76. The Court of Appeal in *Multipurpose Co-operative Society Ltd v Serser & 3 others* (Civil Appeal 160 of 2018) [2023] KECA 441 (KLR) (14 April 2023) (Judgment) held as follows;
- “ 36. Accordingly, when the Appellant filed a notice of appeal, it is deemed to have instituted an appeal: and as soon as that happened, it was not open to the appellant to seek review of the judgment from which the appeal or the intended appeal accrued from.”
77. In the judicial decision of *Mkabara v Frisch* [2002] 2 EA 475 it was held that the process of appeal commences upon the filing of a Notice of Appeal and further that the filing of a Notice of appeal has the effect of removing proceedings from the trial court to the Court of Appeal.
78. In the present matter, it is evident that the Defendants/Applicants lodged a Notice of Appeal on 22nd November, 2022 and then filed the application under consideration on 18th July, 2023. Having already filed an appeal, the Defendants/Applicants are precluded from seeking the setting aside of the judgement of this Court as the proceedings have moved from this Court to the Court of Appeal. On this point alone, the Defendant/Applicants’ application fails.
79. The second issue in determining whether judgment should be set aside is the deposition by the Defendants/Applicants that the defence case was closed without giving them an opportunity to be heard. A perusal of the Court record shows that on 29th September, 2021 the matter came up for hearing and the Defendants/Applicants were absent. The Court, on the said date, closed the Defendants/Applicants case under Order 12 Rule 2(a) of the Civil Procedure Rules.
80. The matter was to be mentioned on 26th October, 2021 to confirm filing of submissions and to take a judgement date.



81. On 26th October, 2021, counsel for the Plaintiff/Respondent informed the Court that the Defendants/Applicants had filed an application dated 21st October, 2021 seeking to set aside the orders issued on 29th September, 2021. He also informed the court that he would not be opposing the said application.
82. The Court allowed the said application and the orders issued on 29th September, 2021 were set aside. The matter was then scheduled for defence hearing on 24th November, 2021.
83. On 24th November, 2021 Philemon Kipkorir Rono the 1st Defendant/Applicant gave evidence as DW1, Richard Kipyegon Arap Rono the 2nd Defendant/Applicant gave evidence as DW2 and David Rono the 3rd Defendant/Applicant also gave his evidence on the said date as DW3. The defence then closed their case.
84. The court record further shows that before the defence case proceeded, Mr. Ng'eno, counsel then on record for the Defendants/Applicants informed the Court that the 4th Defendant was deceased and stated that he would be proceeding with the 1st to 3rd Defendants/Applicants case.
85. The Court of Appeal in *Shanzu Investments Ltd v Commissioner of Lands* [1993] eKLR held as follows;

“The Court has a very wide discretion under the order and rule and there are no limits and restrictions on the discretion of the judge except that if the judgment is varied must be done on terms that are just: *Patel v EA Cargo Handling Services Ltd*, (1974) EA 75, 76B, C (CA-K). The jurisdiction to vary judgment being a judicial discretion should be exercised judicially; and, as is often said, whether judicial discretion should be exercised or withheld in a party's favour, depends, on a large measure, on the facts of each particular case.”
86. It is evident, from the Court record, that Defendants/Applicants gave their evidence on 24th November, 2021 and their case closed. Consequently, their contention that they were not given opportunity to give evidence is not accurate.
87. Taking into consideration the fact that the Defendants/Applicants tendered evidence and closed their case, they have not laid a basis upon which this Court should set aside the judgement delivered on 10th November, 2022.
88. Consequently, the fact of filing a notice of appeal and the fact that judgment was delivered by this court after hearing both parties necessitates the dismissal of the Defendants/Applicants Notice of Motion application dated 17th July, 2023.

B. Whether an eviction order should issue against the Defendants/Respondents from land parcel No. Kericho/Tebesonik/310.

89. The Plaintiff/Applicant is seeking that this Court issues an eviction order against the Defendants/Respondents from the suit parcel.
90. The Defendants/Respondents did not file any response to the Plaintiff/Applicant's application.
91. As stated in preceding paragraphs, this Court delivered judgement on 10th November, 2022. The orders of the Court issued in the said judgement have been set out but I shall, nonetheless, replicate them as hereunder;
 - a. An order of permanent injunction is hereby issued restraining the Defendants by themselves, their agents, servants and any other person claiming through them from remaining on,



cultivating, planting, putting into use, and/or in any manner whatsoever interfering with exclusive use, ownership, peaceful and quiet possession and occupying of the Plaintiff's land LR No. Kericho/Tebesonik/310, measuring 4.45 Hectares.

- b. Defendants by themselves, their agents, servants and any other person claiming through them do forthwith vacate land parcel LR No. Kericho/Tebesonik/310, measuring 4.45 hectares within 30 days upon delivery of this judgement and if they fail to so vacate, an order of eviction be issued against them.
 - c. The Defendants shall pay to the Plaintiff Kshs. 100,000/= as general damages for trespass with interest from the date of this judgement, at Court rates, till payment in full.
 - d. On the other hand, I hold the Plaintiffs' claim in the counterclaim lacks merit and the same is dismissed with orders that the transfer of title LR No. Kericho/Tebesonik/240 from the deceased Simon Kipkorir Chepkwony to the Plaintiffs in the Counterclaim as well as the issuance of a title deed to the Plaintiffs in the Counterclaim on 20th February, 2014 is hereby canceled and title restored back to Simon Kipkorir Chepkwony.
 - e. The County Land Registrar Kericho County or the Land Registrar in charge of the area which the suit parcel is situate shall be served with these orders for compliance.
 - f. Cost is herein awarded to the Plaintiff in the main suit.
92. The Court under order "b" gave the Defendants/Respondents thirty days from the date of the delivery of judgement to vacate land parcel No. Kericho/Tebesonik/310 failure to which an eviction order be issued against them.
93. Judgement in the matter was delivered on 10th November, 2022. As at the time of writing this ruling it has been over two years since judgment was delivered. Nothing is easier than to grant an order of eviction against the Defendants/Respondents from the suit parcel.

C. Whether Jewo Auctioneers should be appointed to carry out the eviction.

94. The Plaintiff/Applicant is seeking that Jewo Auctioneers be appointed to carry out the eviction.
95. In the judicial decision of Joseph Nyakundi Orina v Joseph Ambuka [2019] KEELC 4401 (KLR) the Court held as follows;
- “2. In this application, the Applicant has averred that the Respondent has already been served with the decree but has failed to vacate the suit premises. I have seen the affidavit of service and I am satisfied that the Respondent was duly served...
 4. I therefore allow this application and issue orders of eviction against the respondent. The said eviction to be conducted either by the Court bailiff or an auctioneer/Court broker, to be appointed by the Applicant. I further direct the OCS, Bondeni Police Station, to provide security to the Court bailiff/auctioneer. The Respondent will shoulder the costs of this application.”
96. The Plaintiff/Applicant is at liberty to appoint any auctioneer of his choice including but not limited to Jewo Auctioneers to carry out the eviction.



D. Who should bear costs of the applications.

97. It is now settled that costs shall follow the event. This is in accordance with the provisions of Section 27 of the *Civil Procedure Act* (Cap. 21). A successful party should ordinarily be awarded costs of an action unless the Court, for good reason, directs otherwise.
98. The Plaintiff has succeeded in both applications and is thus entitled to costs.

Disposition.

99. Taking the foregoing into consideration, I find and order as follows:
- a. The Defendants' Notice of Motion application dated 17th July, 2023 lacks merit and it is hereby dismissed with costs.
 - b. An eviction order is hereby issued against the Defendants, their servants, agents or any other person claiming through them from the suit land parcel comprised in title No. Kericho/ Tebesonik/310 measuring 4.45 Ha.
 - c. The Plaintiff is at liberty to appoint any auctioneer of his choice, including but not limited to Jewo Auctioneers to undertake the eviction exercise.
 - d. The OCS, Roret Police Station shall provide security to the Plaintiff for purposes of enforcing peace during the eviction exercise to be carried out on LR No. Kericho/ Tebesonik/310.
 - e. The Plaintiff shall have costs of the applications dated 17th July, 2023 and 9th October, 2024.
100. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO THIS 3RD DAY OF APRIL, 2025.

L. A. OMOLLO

JUDGE.

In the presence of: -

Mr. Koech for the Plaintiff.

The firm of Oyugi Ombui for defendants.

Court Assistant; Mr. Joseph Makori.

