



**Mariera & another v Ongwacho & 2 others; Joseph Ayora Omwena t/  
a Legends Executive Services, Kisii (Applicant) (Environment & Land  
Case 958 of 2016) [2025] KEELC 3157 (KLR) (2 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3157 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISII  
ENVIRONMENT & LAND CASE 958 OF 2016**

**M SILA, J**

**APRIL 2, 2025**

**BETWEEN**

**ISAAC ONWONGA MARIERA ..... 1<sup>ST</sup> PLAINTIFF**

**ISAAC ONWONGA MARIERA (SUING AS PERSONAL REPRESENTATIVE  
OF THE ESTATE OF THE LATE PASTOR SOSPETER MARIERA**

**OONGO) ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**ABEL MORANGA ONGWACHO ..... 1<sup>ST</sup> DEFENDANT**

**LAND REGISTRAR, KISII COUNTY ..... 2<sup>ND</sup> DEFENDANT**

**HONOURABLE ATTORNEY GENERAL ..... 3<sup>RD</sup> DEFENDANT**

**AND**

**JOSEPH AYORA OMWENA T/A LEGENDS EXECUTIVE SERVICES,  
KISII ..... APPLICANT**

**RULING**

(Applicant seeking to be joined to the suit as a third party on basis that he holds a lease from the 1<sup>st</sup> defendant; application being made when the case has already been decided, the judgment being that the 1<sup>st</sup> defendant holds no title to the suit land; no purpose in joining the applicant as the case is already concluded; in any event applicant cannot purport to hold any interest in the suit land as the 1<sup>st</sup> defendant had no title upon which to lease the suit land to the applicant; application dismissed)

1. This ruling is in respect of an application dated 12 March 2025 filed by Joseph Ayora Omwena T/A Legends Executive Services, Kisii. The applicant seeks the following three substantive orders which are prayers (2), (3) and (4) in the application being :



- i. That the applicant be joined as a third party in this suit.
  - ii. That the applicant be granted leave to file the necessary pleadings, responses and any other documents relevant to the case.
  - iii. That there be a stay of execution of the decree issued on 24 September 2024 and/or judgment issued in this matter pending hearing and determination of this application.
2. The application is based on the grounds that the applicant has a direct and substantial interest in the subject matter of the suit as he is a leaseholder of the property that is the subject of this suit; that the applicant entered into a lease agreement with the 1<sup>st</sup> defendant on 19 December 2016 which was renewed on 13 July 2021 and which lease runs until 1 February 2027; that the applicant leased an empty parcel of land with instructions to develop and set up structures thereon; that the applicant has since invested a substantial sum in developing the property into a bar and restaurant, boutique and butchery with an estimated value of Kshs. 30,000,000/=; that the applicant's rights and interest in the property are not represented in these proceedings and without being joined in this suit, his business and substantial investments may be adversely affected by any orders made particularly the eviction order against the 1<sup>st</sup> defendant.
3. The application is supported by the affidavit of the applicant. He has more or less repeated what I have set out above as the grounds in support of the application and annexed the two leases that he has mentioned. He avers that he has not been a party to this case and only became aware that the plaintiff has orders to evict the 1<sup>st</sup> defendant which if executed will adversely affect his business and investment. He contends to be a lawful leaseholder and expects his rights to be respected by all parties.
4. The plaintiffs filed a notice of preliminary objection to oppose the motion. Inter alia it is urged that this court lacks jurisdiction to entertain such application after judgment; that the court is functus officio; that the judgment has not been reviewed or vacated and the suit cannot be revised; that the applicants are named in the judgment as persons claiming under the 1<sup>st</sup> defendant.
5. The application was argued orally on 18 March 2025 and I have considered the submissions made.
6. Before I delve into the application, it is necessary to set out a bit of a background relating to this case.
7. This case was commenced through a plaint filed on 9 August 2012. The plaintiffs pleaded to be the rightful owners of the land parcel Kisii Municipality/Block III/240 ( the suit property). They sued the 1<sup>st</sup> defendant claiming that he has illegally caused himself to be registered as the proprietor thereof and therefore held an unlawful parallel title to the suit land. In the suit, they sought a declaration of ownership of the suit property, cancellation of the title of the 1<sup>st</sup> defendant, a permanent injunction to restrain him from dealing with the title of the suit land, a mandatory injunction to compel the 1<sup>st</sup> defendant to remove a fence that he had erected around the property, general damages for trespass, costs and interest. The 1<sup>st</sup> defendant filed defence and asserted that it was him who was the rightful owner of the suit property. I heard the case



and delivered judgment on 9 November 2023. I entered judgment for the plaintiffs. Within that judgment I observed that after the case was filed, the plaintiffs applied for an order of injunction to stop the 1<sup>st</sup> defendant from continuing to erect a fence which by then was the only development taking place at the time. On 22 November 2013, the court ordered that the status quo be maintained. Despite the order the 1<sup>st</sup> defendant continued to develop the property and built a hotel. In my judgment I issued an order of permanent injunction against the 1<sup>st</sup> defendant and his servants/agents and/or any person claiming under him from entering, being upon, utilizing or in any way disturb the possession of the plaintiffs on the suit land. I ordered that from the date of the judgment the plaintiffs were at liberty to take possession of the suit land. I gave liberty to the plaintiffs to either receive and take the property as it is, or if they wish, demand through correspondence, that the 1<sup>st</sup> defendant removes whatever he has put up on the land. On the claim for general damages, I awarded the plaintiffs general damages in the sum of Kshs. 5,000,000/= together with costs of the suit.

8. The applicant has now come to court claiming to be lessee of the suit property and his rights ought to be protected. I see that the leases he has displayed are between himself and the 1<sup>st</sup> defendant. The issue in this suit was who between the plaintiffs and the 1<sup>st</sup> defendant holds good title to the suit land. That issue has already been decided and it was the holding of this court that the proper owner of the suit property is the plaintiffs. It follows therefore, that not being the rightful owner of the suit property, the 1<sup>st</sup> defendant had no capacity to enter into any lease touching on the suit land. Any lease that has purportedly been entered into by the 1<sup>st</sup> defendant as lessor is null and void ab initio. The purported leases that the applicant contends give him rights over the suit property are worthless pieces of paper. Indeed, if the applicant is on the suit property under the permission and purported title of the 1<sup>st</sup> defendant, the applicant is a stranger and trespasser on the suit property, and it is in his best interest to find a way of changing that status, otherwise any orders of eviction will inevitably touch on him given that he is on the property under the title of a person who has already been declared as not having any interest in the suit property.
9. There is no purpose that is going to be served by joining the applicant to this suit. It is in fact a completed case. The issues for determination have been settled. There is nothing that the applicant is going to bring to the table that is worth considering. The applicant should not even imagine that he holds any lease to the suit property. I have already explained that the 1<sup>st</sup> defendant had no capacity to grant any lease and there is no point of saying more.
10. I see no merit in this application and it is hereby dismissed with costs to the plaintiffs.
11. Since the applicant is not a party, in my discretion, I straight away assess the costs payable at Kshs. 10,000/= which the plaintiffs are at liberty to execute for.
12. Orders accordingly.

**DATED AND DELIVERED THIS 2<sup>ND</sup> DAY OF APRIL 2025**

**JUSTICE MUNYAO SILA**

**JUDGE, ENVIRONMENT AND LAND COURT AT KISII**

Delivered in the presence of :



Mr. Kelvin Mogeni for the plaintiff

Mr. J.M Mokaya for the 1<sup>st</sup> defendant

Ms. Osebe h/b for Mr. Wabwire for the 2<sup>nd</sup> & 3<sup>rd</sup> defendants

Mr. Nyariki for the applicant

Court Assistant – Michael Oyuko

