



**Ngugi v Muchiri & 2 others; Mwangeli & 4 others (Proposed Interested Parties) (Environment & Land Case E017 of 2024) [2025] KEELC 4026 (KLR) (27 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 4026 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT & LAND CASE E017 OF 2024**

**JA MOGENI, J  
MAY 27, 2025**

**BETWEEN**

**GLADYS WAIRIMU NGUGI ..... PLAINTIFF**

**AND**

**CHARLES WAMBUGU MUCHIRI ..... 1<sup>ST</sup> DEFENDANT**

**EQUITY BANK LTD ..... 2<sup>ND</sup> DEFENDANT**

**LAND REGISTRAR, KIAMBU ..... 3<sup>RD</sup> DEFENDANT**

**AND**

**TECQUELAH MWONGELI ..... PROPOSED INTERESTED PARTY**

**JOHN KARANJA MUNENE ..... PROPOSED INTERESTED PARTY**

**GLADYS MUTHONI ..... PROPOSED INTERESTED PARTY**

**DAVID MWIKYA ..... PROPOSED INTERESTED PARTY**

**GEORGE NDUNGU NDEANI ..... PROPOSED INTERESTED PARTY**

**RULING**

1. This Ruling is in respect of three Applications one dated 25/02/2024, 20/11/2024 and 10/12/2024. There is the Application that gave rise to the subsequent Application dated 25/02/2024. Then there are the two Applications dated 20/11/2024 and one dated 10/12/2024 by the 1<sup>st</sup> Defendant and the Plaintiff/Respondent respectively.
2. For good order, it was agreed that all these Applications which involve the same subject matter and almost the same parties to be dealt with concurrently. Nonetheless, for clarity sake, the Honorable Court has undertaken to treat each of these Applications separately as possible while framing out issues as distinctly as possible.



3. The first Notice of Motion Application dated 25/02/2024 seeks the following:
  - a. Spent.
  - b. Spent
  - c. That the Honourable Court be pleased to enjoin 1<sup>st</sup> to 5<sup>th</sup> Proposed Interested Parties to this Suit for purposes of Preserving & Protecting the Tenancy of the proposed Interested Parties to the Suit pending hearing and determination of the Suit herein.
  - d. That pending hearing and determination of the Suit herein, a temporary Restraining Order be issued against the Petitioner and one Peris Gathoni Nganga, their agents, successors and/or assigns from entry, occupation, transferring and/or dealing with the suit property in any manner whatsoever without leave of this Honourable Court.
  - e. That pending hearing and determination of the Suit herein, the proposed Interested Parties be allowed to continue paying rent and abiding with the Terms of their respective Tenancy Agreement to the Suit Property.
  - f. That pending hearing and determination of the Suit herein, a temporary Restraining Order be issued against the Petitioner and one Peris Gathoni Nganga (acting on the behest of the Petitioner), their agents, successors and/or assigns from interfering with peaceful occupation of the 1<sup>st</sup> to 5<sup>th</sup> proposed Interested and any other Tenant on the Suit Premises, from disconnecting ,water, electricity, from locking out the proposed Interested Parties from the Suit Premises, from evicting the proposed Interested Parties from the Suit Premises or any other way interfering with the Tenancy of the proposed Interested or being a Nuisance to the proposed Interested Parties and other Tenants.
  - g. That pending hearing and determination of the Suit hearing, the Court be pleased to Order a Status Quo Ante as existed before filling the Suit by the Petitioner herein or in the alternative, Status Quo Ante as existed when the Court issued the orders dated 28<sup>th</sup> November, 2024.
  - h. That the OCPD Kikuyu and/or any other officer duly appointed by the said OCPD be ordered to ensure compliance with the Order(s) issued by this Court.
  - i. That the costs of this Application be in the cause.
4. The grounds of the Application are on the face of it and supported by an Affidavit sworn on 25/02/2024 by Tecquelah Mwangeli one of the tenants in the suit premises.
5. It is the proposed Interested Parties/Applicant's contention that they are confused as regards to their Tenancy because of the constant and conflicting instructions they keep receiving from both the Petitioner and the 1<sup>st</sup> Respondent/ Defendant. Thus that they are living in constant fear as the Petitioner and a Third Party acting on her behalf have been intimidating and harassing the intended Interested Parties despite their having valid Tenancy Agreements through which they have been paying rent to the 1<sup>st</sup> Respondent since 2022. As a result they sought to be enjoined since according to the averment of Tecquelah Mwangeli the Decree that will be issued by this Court will affect them.
6. The Plaintiff filed a Replying Affidavit sworn on 20/05/2025 to the Application dated 25/02/2024 and denied the averments made. She stated that Application is unmeritorious and amounts to an abuse of the Honorable Court's due process and she prayed for its dismissal with costs. She averred that the main suit involves fraudulent dealings with property and that tenants have no proprietary interest in land disputes.



7. She also stated that the Applicant is not in any way prejudiced by the suit before this Court and has suffered no loss and that the suit before the Court does not involve the Interested Parties and that they are being enjoined to the suit to delay justice.
8. The second Notice of Motion Application dated 20/11/2024 seeking the following:
  - a. Spent
  - b. Spent
  - c. That pending the hearing and final determination of the present suit, a temporary injunction do issue restraining the Defendants whether by themselves their agents, servants employees or any other person acting through them from leasing, charging, transferring, entering, trespassing, encroaching, causing construction, excavations, erecting building structures temporary or otherwise developing in whatever form, occupying, interfering, with the general environment on the suit land howsoever on the suit land known as No. Dagoretti/Kinoo/5892 situated at Kikuyu in Kiambu County.
  - d. That, preservatory orders do issue against the suit property known as No. Dagoretti/Kinoo/5892 situated at Kikuyu in Kiambu County pending hearing and determination of the suit
  - e. That, the Officer Commanding Station Kikuyu Police Station, do enforce and ensure compliance of the orders above.
  - f. That, the Costs of the Application be provided for.
9. The grounds of the Application are on the face of it and the Application is supported by an Affidavit sworn by Gladys Wairimu Ngugi on 20/11/2024, the Petitioner herein although she has described herself at Paragraph 1 of the Supporting Affidavit as being the Plaintiff. It is her contention that she is the legal and beneficial owner of LR No. Dagoretti/Kinoo/5892 which she bought on 7/03/2014 from one Peris Gathoni Nganga.
10. She deposes that she has enjoyed to have quiet possession until 24/10/2024 when the 1<sup>st</sup> Defendant attempted to evict her. She attributes this actions of the Defendants to a fraudulent scheme which wants to deprive her of her land. She denies having authored or signed onto an undated Sale Agreement between herself and the 1<sup>st</sup> Defendant. She annexed a copy of the sale agreement marked as GWN-3.
11. She denies having been involved in charging her land for Keshs 3,300,000 through her account number 06301XXXX3542 at Equity Bank Kawangware Branch nor for a further loan of Kesh 12,000,000 on 29/06/2021. Due to the activities she states that she reported to Kikuyu Police Station and she placed a restriction on the land which is dated 13/08/2024. She therefore seeks to restrain the Defendants from interfering with her possession and ownership through issuance of an injunction.
12. She told the Court that since January 2023 the 1<sup>st</sup> Defendant has been collecting rent from the rented premises of Kesh 150,000 per month.
13. The Application is opposed vide a Replying Affidavit sworn on 10/02/2025 by Charles Wambugu Muchiri the 2<sup>nd</sup> Defendant/Respondent. He claims to be the lawful owner of the suit property as per Title Deed issued on 23/09/2014 which he annexed as evidence – CWM-1. He alleged that he purchased it from Duncan Gichui Waiyaki who was registered owner of title numbers Dagoretti/Kinoo/5536 and Dagoretti/Kinoo 5374 as the Sale Agreement he annexed as CWM-2.



14. That his estranged wife had the suit property registered in her name but she transferred it to the Plaintiff who is her mother. Further that in order to protect his proprietary interests he approached his mother-in law to sell the suit property back to himself which she did which is evidence vide the annexed Sale Agreement CWM-3.
15. He avers that he approached the 2<sup>nd</sup> Defendant to finance the purchase and the Application for financing was successful. That since the suit property was collateral as per annexure CWM-4. He deposed that he has been in occupation and that he constructed 15 rental units that the Green Card attests to the many transactions that happened with regard to the suit property. That it shows that the suit property is registered under the 1<sup>st</sup> Defendant's name as per annexure CWM-5.
16. He further deposes that through the Ex parte order issued by this Court his estranged spouse has harassed tenants frequently using the said order and she has also gained entry onto the suit property and taken up one unit on the ground floor which she is currently occupying. He thus prays for dismissal of the Application.
17. No other party filed a response to the Application dated 20/11/2024 except the 1<sup>st</sup> Defendant/ Respondent.
18. The Third Notice of Motion Application is dated 10/12/2024 filed by 1<sup>st</sup> Defendant where he sought the following:
  - a. Spent
  - b. That Peris Gathoni Nganga be enjoined in these proceedings as an Interested Party.
  - c. That the intended interested party be cited and be held in contempt of Court for having expressly breached and acted in violation of the Court Orders dated 27<sup>th</sup> November, 2024.
  - d. That in the alternative to order c above, the interested party having forcefully gained entrance of the suit property after issuance of Court orders dated 27<sup>th</sup> November 2024, be ordered to vacate from the suit premises and the status quo of the suit property to remain as it was.
  - e. That the Officer Commanding Kikuyu Police Station to supervise and enforce order number d against the Interested Party.
  - f. That this Honourable Court be pleased to issue a temporary Order of injunction restraining the Plaintiff/Respondent and the Interested party by themselves, their agents, servants or Employees from entering, trespassing, encroaching, collecting rent or causing unnecessary nuisance to the Applicants lawful Tenants, interfering or dealing all that property known as L.R. No. Dagoretti/Kinoo /5892 situated at Kiambu County pending hearing and determination of this Application Inter- parties and hearing of the main case.
  - g. That the costs of this Application be provided for.
19. The grounds of the Application are on the face of it and are reiterated by the 17 paragraphed Affidavit of Charles Wambugu Muchiri sworn on 10/12/2024.
20. The Application is opposed by the Plaintiff/Respondent Gladys Wairimu Ngugi who swore an Affidavit dated 25/02/2025 and averred that she is the lawful and Bonafide owner of the suit property Dagoretti/Kinoo/5892 and that she is not a party to any fraud that to the contrary it is the 1<sup>st</sup> Defendant who has defrauded her of the suit property.



21. She further avers that the 1<sup>st</sup> Defendant has not responded to her Application dated 20/11/2024 but has instead chosen to file the instant Application. It is her contention that the instant dispute is between herself and the 1<sup>st</sup> Defendant and therefore the Intended Party should not be dragged into this matter. That this Application should be dismissed. That she opposes joinder of Interested Parties.
22. That Application is opposed by the 1<sup>st</sup> Respondent – John Gikara Macharia. In his Replying Affidavit sworn and filed herein on 14<sup>th</sup> June, 2021, the 1<sup>st</sup> Respondent avers that the Application dated 25<sup>th</sup> May, 2021 is a non-starter, fatally and incurably defective, grossly incompetent, misconceived, scandalous, frivolous, vexatious and that it may embarrass or delay him from reaping the fruits of his judgment.
23. The Court gave directions on filing of written submissions and a Ruling date was reserved.

### **Analysis and Determination**

24. I have carefully read all the Affidavits, the pleadings, studied the annexures filed and written submissions all of which I have considered while writing this Ruling.
25. The issues that I see rend themselves for determination are:
  - a. Whether the Plaintiff has acted in contempt of Court
  - b. Whether the Intended Interested Parties should be joined to this suit as Intended Interested Parties.
  - c. Whether the Applicants have satisfied the conditions for grant of temporary injunction
  - d. Who bears the costs of the three Applications?
26. The 1<sup>st</sup> Defendant in his Application dated 10/12/2024 averred that the intended Interested Party be cited for contempt of Court for breaching and acting in violation of the Court orders dated 27/11/2024.
27. Contempt proceedings in Kenya are governed by Section 5 (h) of the Judicature Act which gives the High Court and the Court of Appeal powers to punish for contempt of Court.
28. In the case of Christine Wangari Gachege v Elizabeth Wanjiru Evans & 11 Others [2014] eKLR, the Court of Appeal sitting in Nakuru in Obiter dictum stated as follows:-

“The emphasis imposes a duty on the High Court, the Court of Appeal and law practitioners to ascertain the applicable law of contempt in the High Court of Justice in England, at the time an Application is brought.”
29. It is trite law that orders made by a properly constituted Court of law must be obeyed. In the case of Hadkinson v Hadkinson [1952] ALL ER it was held:-

“It is the plain and unqualified obligation of every person against, or in respect of whom, an order is made by a Court of competent jurisdiction, to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or even void.”



30. In the case of *Econet Wireless Kenya Ltd v Minister for Information of Kenya & Another* [2005] eKLR, the Court relying on the decision of the Court of Appeal in *Gillab Chand Papatlal Shah & Another Civil Application no. 39 of 1990* stated that:-

“It is essential for the maintenance of the Rule of Law and order that the authority and dignity of our Courts are upheld at all time. The Court will not condone deliberately disobedience of its orders and will not shy away from its responsibilities to deal firmly with proved contemnors.”

31. In *Teachers Service Commission v Kenya Union of Teachers & 2 Others* [2013]eKLR the Court stated as follows: -

“The reason why Courts will punish for contempt of Court then is to safeguard the rule of law which is fundamental in the administration of justice. It has nothing to do with the integrity of the judiciary or the Court or even the personal ego of the presiding judge. Neither is it about placating the Applicant who moves the Court by taking out contempt proceedings. It is about preserving and safeguarding the rule of law. A party who walks through the justice door with a Court order in his hands must be assured that the order will be obeyed by those to whom it is directed”. “A Court order is not a mere suggestion or an opinion or a point of view. It is a directive that is issued after much thought and with circumspection. It must therefore be complied with and it is in the interest of every person that this remains the case. To see it any other way is to open the door to chaos and anarchy and this Court will not be the one to open that door. If one is dissatisfied with an order of the Court, the avenues for challenging it are set out in the law. Defence is not an option.”

32. In order to succeed on an Application for contempt of Court the Applicant must satisfy the Court of the following:-

- a. That the terms of the order (or injunction or undertaking) are clear and unambiguous and are binding on the Defendant.
- b. That the Defendant has knowledge of or edge of or proper notice of the terms of the order.
- c. The Defendant has acted in breach of the order.
- d. The Defendant’s conduct is deliberate.

33. The Intended Interested Party not having been enjoined to the suit did not respond to the allegations of contempt nor to the Application. However the Plaintiff filed a response to the Application but did not address herself to the issue of contempt but only responded to the issue of joinder of Interested Parties which she opposed.

34. The standard of proof required in cases of contempt is higher than that required in an ordinary civil case. Before a finding of contempt can be made, there must be a demonstration of wilful and deliberate disobedience of a Court order.

35. In *Gatharia K. Mutikika v Baharini Farm Ltd* [1985] KLR 227 it was held that-

“A contempt of Court is an offence of a criminal character. A man may be sent to prison. It must be proved satisfactorily..... it must be higher than proof on a balance of probabilities, almost but not exactly, beyond reasonable doubt. The standard of proof beyond reasonable doubt ought to be left where it belongs, to wit criminal cases. It is not safe to extend it to



offences which can be said to be quasi-criminal in nature. However, the guilt has to be proved with such strictness of proof as is consistent with the gravity of the charge... Recourse ought not to be heard to process contempt of Court in aid of a civil remedy where there is any other method of doing justice. The jurisdiction of committing for contempt being practically arbitrary and unlimited, should be most jealously and carefully watched and exercised with the greatest reluctance and the greatest anxiety on the part of the judge to see whether there is no other mode which is not open to the objection of arbitrariness and which can be brought to bear upon the subject..... applying the test that the standard of proof should be consistent with the gravity of the alleged contempt... it is competent for the Court where contempt is alleged to or has been committed, and or an Application to commit, to take the lenient course of granting an injunction instead of making an order for committal or sequestration, whether the offender is a party to the proceedings or not.”

36. In *Oilfield Movers Ltd v Zahara Oil & Gas Limited* [2020]eKLR the Court stated –

“It is important however that the Court satisfies itself beyond any shadow of a doubt that the person alleged to be in contempt committed the act complained of with full knowledge or motive of the existence of the order of the Court forbidding it. The threshold is quite high as it involves possible deprivation of a person’s liberty .....”

37. The Applicant was required to prove beyond reasonable doubt that the Intended Interested Party is in wilful and deliberate breach of the Court orders of 27/11/2024.

38. On her part, the Intended Interested Party did not respond since they were not joined to the suit anyway. As already stated the Plaintiff filed a response to the Application but only focused on the issue of joinder of intended Interested Parties in the Application. So the issue is whether the Intended Interested Party is in contempt or put another way whether the Applicant has proved that the Intended Interested Party is guilty of contempt of Court for which she deserves to be punished.

39. The Applicant has claimed that the Respondent entered the suit property. Apart from that unsupported statement he never availed to Court any evidence of prove of this statement. It is not safe to assume that the intended Interested Party did contravene the Court order which stated; “There shall be no dealings on the suit land pending the hearing of the Application inter partes.”

40. Previously, Courts were of the opinion that for a party to be held to be in contempt there must be awareness of the order by establishing personal service of the subject order and the attendant penal notice upon the alleged contemnor (see in *Nyamogo & Another vs Kenya Posts and Telecommunications Corporation* (1994) KLR 141). This position has however shifted in recent years, and Courts have held that it is sufficient for the Applicant to demonstrate awareness and/or knowledge by the alleged contemnor of the orders.

41. This Court is alive to and ascribes to the changes in the jurisprudence in this area of law to the effect that knowledge of an order supersedes personal service. In the case of *Kenya Tea Growers Association vs Francis Atwoli & Others* (2012) eKLR, the Respondents claimed that they were unaware of the Court Order until they saw it in a newspaper over a month after it was issued and that they were not served with the Court orders and therefore they could not be said to be in contempt, but the Court held that:-

“On this issue, our Courts seem to have moved steadily towards the position that although Order 52 Rules 3 and 4 of the Supreme Court Practice Rules of England would point towards personal service as a factor in determining contempt, in fact knowledge of an order is higher than service. It is common ground that neither of the alleged contemnors was ever



directly served and that leaves the issue whether they had knowledge of the order prior to 18<sup>th</sup> October 2010. On that issue, I have the evidence of Isaac Kiprotich Maswai, Philip Kibii Cheruiyot and Emmanuel Ng'etich before me. They all stated, on oath, that they heard Francis Atwoli uttering words whose import was to confirm that not only was he aware and had knowledge of the Order but he also challenged it as having been given without jurisdiction. Cheruiyot went further to produce a transcription of words that he recorded as having been uttered by Atwoli and which I have reproduced above.”

42. In the case of Kenya Tea Growers Association vs Francis Atwoli (supra) Lenaola J (as he then was) went on to find that he was satisfied that the alleged contemnors had knowledge of the Court Order. The rationale behind this change appears to be the need to protect the integrity and dignity of Court orders. To excuse a contemnor who has knowledge of a Court order simply because he has not been personally served is to open up Court orders and process to deliberate, wilful, contemptuous and cynical disobedience. This position has been endorsed repeatedly by the Court of Appeal, for instance in Shimmers Plaza Limited vs National Bank of Kenya [2015] eKLR, the Court held that:-

“We now revisit the issue of service. Was there service of the order said to have been disobeyed on the Respondent? There is no dispute that no formal order was extracted and personally served on the Respondent and an affidavit of service filed to that effect.” In that respect, this case can be distinguished from Justus Kariuki Mate & Another vs Hon. Martin Wambora (Wambora case) supra cited by learned counsel for the Applicant. On the other hand however, this Court has slowly and gradually moved from the position that service of the order along with the penal notice must be personally served on a person before contempt can be proved. This is in line with the dispensations covered under 81.8 (1) (supra). Kenya’s growing jurisprudence right from the High Court has reiterated that knowledge of a Court order suffices to prove service and dispense with personal service for the purposes of contempt proceedings. For instance, Lenaola J in the case of Basil Criticos vs Attorney General and 8 Others [2012] eKLR pronounced himself as follows:- “...the law has changed and as it stands today knowledge supersedes personal service...where a party clearly acts and shows that he had knowledge of a Court Order; the strict requirement that personal service must be proved is rendered unnecessary.”

43. The Court of Appeal similarly pronounced itself in Woburn Estate Limited vs Margaret Bashforth [2016] eKLR citing the decision in Refrigeration and Kitchen Utensils Ltd v Gulabchand Popatlal Shah & Another, Nairobi Civil Application No.39 of 1990, where it was observed that:-

“A party who knows of an order, whether null or valid, regular or irregular, cannot be permitted to disobey it... It would be most dangerous to hold that the suitors, or their solicitors, could themselves judge whether an order was null or valid-whether it was regular or irregular. That they should come to the Court and not take upon themselves to determine such a question...he should apply to the Court that it might be discharged. As long as it exists it must not be disobeyed.”

44. The above provision takes cognizance of the fact that personal service may not be achieved in some circumstances. For these reasons, this Court will not hesitate to hold that where a party has knowledge of a Court order, personal service is not mandatory. In the instant Application, the Court Order in reference was issued on 27/11/2024 ex parte and the parties appeared in Court on 26/02/2025 and the intended Interested Parties were represented by their Counsel, Mr Murigu for Mr Mwangi.



45. For this reason, the Intended Interested Party cannot be heard to say that she was not aware of the existence of the order as the record shows she had full knowledge of it.
46. In the circumstances I find that the Intended Interested Party having been represented in Court was aware of the Court orders issued.
47. Counsel represents the interests of their clients, therefore, where orders are made in the presence of Counsel for a party, it is expected that Counsel will inform their clients of the decision of the Court. The Defendants are thus presumed to be have knowledge of the existence and terms of the Court order in question. In *Shimmers Plaza Limited vs National Bank of Kenya (Supra)*, the Court held that:-
- “The dispensation of service under rule 81.8 (1) is subject to whether the person can be said to have had notice of the terms of the judgment or order. The notice of the order is satisfied if the person or his agent can be said to either have been present when the judgment or order was given or made; or was notified of its terms by telephone, email or otherwise. In our view, 'otherwise' would mean any other action that can be proved to have facilitated the person having come into knowledge of the terms of the judgment and/or order. This would definitely include a situation where a person is represented in Court by counsel. Once the Applicant has proved notice, the Respondent bears an evidential burden in relation to wilfulness and mala fides disobedience. This Court in the *Wambora case (supra)* affirmed the Application of these requirements.”
48. From the foregoing, it becomes apparent that the Intended Interested Party having been represented in this suit by Counsel, who was present in Court when the Ruling was delivered, are well aware of the injunctive order issued herein. This Court certainly finds so.
49. On the second issue of joinder of Interested Parties, under Order 1 Rule 10 (2) of the Civil Procedure Rules the name of any person whose presence before the Court may be necessary in order to enable the Court effectually and completely adjudicate upon and settle all questions involved in the suit, can be added at any stage of the proceedings. in *Francis Karioko Muruatetu & another v Republic & 5 others [2016] eKLR*, (Supreme Court Petition No(s.) 15 & 16 of 2015 (Consolidated), held that a party who seeks to be joined in proceedings must demonstrate the personal interest or stake that the party has in the matter , the interest must be clearly identifiable and must be proximate enough. And secondly the prejudice to be suffered by the intended party in case of non-joinder, must also be demonstrated to the satisfaction of the Court. It must also be clearly outlined, and not something remote.
50. The question her is who is an Interested Party? According to the Black’s Law Dictionary, 9<sup>th</sup> Edition a “Necessary Party” is defined as;
- “A party who being closely connected to a lawsuit should be included in the case if feasible but whose absence will not require dismissal of proceedings.”
51. The Black Law Dictionary, 9<sup>th</sup> Edition at page 1232 further defines an Interested Party as;
- “A party who has a recognizable stake (and therefore standing) in the matter.”



52. Whereas the *Civil Procedure Act*, Cap 21 is silent on the subject as to who is an “Interested Party”, Order 41 Rule 5 of the Civil Procedure Rules 2010, does make a reference to the term “Interested Party” and states as follows;

“The Court may either on its own motion or on Application by any Interested Party, remove a receiver appointed pursuant to this order on such terms as it thinks fit.”

53. Besides, reference to the word “Interested Party” can also be traced to *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, *Legal Notice No. 117 of 2013*, which defines an Interested Party as;

“A person or an entity that has an identifiable stake or legal interest or duty in the proceedings and may not be directly involved in the litigation.”

54. In *Kenya Medical Laboratory Technicians and Technologists Board & 6 others v Attorney General & 4 others* [2017] eKLR, Mativo. J. (as he then was) explained circumstances when an Interested Party ought to be enjoined in a proceeding. He stated thus;

“A person is legally interested in the proceedings only if he can say that it may lead to a result that will affect him legally that is by curtailing his legal rights. In determining whether or not an Applicant has a legal interest in the subject matter of an action sufficient to entitle him to be joined as an Interested Party the true test lies not so much in an analysis of what are the constituents of the Applicant’s rights, but rather in what would be the result on the subject-matter of the action if those rights could be established. It is apparent that a party claiming to be enjoined in proceedings must have an interest in the pending litigation, but the interest must be legal, identifiable or demonstrate a duty.”

55. In the case of *Communications Commission of Kenya & 4 Others v Royal Media Services Limited & 7 Others* [2014] eKLR, the Supreme Court of Kenya held that;

“(22) In determining whether the Applicant should be admitted into these proceedings as an Interested Party we are guided by this Court’s Ruling in the *Mumo Matemo* case where the Court (at paragraphs 14 and 18) held:

“[An] Interested Party is one who has a stake in the proceedings, though he or she was not party to the cause ab initio. He or she is one who will be affected by the decision of the Court when it is made, either way. Such a person feels that his or her interest will not be well articulated unless he himself or she herself appears in the proceedings, and champions his or her cause ...”

56. Similarly, in the case of *Meme v. Republic*, [2004] 1 EA 124, the High Court observed that a party could be enjoined in a matter for the reasons that:

- “(i) (i) Joinder of a person because his presence will result in the complete settlement of all the questions involved in the proceedings;
- (ii) joinder to provide protection for the rights of a party who would otherwise be adversely affected in law;



(iii) joinder to prevent a likely course of proliferated litigation.”

57. The substratum of the Suit is whether or not the subject property belong to the Plaintiff or the 1<sup>st</sup> Defendant therefore the participation of the intended Interested Parties who are tenants is not necessary for the determination of that question. However the participation of the estranged wife of the 1<sup>st</sup> Defendant Peris Gathoni Ng’ang’a is important.
58. For this reason, I will allow the joinder of Peris Gathoni Ng’ang’a but disallow the joinder of the 1<sup>st</sup> to the 5<sup>th</sup> Interested Parties.
59. On the question of grant of injunctive orders, both the Plaintiff and the 1<sup>st</sup> Defendant have sought for grant of temporary injunctive relief pending the hearing and determination of the suit.
60. The substantive law on this matter is Order 40 Rule 1(a) of the Civil Procedure Rules 2010 which provides:

“Where in any suit it is proved by affidavit or otherwise that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongly sold in execution of a decree ... the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the Court thinks fit until the disposal of the suit or until further orders.”

61. It was long established and continues to be good Law that temporary injunctions are granted upon the satisfaction of tripartite conditions to wit: whether the Applicant has established a prima facie case; whether upon examination of the prevailing circumstances it becomes clear that the Applicant stands to suffer irreparable loss that the Respondent would be hard pressed to assuage by an award of damages and finally, where there was still doubt, it would be in order to consider in who’s favour the balance of convenience tilted. These principles were established in *Giella vs. Cassman Brown & Co. Ltd* 1973 E.A 358.
62. While discussing the conditions precedent to obtaining an Order of injunctive relief, the Court of Appeal in *Nguruman Ltd v. Jan Bonde Nielsen & 2 Others*, [2014] eKLR observed that:

“In an interlocutory injunction Application, the Applicant has to satisfy the triple requirements to:

- a. establish his case only at a prima facie level,
- b. demonstrate irreparable injury if a temporary injunction is not granted, and
- c. ally any doubts as to (b) by showing that the balance of convenience is in his favour.”

63. Bearing the above in mind, the first stop of the journey towards my final determination is whether the Applicants have established a prima facie case. A prima facie case was defined in *Mrao Ltd v. First American Bank of Kenya Ltd & 2 Others* [2003] eKLR, where Bosire, JA stated as follows:

“So what is a prima facie case? I would say that in civil cases it is a case in which on the material presented to the Court a tribunal properly directing itself will conclude that there exists a



right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”

64. The Court of Appeal deliberating what amounted to a prima facie case in *Nguruman (Supra)* made the following comments:-

“We reiterate that in considering whether or not a prima facie case has been established, the Court does not hold a mini trial and must not examine the merits of the case closely. All that the Court is to see is that on the face of it the person applying for an injunction has a right, which has been or is threatened with violation. Positions of the parties are not to be proved in such a manner as to give a final decision in discharging a prima facie case. The Applicant need not establish title it is enough if he can show that he has a fair and bona fide question to raise as to the existence of the right, which he alleges. The standard of proof of that prima facie case is on a balance or, as otherwise put, on a preponderance of probabilities. This means no more than that the Court takes the view that on the face of it the Applicant’s case is more likely than not to ultimately succeed.”

65. A key point of contention in this matter is the ownership of the suit property and the validity of the title and documents produced in support of the allegations of ownership presented by both Applicants in the Notice of Motion Applications dated 20/11/2024 and 25/02/2024. In both Applications the Respondent is also claiming ownership of the suit property.

66. In considering the above circumstances, it is better to safeguard and maintain the status quo for a greater justice than to let the status quo be disrupted by not granting the interlocutory injunction and after hearing the Application, find that a greater injustice has been occasioned. The guiding principle of the overriding objective is that the Court should do justice to the parties before it and their interests must be put on scales.

67. I note that this Application was also brought under the provisions of Sections 3A of the *Civil Procedure Act*, which grants this Court a wide discretion to grant interlocutory orders as may appear to be just and convenient.

68. The Black’s Law Dictionary, Butter Worth’s 9<sup>th</sup> Edition, defines status quo as a Latin word which means ‘the situation as it exists’. The purpose of an order of status quo has been reiterated in a number of decisions.

69. In the case of *Republic v National Environment Tribunal, Ex-parte Palm Homes Limited & Another* [2013] eKLR, Odunga J (as he then was) stated: -

“When a Court of law orders or a statute ordains that the status quo be maintained, it is expected that the circumstances as at the time when the order is made or the statute takes effect must be maintained. An order maintaining status quo is meant to preserve the existing state of affairs...Status quo must therefore be interpreted with respect to existing factual scenario ...”

70. In the case of *Kenya Airline Pilots Association (KALPA) v Co-operative Bank of Kenya Limited & another* [2020] eKLR, the purpose of a status quo order was explained as follows: -

“... By maintaining the status quo, the Court strives to safeguard the situation so that the substratum of the subject matter of the dispute before it is not so eroded or radically changed



or that one of the parties before it is not so negatively prejudiced that the status quo ante cannot be restored thereby rendering nugatory its proposed decision.”

71. Having considered the facts that have emerged in this case and the evidence adduced by way of affidavit, it is the view of the Court that apart from preserving the substratum of the subject matter, an order of status quo is a case management strategy, where the Court will be keen to prevent prejudice as between the parties to a matter pending the hearing and determination of the main suit. The circumstances in this matter demonstrate that both parties as it stands have an interest that needs to be preserved pending the determination of this suit. To meet the end of justice, neither party should be prejudiced.
72. Having discussed the definition and purpose of a status quo order, the next question is the nature of the order and whether it differs from an injunctive order. In the case of *Fatuma Abdi Jillo v Kuro Lengesen & another* [2021] eKLR, it was stated as follows: -

“Murithi Jin Boabab Beach Resort as quoted by *F. Tuiyot Saifudeen Abdullahi & 4 Others* in *Mombasa High Court Misc. Civil Cause No. 11 of 2012*, described the nature of a status quo order as follows:

“In my view, an order to Status quo to be maintained is different from an order of injunction both in terms of the principles for grant and the practical effect of each. While the latter is a substantive equitable remedy granted upon establishment of a right, or at interlocutory stage, a prima facie case, among other principles to be considered, the former is simply an ancillary order for the preservation of the situation as it exists in relation to pending proceedings before the hearing and determination thereof. It does not depend on proof of right or prima facie case. In its effect, an injunction may compel the doing or restrain the doing of a certain act, such as, respectively, the reinstatement of an evicted tenant or the eviction of the tenant in possession. An order for status quo merely leaves the situation or things as they stand pending the hearing of the reference or complaint.”

73. Further, in the case of *Thugi River Estate Limited & Another v National Bank of Kenya Limited & 3 Others* [2015] eKLR, Onguto J. stated that an order of status quo can be given by the Court exercising its general jurisdiction and that the order need not necessarily be prayed by the parties and in fact, can be originated by the Court.

“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. State of affairs however do not always remain static, so it is always crucial for the Court to be very specific and neat in its description of what state of affairs is to be preserved.”



74. Odunga J. in the case of Thugi River Estate Limited (supra) goes further to set out the proper manner in which the Court ought to frame a status quo order, especially where it is one that the Court has originated. He stated that;

“.... Ordinarily where it is the Court that has prompted a status quo order or has prompted the parties to it, it is more appropriate and exceedingly relevant to describe clearly the state of affairs at the time the order for status quo is issued. It is undesirable to simply make an order of status quo to be maintained without clearly describing the state of affairs then existing and being preserved. Assistance of the Counsel should always be sought in such instances otherwise each party may walk away with its own state of affairs in mind.”

75. In summary from the above cases, the following matters relating to status quo orders are emergent; that status quo orders can be made by the Court on its own motion in the exercise of its general jurisdiction; that status quo orders can be issued for the purpose of preserving the subject matter of the property, for case management reasons and in a bid to prevent prejudice from being visited against either party to the case; that status quo orders are different from injunctions, meaning that the considerations to be established for grant of injunctions are not necessary under status quo orders; and that a Court originating status quo orders to explicitly frame the state of affairs to be preserved.

76. Arising from all the above, this Honourable Court proceeds to make the following findings. These findings are:

- a. The Court finds that Peris Gathoni Ng'ang'a Intended Interested Party/Respondent to be in contempt of this Court and given the relationship with the 1<sup>st</sup> Defendant and the Plaintiff the Court gives a stern warning to Peris Gathoni Ng'ang'a to ensure she obeys Court orders forthwith.
- b. The Application for joinder of Peris Gathoni Ng'ang'a is hereby granted and she is directed to file her Defence within the next 30 days and serve all the parties herein. However the Application for joinder of the 1<sup>st</sup> to 5<sup>th</sup> Intended Interested Parties is found to lack merit and is thus declined.
- c. That the Court issues an order for status quo to be maintained on the suit property meaning there shall be no interference with any person who is on the suit property as at 26<sup>th</sup> May 2025 and all processes shall be run as they are today except the rent collected shall be deposited in an interest earning account in the names of both the Counsels for the Plaintiff and the 1<sup>st</sup> Defendant until this suit is heard and determined.
- d. That there shall be maintained peace and tranquility by all the parties and their agents at the suit land at all times during the pendency of this suit until it is heard and determined.
- e. That the Officer Commanding Station, Kikuyu Police Station to supervise and enforce Order No. (c) and (d)
- f. Costs shall be in the cause.
- g. Pre-trial Conference on 19/06/2025.

77. Orders Accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 27<sup>TH</sup> DAY OF MAY 2025  
VIA MICROSOFT TEAMS.**



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**MOGENI J**

JUDGE\*\*

In the presence of:

Mr. Ojuku for the Plaintiff/Respondent

Mr. Marai for the 1<sup>st</sup> Defendant

Mr. Moriasi for the 2<sup>nd</sup> Defendant

3<sup>rd</sup> Defendant – Absent

Mr. Kamangu for the Proposed Interested Parties

Mr. Melita – Court Assistant

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**MOGENI J**

**JUDGE**

