



**Mwazuzu (For his own and on behalf of all persons living on LR 4752) v
Maruma Holdings Limited & another (Environmental and Land Originating
Summons 12 of 2004) [2025] KEELC 5083 (KLR) (3 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5083 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS 12 OF 2004**

YM ANGIMA, J

JULY 3, 2025

BETWEEN

**JUMAA ABDALLA MWAZUZU (FOR HIS OWN AND ON BEHALF OF ALL
PERSONS LIVING ON LR 4752) PLAINTIFF**

AND

MARUMA HOLDINGS LIMITED 1ST DEFENDANT

COMMISSIONER OF LANDS 2ND DEFENDANT

RULING

A. Applicant's application

1. By a notice of motion dated 03.03.2025 brought pursuant to Sections 1A, 1B, 3A of the [Civil Procedure Act](#), Order 12, 14, 17, 18, 16, 19, 20, 21, 22, 37, 40, 45, 47, 48, 49, 51 of the Civil Procedure Rules and all the enabling provisions of the law the applicant sought, inter alia, the following orders;
 - i. That the Court Bailiff Rose. M. Njoka be summoned for cross-examination on her affidavit dated 27th November 2015 and on the manner of Execution of the impugned Decree and to give an account of;
 - a. The number of houses/structures demolished, their state and value before demolition and the names of the owners.
 - b. The number of people evicted and their names.
 - ii. That the Consent dated 19th April 2013 and its consequent Decree given of 22nd April 2013 and issued on 24th April 2013 be reviewed, set aside, discharged and or varied.



- iii. That all the orders issued by the Deputy Registrar be reviewed, set aside, discharged and or varied.
 - iv. Costs be borne by the Respondents.
2. The application was based upon the grounds set out on the face of the motion and the contents of the supporting affidavit sworn by Khamis Athman Bwika on 03.03.2025. The deponent who claimed to be the 15th applicant herein contended that the consent order dated 19.04.2013 was obtained through fraud and misrepresentation of facts and was thus irregular and illegal. The deponent further claimed that the said consent order had led to the eviction of over 180 people from their homes. He argued that the 1st plaintiff Juma Abdalla Mwazuzu, obtained the consent orders on behalf of the applicants without their knowledge and by concealing material facts. He argued that the defendants shall not suffer any prejudice if the consent order is set aside by the court in the interest of justice.

B. Response by one of the Plaintiffs

3. Shaban Luchesi swore a replying affidavit on 24.03.2025 on his behalf and that of other beneficiaries/ evictees in opposition to the application. He contended that Khamis Athmani Bwika, the applicant herein, was a stranger who did not reside on the suit property and neither was he affected by the eviction. He claimed that the consent order entered into in 2014 was in its final stages of implementation and should not be set aside. He maintained that together with other evictees they were in the process of obtaining their portions of land as agreed in the consent order. He further claimed that setting aside the consent order would derail the settlement process and prejudice their interest. He urged the court to find that the application was an abuse of the court process and dismiss it with costs.

C. 1st Respondent's response

4. The 1st respondent filed a replying affidavit sworn by Beatrice Mghoi Mbela, one of its directors, on 16.04.2025 in opposition to the application. It was contended that the suit land had exchanged hands and the 1st respondent was no longer the registered owner as evident from the official postal search dated 22.09.2014. The deponent maintained that before the evictions were carried out in January 2021, the 1st respondent was summoned by the 2nd respondent in December 2015 where public hearings were conducted in the presence of the public, including the applicants. The 2nd respondent determined that the 1st respondent surrenders 100 acres to resettle the applicants, a process that began with subdivisions in 2016 and was affirmed before the Senate Land committee in October 2021 after the said evictions were carried out. The court was urged to find that the application was made in bad faith dismiss the application it costs.

D. Directions on Submissions

5. When the application was listed for directions, it was directed that the same shall be canvassed through written submissions. The parties were consequently granted timelines within which to file and exchange their respective submissions. The record shows that neither the applicants nor the respondents had filed submissions to the application by the time of preparing this ruling.

E. Issues for Determination

6. The court has perused the applicant's notice of motion, the replying affidavits in response thereto, as well as the material on record. The court is of the opinion that the following are the main issues for determination herein;



- a. Whether the court should set aside the consent order dated 19.04.2013.
- b. Whether the court bailiff should be summoned for examination.
- c. Who shall bear the costs of the application.

F. Analysis and determination

Whether the court should set aside the consent order dated 19.04.2013

7. The court has considered the material and submissions on record on this issue. The record shows that on 22.04.2013, the court adopted the consent dated 19.04.2013 and filed on 22.04.2013 as an order of the court in the presence of counsels for the concerned parties. By consent, it was ordered that:
 - i. The Defendant shall sub-divide the suit property herein, that is to say, L.R. No. 4752 Kwale and give the Plaintiffs, together with all those people who are squatting on the land a total of 100 acres.
 - ii. It is thereby agreed that this is a representative suit and the Plaintiffs are acting for themselves and for all those people who are cultivating and living on the suit land.
 - iii. The 100 acres plot that will be given out to the Plaintiffs as per the contract shall be transferred to the Plaintiffs who hereby undertake to sub-divide and transfer sub-titles to the other beneficiaries.
 - iv. The cost of sub-dividing and transferring the 100 acres to the Plaintiffs shall be borne by the Defendant.
 - v. The cost of subdividing and transferring the 100 acres to the other beneficiaries shall be borne by the Plaintiffs and the beneficiaries.
 - vi. The plaintiffs shall have up to the 31 December,2013 to harvest their crops to the intent that the plaintiffs shall vacate all the area outside the 100 acres granted to them(the remaining portion) and hand over vacant possession thereof effective 1st January 2014 failing which the 1st defendant its lawful assign or successor in title shall be at liberty to execute for possession in the same manner as if the 1st defendant herein had a decree for possession in respect of the said remaining area.
 - vii. The plaintiffs hereby undertake and bind themselves to ensure that they shall not enter, occupy, cultivate or in any manner claim ownership or deal with the remaining portion of land owned by the 1st defendant.
 - viii. So as to give effect to this consent the order of injunction granted herein be and is hereby lifted.
 - ix. The suit herein be and is hereby marked as settled and the costs thereof to be agreed upon by the parties.
8. It is trite law that once a consent order has been adopted by court it becomes binding upon the parties. The consent order of 19.04.2013 was clear and unambiguous. It provided that the suit would be marked as settled upon the subdivision of LR 4752 and the hiving off of 100 acres to resettle the applicants and the other occupants they were representing. The 1st respondent has demonstrated to the court that they are at an advanced stage of concluding the implementation of the said consent order. The 1st respondent has also established to the court that the 2nd respondent was involved in the resettlement of the applicants and other occupants on the 100 acres as agreed in the consent order.



It is clear to the court that over the past decade, the parties involved have been in the process of implementing the said consent order is currently in its last stages of implementation.

9. It is settled law that a consent binds parties as would a contract and as such a consent can only be set aside on grounds which would justify the setting aside of a contract. The applicant herein contended that Juma Abdalla Mwazuzu acted fraudulently when he instructed the then advocates to enter into the said consent. He also argued that the other applicants were not aware of the consent order and were not served with a notice to show cause. The court can only interfere with a consent judgement upon demonstration of fraud, misrepresentation and/or misapprehension of a material fact. None of these grounds has been satisfactorily established by the applicant. The court is not persuaded to set aside a consent that was entered into over 12 years ago. In *Kenya Commercial Bank v Specialized Engineering* [1982] KLR held, inter alia, that;

“any order made in the presence and with the consent of counsel is binding on all parties to the proceedings and cannot be varied or discharged unless obtained by fraud or collusion or by an agreement contrary to the policy of the court or if the consent was given without sufficient materials or in misapprehension or ignorance of material facts in general for a reason which would enable the court to set aside an agreement.”

Whether the court bailiff should be summoned for examination

10. In view of the court’s finding and holding on the first issue, it would not serve any useful purpose to summon the court bailiff since the court is not inclined to set aside the consent order dated 19.04.2013.

Who shall bear the costs of the application

11. Although costs of an action or proceeding are at the discretion of the court, the general rule is that costs shall follow the event in accordance with the proviso to 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. See *Hussein Janmohamed & Sons –vs- Twentsche Overseas Trading Co. Ltd* [1967] EA 287. The court finds no good reason to depart from the general rule. As a result, the 1st respondent shall be awarded the costs of the application to be borne by the applicant Khamis Athman Bwika.

G. Conclusion and disposal orders

12. The upshot of the foregoing is that the court finds that there are no grounds for setting aside the consent order dated 19.04.2013 and adopted as an order of the court on 22.04.2013. The court finds the application unmerited and consequently makes the following orders:

- a. The application dated March 3, 2025 is hereby dismissed with costs to the 1st respondent.
b. Since the suit

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Orders accordingly.

RULING DATED AND SIGNED AT MOMBASA AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS ON THIS 3RD DAY OF JULY, 2025.

.....
Y. M. ANGIMA

JUDGE



In the presence of:

Gillian Court assistant

Mr. Mwawasaa for plaintiff

Mr. Ruwa for plaintiff

Mr. Mwakisha for 1st defendant

No appearance for the 2nd defendant

