



**Nguruka & 4 others v National Land Commission & 5 others (Environment & Land Case 108 of 2012) [2025] KEELC 5027 (KLR) (7 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5027 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT & LAND CASE 108 OF 2012**

**EM WASHE, J  
JULY 7, 2025**

**BETWEEN**

**ERINYIT EPORON NGURUKA ..... 1<sup>ST</sup> PLAINTIFF  
LODUPORO EKITUI MURECHEO ..... 2<sup>ND</sup> PLAINTIFF  
STEPHEN LOKITOI KASKOUT ..... 3<sup>RD</sup> PLAINTIFF  
WILLIAM NGURO ..... 4<sup>TH</sup> PLAINTIFF  
WILLIAM GICHUHI ..... 5<sup>TH</sup> PLAINTIFF**

**AND**

**NATIONAL LAND COMMISSION ..... 1<sup>ST</sup> DEFENDANT  
DIRECTOR OF LAND ADJUDICATION AND SETTLEMENT .... 2<sup>ND</sup>  
DEFENDANT  
DIRECTOR OF SURVEY ..... 3<sup>RD</sup> DEFENDANT  
REGISTRAR OF LANDS, UASIN GISHU COUNTY ..... 4<sup>TH</sup> DEFENDANT  
LONRHO AGRI-BUSINESS (EA) LIMITED ..... 5<sup>TH</sup> DEFENDANT  
FANKIWA LIMITED ..... 6<sup>TH</sup> DEFENDANT**

**RULING**

1. The 6<sup>th</sup> Defendant (hereinafter referred to as “the applicant”) filed a Notice of Motion Application dated 11.01.2025 (hereinafter referred to as “the present Application”) against the 1<sup>st</sup> to 5<sup>th</sup> Plaintiffs (hereinafter referred to as “the Respondents”) seeking for the following Orders; -
  - a. An Order be and is hereby made that the properties known as LR.NO.Pioneer/Ngeria Block 1 (EATEC)/471 measuring 3.800 Hectares, LR.NO.Pioneer/Ngeria Block 1



(EATEC)/473 measuring 2.800 Hectares, LR.NO.Pioneer/Ngeria Block 1 (EATEC)/474 measuring 2.870 Hectares, LR.NO.Pioneer/Ngeria Block 1 (EATEC)/475 measuring 3.350 Hectares, LR.NO.Pioneer/Ngeria Block 1 (EATEC)/476 measuring 4.05 Hectares, LR.NO.Pioneer/Ngeria Block 1 (EATEC)/477 measuring 6.350 Hectares, LR.NO.Pioneer/Ngeria Block 1 (EATEC)/1860 measuring 4.77 Hectares and LR.NO.Pioneer/Ngeria Block 1 (EATEC)/1862 measuring 2.023 Hectares were declared by the Supreme court in its Judgement delivered on 15.12.2023 in Petition No. 32 (eo36), 35(e038) &36(e039) Of 2022 Between Fanikiwa Limited, Mary Jepkemboi Too & Sophie Jelimo Too (suing As Joint Administrators Ad Litem In The Estate Of Mark Kiptarbei Too, Lonrho Agri Business (ea) Kimited & David K.korir As The Lawful Properties Of Fanikiwa Limited.

- b. The Environment & Land Court lacks jurisdiction to entertain and interpret issues conclusively determined by the Supreme Court in its judgement delivered on 15.12.2023 in Petition No. 32 (eo36), 35(e038) &36(e039) Of 2022 Between Fanikiwa Limited, Mary Jepkemboi Too & Sophie Jelimo Too (suing As Joint Administrators Ad Litem In The Estate Of Mark Kiptarbei Too, Lonrho Agri Business (ea) Kimited & David K.korir being the highest Court in Kenya under Article 163 (7) of *the Constitution*, 2010 which states that all Courts other than the Supreme Court is bound by the decision of the Supreme Court.
  - c. An Order be and is hereby issued that the Amended Originating Summons invites the Environment and Land Court to exercise residual jurisdiction where none exists. This Court can only exercise jurisdiction expressly conferred by law and the Court has no jurisdiction to interpret or clarify the effect of a Supreme Court decision on its earlier Orders. This Court cannot interfere with or interpret the Supreme Court decision delivered on the 15.12.2023.
  - d. The Amended Originating Summons herein be struck out with costs for lack of jurisdiction.
  - e. A declaration that the Environment & Land Court lacks jurisdiction to interpret, clarify or revisit issues conclusively determined by the Supreme Court in its Judgement dated 15.12.2003 in PETition No. 32 (eo36), 35(e038) &36(e039) Of 2022 Between Fanikiwa Limited, Mary Jepkemboi Too & Sophie Jelimo Too (suing As Joint Administrators Ad Litem In The Estate Of Mark Kiptarbei Too, Lonrho Agri Business (ea) Kimited & David K. Korir.
  - f. Costs of this suit and the motion be borne by the Plaintiffs/Respondents as a higher scale in favour of the 5<sup>th</sup> and 6<sup>th</sup> Defendants.
2. The prayers sought hereinabove are based in the following facts contained in the body of the application as well as the Supporting Affidavit by one Karen Chesoo sworn on 11<sup>th</sup> February, 2025 and can be summarised as follows:
- i. The Applicants state that the pending OS concerns an ownership dispute of the properties known as LR.NO.Pioneer/Ngeria Block 1 (EATEC)/471 measuring 3.800 Hectares, LR.NO.Pioneer/Ngeria Block 1 (EATEC)/473 measuring 2.800 Hectares, LR.NO.Pioneer/Ngeria Block 1 (EATEC)/474 measuring 2.870 Hectares, LR.NO.Pioneer/Ngeria Block 1 (EATEC)/475 measuring 3.350 Hectares, LR.NO.Pioneer/Ngeria Block 1 (EATEC)/476 measuring 4.05 Hectares, LR.NO.Pioneer/Ngeria Block 1 (EATEC)/477 measuring 6.350 Hectares, LR.NO.Pioneer/Ngeria Block 1 (EATEC)/1860 measuring 4.77 Hectares and LR.NO.Pioneer/Ngeria Block 1 (EATEC)/1862 measuring 2.023 Hectares (hereinafter referred to as the “suit properties”) registered to the Applicant.
  - ii. That the suit properties were declared the property of the Applicant by the supreme court through its judgment dated 15<sup>th</sup> December, 2023 in the Petitions known as Petition No. 32



(eo36), 35(e038) &36(e039) Of 2022 Between Fanikiwa Limited, Mary Jepkemboi Too & Sophie Jelimo Too (suing As Joint Administrators Ad Litem In The Estate Of Mark Kiptarbei Too, Lonrho Agri Business (ea) Kimited & David K. Korir.

- iii. Consequently therefore, this Court lacks jurisdiction to entertain or interpret issues conclusively determined by the Supreme Court, which is the highest Appellate Court and whose decisions are binding on this Court.
  - iv. That this Court has no jurisdiction to either interpret clarify or revisit the issues conclusively determined by the Supreme Court through its judgement dated 15<sup>th</sup> December, 2023 and it is only fair that the present OS be struck out.
3. The Respondents on the other had opposed the present application through a Response to the Application dated 25<sup>th</sup> February, 2025 based on the following facts;-
- i. The Respondents stated that after the filing of the pending OS, the Applicant made an order seeking for stay of the proceedings in this file pending the determination of the Supreme Court proceedings in Petition No. 32 (eo36), 35(e038) &36(e039) Of 2022 Between Fanikiwa Limited, Mary Jepkemboi Too & Sophie Jelimo Too (suing As Joint Administrators Ad Litem In The Estate Of Mark Kiptarbei Too, Lonrho Agri Business (ea) Kimited & David K. Korir.
  - ii. In the petitions Petition No. 32 (eo36), 35(e038) &36(e039) Of 2022 Between Fanikiwa Limited, Mary Jepkemboi Too & Sophie Jelimo Too (suing As Joint Administrators Ad Litem In The Estate Of Mark Kiptarbei Too, Lonrho Agri Business (ea) Kimited & David K. Korir, the disputes were between the interested party and the 5<sup>th</sup> Defendant herein together with the Applicant in the present application.
  - iii. In other words, the Respondents were of the considered view that they were not parties in those proceedings before the Supreme Court and the judgement pronounced therein was not binding to them.
  - iv. The Respondents sought this court to give them an opportunity to be heard based on Article 50 of *the constitution* and stated that this Court has jurisdiction to do so.
  - v. The Respondents concluded their response by stating that the proceedings before this Court as regards the pending OS are not in contempt of the judgement of the Supreme Court pronounced on 15<sup>th</sup> December 2023.
4. The Court directed that the present application be canvassed by way of written submissions.
5. The Applicants then proceeded to file their submissions dated 13<sup>th</sup> May, 2025 and the Court did not see any submissions filed by the Respondent.
6. The Court has perused the present application, the response by the Respondents and the submissions filed and the issues for determination are as follows:-

Issue no. 1 – what is the respondent’s cause of action and/or claim in the pending os?

Issue no. 2 – was the respondent’s cause of action and/or claim an issue in the supreme court judgment pronounced on 15<sup>th</sup> december, 2023?

Issue no. 3 – did the supreme court decision of 15<sup>th</sup> december, 2023 resolve the cause of action and/or claim contained in the pending os in this matter?

Issue no. 4 – are the prayers in the present application merited?



Issue no. 5 – who bears the costs of this application?

7. The Court having identified the above issues for determination the same will now be discussed as herein below.

### **Issue No. 1 – What Is The Respondent’s Cause Of Action And/or Claim In The Present Suit?**

8. The first issue for determination is to understand and appreciate the Respondents Cause of action before this Court pending hearing and determination.
9. From a perusal of this file, the original claim was filed through the Originating Summons dated on 10<sup>th</sup> February, 2003.
10. Subsequently, the OS dated 10<sup>th</sup> February, 2023 was amended with one dated 25<sup>th</sup> September 2017.
11. In this amended OS dated 25<sup>th</sup> September 2017, the Respondents sought various declarations including but not limited to the fact that their Constitutional rights under Article 71 of *the Constitution* had been infringed by the forceful eviction effected by the Applicant and the other Defendants therein.
12. Similarly, the Respondents sought a declaration that the purported sale, transfer, alienation and transfer of the property known as LR No. 7739/14 to other people excluding the Respondents was illegal, discriminatory and infringed various provisions of *the constitution* including Article 77, 81 and 82 of *the Constitution*.
13. In addition to the above, the Respondents herein sought an Order of Injunction restraining the 1<sup>st</sup> Defendant in this matter from alienating the suit property known as L.R No.7739/14 to any other party without considering the Respondents interests.
14. Lastly, the Respondents sought for a mandatory injunction to be issued directing the 1<sup>st</sup> Defendant to resettle and ensure that the Respondents returned to the portions they occupied on LR No. 7739/14 which portions they had occupied for over 12 years and therefore had legitimate ownership rights on the same.
15. On the 5<sup>th</sup> May 2020, the Court was of the considered view that the Amended OS dated 25<sup>th</sup> September 2017 should be converted from an Originating Summons to a normal suit so that the issues for determination would be heard and determined in line with *the Constitution* and applicable Statutory laws.

### **Issue no. 2 – was the respondents cause of action and/or claim an issue in the supreme court judgment pronounced on 15<sup>th</sup> december, 2023**

16. The Applicants in the present application are of the considered view that they are the registered owners of LR.NO.Pioneer/Ngeria Block 1 (EATEC)/471 measuring 3.800 Hectares, LR.NO.Pioneer/Ngeria Block 1 (EATEC)/473 measuring 2.800 Hectares, LR.NO.Pioneer/Ngeria Block 1 (EATEC)/474 measuring 2.870 Hectares, LR.NO.Pioneer/Ngeria Block 1 (EATEC)/475 measuring 3.350 Hectares, LR.NO.Pioneer/Ngeria Block 1 (EATEC)/476 measuring 4.05 Hectares, LR.NO.Pioneer/Ngeria Block 1 (EATEC)/477 measuring 6.350 Hectares, LR.NO.Pioneer/Ngeria Block 1 (EATEC)/1860 measuring 4.77 Hectares and LR.NO.Pioneer/Ngeria Block 1 (EATEC)/1852 measuring 2.023 Hectares.
17. However, looking at the Pleadings in this suit, the property in dispute is described as LR No. 7739/14 commonly known as Kambi Turkana Block.



18. The question that arises is whether the property in this suit which is LR No. 7739/14 commonly known as Kambi Turkana Block formed any portion of land discussed in the Supreme Court Judgment pronounced on 15<sup>th</sup> December, 2023.
19. It is the Applicant's obligation under Section 107 of the *Evidence Act* to have clearly demonstrated the interlink between the properties adjudicated in the Supreme Court judgment of 15<sup>th</sup> December 2023 with the property in dispute in this suit known as L.R No.7739/14.
20. For the avoidance of sought, the properties that the supreme court declared to belong to the Applicant are LR NO Pioneer/Ngeria Block 1 (EATEC) 7070, 7068, 3395, 5903, 2454, 476, 1860, 475, 5497, 5494, 5492, 5489, 5486, 1384, 1383, 5484, 474, 472, 5485, 5487, 5490, 5488, 5491, 5493, 1861, 5496, 1862, 5491, 473, 477, 471, 1353, 1375, 1374, 1379, 1378, 1380, 1381, 1382, 1852, 1386, 1385, 85, 5495 AND 5902.
21. Looking at the Judgment by the Supreme Court pronounced on 15<sup>th</sup> December 2023, the disputed property in this suit known as LR.NO.7739/14 does not appear on the face of the said Judgement.
22. As such, this Court is of the considered view that the properties dealt with in the Supreme Court judgment of 15<sup>th</sup> December, 2025 are different from the property being claimed by the Respondents in this suit known as LR No. 7739/14.
23. Similarly, the Applicant seems to suggest that the Respondents were part of the larger group known as Sirikwa Squatters Group that was engaged in the Supreme Court proceedings and therefore the Judgment pronounced on 15<sup>th</sup> December 2023 is binding on them.
24. On the other hand, the Respondents denied that they are members of Sirikwa Squatters Group but admitted that they were having a legitimate expectation to be allocated land based on the letter by the former Daniel Toroitich Arap Moi.
25. It was therefore incumbent for the Applicant to again either produce evidence of the Respondents membership to Sirikwa Squatters group or demonstrate a link with any member in the said group known as Sirikwa Squatters group.
26. Unfortunately, the Applicant did not demonstrate or provide any evidence to that effect.
27. In conclusion, this Court is of the considered view and finding that the Respondents claim in this suit relates to LR No. 7739/14 and not the properties described in the Supreme Court Judgement pronounced on the 15<sup>th</sup> December 2023 that were being claimed by Sirikwa Squatters Group.

**Issue no. 3-did the supreme court decision of 15<sup>th</sup> december, 2023 resolve the cause of action and/or claim contained in the pending suit?**

28. As regards this issue, it is clear from Issue No. 2 hereinabove that the ownership dispute of the property known s LR N. 7739/14 was never an issue for determination in the Supreme Court Petitions that were determined on the 15<sup>th</sup> of December 2023.
29. As such, the issue of ownership of the property known as LR.NO.7739/14 which is before this Court was not canvassed and or determined by the decision of the Supreme Court decision pronounced on 15<sup>th</sup> December 2023.

**ISsue No. 4 – Are The Prayers In The Present Application Merited**

30. Based on the finding in issue No. 3, present Application is not merited and is disallowed.



**Issue No. 5 – Who Beras The Costs Of This Application**

31. The Application not having succeeded, the Applicant is condemned to pay costs.

**Conclusion**

32. In conclusion therefor, this court makes the following orders in determination of the Notice of Motion Application dated 11<sup>th</sup> January, 2025;-

A. The notice of motion application dated 11<sup>th</sup> January, 2025 is not merited and therefore dismissed.

B. The applicant is condemned to pay costs to the respondents.

**DATED, SIGNED & DELIVERED VIRTUALLY AT ELDORET ELC THIS 7<sup>TH</sup> DAY OF JULY 2025.**

**EMMANUEL.M. WASHE**

**JUDGE**

In The Presence Of:

Court Assistant: Brian

Applicant: Mr. Ojala Holding Brief Oburu For The Plaintiff/respondent

Respondent: Ms. Chesoo For The 5<sup>th</sup> And 6<sup>th</sup> Defendants/applicants

