



Odera & 6 others (Suing on their own and on Behalf of all other Members of the Kogony Community Claiming Registerable Interest in the Land known as C/18 Scheme) v Akinyi & 5 others; Oim & 18 others (Interested Party); Otieno & 21 others (Applicant) (Environment and Land Case 146 of 2012) [2025] KEELC 5225 (KLR) (10 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5225 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT AND LAND CASE 146 OF 2012**

**SO OKONG'O, J
JULY 10, 2025**

BETWEEN

**CHRISTABEL ACHIENG ODERA 1ST PLAINTIFF
WILSON OGOLA ODENY 2ND PLAINTIFF
CARRILUS OLANDO ODARI 3RD PLAINTIFF
JOSEPH OMOLLO 4TH PLAINTIFF
FLORENCE ATIENO ADERA 5TH PLAINTIFF
JOHN OKONGO OGENDO 6TH PLAINTIFF
MICHAEL JUMA ADEDE 7TH PLAINTIFF
SUING ON THEIR OWN AND ON BEHALF OF ALL OTHER MEMBERS OF
THE KOGONY COMMUNITY CLAIMING REGISTERABLE INTEREST IN
THE LAND KNOWN AS C/18 SCHEME**

AND

**CHRISTOPHER JUMA AKINYI 1ST DEFENDANT
AUGUSTINE GENGA ONDINGO 2ND DEFENDANT
VITALIS OURU AKINYI 3RD DEFENDANT
JANE KAMBAGA 4TH DEFENDANT
COUNTY LANDS REGISTRAR 5TH DEFENDANT
HON ATTORNEY GENERAL 6TH DEFENDANT**

AND



DAVID ODERA OIM & 18 OTHERS INTERESTED PARTY

AND

PIUS OTIENO APPLICANT
FERDINAND OUMA OKINYI APPLICANT
GRANDEMIRA ENTERPRISES APPLICANT
SPALA ODUOR OHAGA APPLICANT
CHRISPINE OTIENO ODIMA APPLICANT
MILLICENT ACHIENG APPLICANT
WESLEY OSKAH NYAKUNGU APPLICANT
MALACK MAINYA MATARA APPLICANT
DOUGLAS OTIENO OMONDI APPLICANT
DANIEL OKELLO APPLICANT
RICHARD KUBONDO MAINA APPLICANT
AMIR MAUJI ARJAN APPLICANT
BONVENTURE ODHIAMBO APPLICANT
DAVID MOKONO APPLICANT
CHRISPINE JUMA OGONGO APPLICANT
NEREAH AWINO OCHIENG APPLICANT
MOSES AYAGA ADHINGA APPLICANT
CAROLINE JOY AYOMA APPLICANT
DAVID MACHIO LUKIRI APPLICANT
DOMINICK O OKELLO APPLICANT
PULIN J MORJARIA APPLICANT
LORNA KERUBO ANURI APPLICANT

*((Suing on their own and on behalf of all other members of the Kogony
Community claiming registerable interests in the land known as C/18 Scheme))*

RULING

1. In their further amended Plaintiff dated 8th November 2019, filed on 11th November 2019, the Plaintiffs averred that they were members of the Kogony Community living in Kogony Sub-Location. The Plaintiffs averred that they were entitled to all that parcel of land lying between Kogony and Kanyakwar adjudication sections which had been registered and was in Survey Map No.18. The Plaintiffs averred that the said parcel of land (hereinafter referred to only as “the suit property”) was referred to in some official records as Parcel Nos. Kisumu /Kogony/5000-6012.



2. The Plaintiffs averred that in 1978, the suit property was inadvertently included in the Kenya Gazette Notice through which part of the land in Kanyakwar had been acquired compulsorily by the government. The Plaintiffs averred that when this mistake was noted and corrected, the suit property was not immediately adjudicated, and the same remained as an open space between Kogony and Kanyakwar adjudication sections. The Plaintiffs averred that the suit property was neither demarcated nor surveyed. The Plaintiffs averred that the suit property was community land and that the same was inherited by the Plaintiffs from their ancestors. The Plaintiffs averred that in 2011, a decision was made by the District Land Adjudication and Settlement Officer that the suit property should be adjudicated and returned to the original families that owned it. The Plaintiffs averred that they elected some of their members to carry out this exercise on their behalf. The Plaintiffs averred that among the persons who were elected for that purpose were the 1st, 2nd and 3rd Defendants.
3. The Plaintiffs averred that the 1st, 2nd and 3rd Defendants assured the Plaintiffs that the suit property would be adjudicated and registered in the names of the Plaintiffs. The Plaintiffs averred that the 1st, 2nd and 3rd Defendants, in breach of their duties, colluded with the 4th Defendant and the District Land Registrar, Kisumu and caused all the parcels of land created from the suit property to be registered in the names of a few individuals, including the 1st, 2nd and 3rd Defendants. The Plaintiffs averred further that the 1st, 2nd, 3rd, 4th, 5th and 6th Defendants fraudulently caused some of the parcels of land created from the suit property to be registered in the names of persons who were not members of the Kogony Community. The Plaintiffs sought judgment against the 1st, 2nd, 3rd, 4th, 5th and 6th Defendants for:
 1. General Damages;
 2. A declaration that the suit property comprising, but not limited to, land parcel Nos. Kisumu/Kogony/5000-6012 be declared the Plaintiffs' ancestral land, and that the same should revert to the Plaintiffs;
 3. An order that all the titles arising from the suit property which were issued to the 1st, 2nd, 3rd, 4th, 5th and 6th Defendants and /or any other third parties be nullified and cancelled;
 4. An order that all the remaining parcels of land forming part of the suit property, which had not been transferred or alienated, be equitably and justly shared between (and distributed to) all the beneficiaries entitled to the same, including the Plaintiffs;
 5. An order that the 1st, 2nd, 3rd, 4th, 5th and 6th Defendants do render true and accurate accounts of their dealings with all the parcels of land forming part of the suit property and further that they do jointly and severally account to all the Plaintiffs for all the proceeds of the sale of any of the parcels which they had sold out of the suit property; and
 6. Costs of this suit plus interest thereon.
3. The 1st, 2nd, 3rd and 4th Defendants filed a joint amended statement of defence on 11th July 2017 in which they denied the allegations made against them by the Plaintiffs. The 1st, 2nd and 3rd Defendants denied that they colluded with the 4th Defendant and the District Land Registrar, Kisumu, to register the parcels of land that arose from the adjudication and demarcation of the suit property in the names of a few individuals, including them. The 1st, 2nd and 3rd Defendants denied that there existed a fiduciary relationship between them and the Plaintiffs. The 1st, 2nd and 3rd Defendants denied having breached such duty as alleged. The 1st, 2nd and 3rd Defendants also denied the particulars of fraud pleaded against them in the amended plaint. The 5th and 6th Defendants filed a joint statement of defence on 10th January 2020. The 5th and 6th Defendants denied the Plaintiffs' claim in its entirety.



4. The matter was heard and a judgment delivered on 18th March 2022. The court found that the suit property was community land and that the 1st, 2nd, 3rd and 4th Defendants were appointed to act on behalf of the members of the Kogony Community in ensuring that the suit property was demarcated, registered and titles issued in the names of the community members. The court found that the Defendants fraudulently registered the parcels of land that were created from the suit property in the names of persons who were not members of the community and had sold some of the parcels to third parties. Based on the said findings, the court entered judgment for the Plaintiffs against the Defendants for:
1. General damages of Kshs.10,000,000/=.
 2. A declaration that all that block of land registered and comprised in Map Sheet or Diagram No. 18 and which was referred to as Kogony C-18 Scheme, and comprising, but not limited to, land parcel Nos. Kisumu/Kogony/5000-6012 was the Plaintiffs' ancestral land, and the same should revert to the Plaintiffs.
 3. An order that all the title deeds forming part of the said Kogony C-18 Scheme and which were issued to the 1st, 2nd, 3rd and 4th Defendants and /or any other third parties be nullified and cancelled.
 4. An order that all the remaining parcels of land forming part of the said Kogony C-18 Scheme, which had not been transferred or alienated, be equitably and justly shared between (and distributed to) all the beneficiaries entitled to the same, including the Plaintiffs.
 5. An order that the 1st, 2nd, 3rd and 4th Defendants do render true and accurate accounts of their dealings with all the parcels of land forming part of Kogony C-18 and further that they do jointly and severally account to all the Plaintiffs for all the proceeds of the sale of any of the parcels which they had sold out of the said Kogony C-18 Scheme.
 6. Costs of this suit plus interest thereon.

The applications before the court

5. What is now before the court are two applications brought by the 1st to 18th Applicants and 19th to 22nd Applicants by way of separate Notices of Motion dated 8th July 2024 and 9th July 2024 respectively under Sections 1A, 1B, 3, 3A and 63(e) of the *Civil Procedure Act* and Order 1 Rule 10(2), Order 22 Rule 22 and Order 51 Rules 1 and 15 of the Civil Procedure Rules. In the two applications, the Applicants have sought the following orders;
1. That the judgment of this court dated 18th March 2022 be set aside and the hearing of the suit do commence afresh.
 2. That the 1st to 18th Applicants be joined in the proceedings as the 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, 15th, 16th, 17th, 18th, 19th, 20th, 21st, 22nd and 23rd Defendants and the 19th to 22nd Applicants be joined in the proceedings as the 7th, 8th, 9th and 10th (sic) (24th, 25th, 26th and 27th) Defendants and the plaint to be amended accordingly and be served upon all the parties.
 3. That in the alternative to orders 1 and 2 above, this court be pleased to review its judgment dated 18th March 2022 by striking out any reference to the Applicants' respective land parcels, namely, Kisumu/Kogony/6245, 6023, 5143, 5144, 5118, 6191, 6056, 7276, 7277, 5139, 6913, 6619, 5915, 5870, 5845, 5846, 6912, 5705, 5588, 6912 and 5145, and Kisumu/Kogony/6055, 5850, 5934 and 6183.



4. The costs of the application be provided for.
6. The two applications were brought on the grounds set out on the face thereof and on the affidavits of one, George G. N. Otieno, who claimed to have the authority of the Applicants to swear the affidavits on their behalf. The Applicants averred that they were the bona fide registered owners respectively of the parcels of land known as Kisumu/Kogony/6245, 6023, 5143, 5144, 5118, 6191, 6056, 7276, 7277, 5139, 6913, 6619, 5915, 5870, 5845, 5846, 6912, 5705, 5588, 6912, 5145, 6055, 5850, 5934 and 6183 located within Registry Index Map Sheet No. 18, Kogony Registration section, Kisumu County (hereinafter together referred to as “the Applicants’ land” and individually as “Plot Nos. 6245, 6023, 5143, 5144, 5118, 6191, 6056, 7276, 7277, 5139, 6913, 6619, 5915, 5870, 5845, 5846, 6912, 5705, 5588, 6912, 5145, 6055, 5850, 5934 and 6183 ”). The Applicants averred that they purchased the Applicants’ land and obtained titles before the institution of this suit and without notice of any defect in the said titles. The Applicants averred that the Plaintiffs’ failure to join the Applicants in this suit constituted a gross violation of their right to be heard.
7. The Applicants averred that the 5th Applicant purchased Plot No. 5118 on 29th March 2012 before the institution of this suit, but was issued with a title deed on 5th June 2015 after the filing of the suit. The Applicants averred that the 5th Applicant should have been notified of the suit and joined as a party. The Applicants averred further that the 6th Applicant purchased Plot No. 6056 on 16th February 2011 before the filing of the suit and was issued with a title deed after the filing of the suit. The Applicants averred that the 6th Applicant should also have been joined in the suit.
8. The Applicants averred that the 7th to 8th Applicants purchased a portion of Plot No. 5142 from the 1st Applicant, who had been issued with a title for the property on 15th November 2011 before the filing of this suit. The Applicants averred that on 12th July 2012, after the filing of the suit, Plot No. 5142 was subdivided into two portions, Plot No. 6245, which was retained by the 1st Applicant and Plot No. 6246, which was transferred to the 7th Applicant. The Applicants averred that Plot No. 6246 was also subdivided into Plot No. 7276 and Plot No. 7277, which were registered in the names of the 7th and 8th Applicants. The Applicants averred that the 7th and 8th Applicants should have been notified of the suit and joined in it as a party.
9. The Applicants averred that the 9th Applicant purchased Plot No. 5139 after the commencement of the suit and was issued with a title deed. The Applicants averred that the seller of Plot No. 5139 to the 9th Applicant was not a party to the suit. The Applicants averred that the 9th Applicant should have been notified of the suit and joined as a party.
10. The Applicants averred that the 10th, 11th, 12th, 13th, 14th, 15th and 18th Applicants purchased Plot Nos. 5145, 6913, 6619, 5915, 5870, 5845, 5846 and 6912 after the filing of the suit and were issued with title deeds for the same. The Applicants averred that these Applicants should have been notified of the suit and joined in the suit as parties.
11. The Applicants averred that the 19th Applicant purchased Plot No. 6055 on 1st March 2014 in good faith and after conducting due diligence after the commencement of this suit, and was issued with a title deed by the Land Registrar. The Applicants averred that the 19th Applicant should have been notified of the suit and joined in the suit as a party.
12. The Applicants averred further that the 20th, 21st and 22nd Applicants purchased Plot Nos. 5850, 5934 and 6183 in good faith after the commencement of this suit and were issued with title deeds by the Land Registrar. The Applicants averred that these Applicants should have been notified of the suit and joined in the suit as parties.



13. The Applicants averred that they were not aware of the existence of this suit until 2023, when they came across a judgment delivered in this suit on 18th March 2022, in Kisumu J.R No. 4 of 2023, in which it was attached to an affidavit. The Applicants averred that Kisumu J.R No. 4 of 2023 was being mentioned together with ELC J.R No. 1 of 2023, in which some of the Applicants were parties. The Applicants averred that it was upon perusal of the said judgment that they learnt that the court had cancelled their titles to the Applicants' land.
14. The Applicants averred that they were not parties to this suit and were not made parties to the suit before the said judgment of 18th March 2022 that cancelled their titles. The Applicants averred that in proceeding with the suit in the absence of the Applicants and having the titles for the Applicants' land cancelled without hearing the Applicants, violated the sanctity of the Applicants' titles, the rules of natural justice and the rights of the Applicants guaranteed under Article 47 of *the Constitution*. The Applicants averred that the impugned judgment of the court needed to be set aside, the Applicants joined in the suit, and the hearing of the suit commenced afresh. The Applicants annexed several documents to the affidavit in support of the two applications.
15. The Applicants' application was opposed by the Plaintiffs through a replying affidavit sworn by the 1st Plaintiff on 11th October 2024. The Plaintiffs averred that the parcel of land that was referred to as the Gap between Kogony and Kanyakwar registration section/Kogony C-18 Scheme (the suit property) belonged to the Kogony clan and the same was neither surveyed, demarcated, nor registered. The Plaintiffs averred that the 1st, 2nd and 3rd Defendants grabbed the suit property and sold the same to third parties, some of whom were the Applicants. The Plaintiffs averred that they filed this suit to challenge the fraudulent grabbing of the suit property. The Plaintiffs averred that the court, after hearing the suit, found that the Defendants had committed fraud. The Plaintiffs averred that the Defendants had no title in the suit property that they could transfer to the Applicants.
16. The Plaintiffs averred that the Applicants' titles emanated from land parcel No. Kisumu/Kogony/4617, which originated from Kisumu/Kogony/2409. The Plaintiffs averred that land parcel No. Kisumu/Kogony/4617 was transferred to the 1st Defendant. The Plaintiffs averred that the 1st Defendant subdivided parcel No. Kisumu/Kogony/4617 into 29 portions, which included the land allegedly owned by the Applicants (Applicants' land). The Plaintiffs averred that the Applicants' land did not emanate from the suit property, which was the subject of this suit. The Plaintiffs averred that, in the circumstances, there was no basis upon which the orders sought could be granted. The Plaintiffs averred that the issue of the validity of the Applicants' titles was the subject of ELC JR. No. E001 of 2023, ELC JR. No. E005 of 2023 and ELC JR. No. E004 of 2023, in which the court found that the process through which the Applicants' titles were created was fraudulent, and as such, the titles held by the Applicants were invalid. The Plaintiffs averred that some of the Applicants had not exhibited their titles, hence the orders sought could not be granted in their favour.
17. The two applications were argued together by way of written submissions. The Applicants filed submissions dated 10th November 2024, while the Plaintiffs filed submissions dated 11th February 2025. In their submissions, the Applicants reiterated the grounds set out on the face of their applications and the affidavits in support thereof and urged the court to allow the applications.
18. The Plaintiffs similarly reiterated the contents of their replying affidavit in opposition to the applications. The Plaintiffs reiterated that the Applicants' parcels of land originated from land parcel No. Kisumu/Kogony/4617, owned by the 1st Defendant, which was not the subject of this suit, and the judgment sought to be set aside. The Plaintiffs submitted that the Applicants should pursue their claim, if any, against the 1st Defendant. The Plaintiffs submitted that this court had found in ELC JR. No. E001 of 2023, ELC JR. No. E005 of 2023 and ELC JR. No. E004 of 2023 that the titles held by the



Applicants were acquired fraudulently. The Plaintiffs submitted that the issue of the Applicants having not been made a party to this suit has been overtaken by events in the circumstances. The Plaintiffs submitted further that some of the titles relied on by the Applicants were obtained after the filing of this suit, and as such, the same offended the lis pendens rule. The Plaintiffs urged the court to dismiss the Applicants' applications.

Analysis and determination

- 19 I have considered the Applicants' applications together with the affidavits filed in support thereof. I have also considered the replying affidavit by the Plaintiffs and the submissions by the advocates for the parties. In both applications, the Applicants have sought to set aside the judgment delivered herein on 18th March 2022 on the ground that the said judgment affected them while they were neither parties nor aware of the existence of this suit. The Applicants have contended that the court in the said judgment cancelled the titles held by them for the Applicants' land without hearing them. From the documents annexed to the affidavits in support of the applications, Plot No. 6245 is registered in the name of the 1st Applicant. The property is a portion of Plot No. 5142, which was also registered in the name of the 1st Applicant. Plot No. 5142 and Plot No. 6245 were registered in the name of the 1st Applicant on 15th November 2011 and 3rd May 2012, respectively, before the filing of this suit on 20th December 2012. Plot No. 6023 was registered in the name of the 2nd Applicant on 15th August 2012 before the filing of this suit, Plot No. 5143 and Plot No. 5144 were registered in the name of the 3rd Applicant on 18th July 2012 before the filing of the suit, Plot No. 5118 was registered in the name of the 4th Applicant on 28th May 2012 while Plot No. 6191 was registered in the name of the 5th Applicant on 29th March 2012 before the filing of the suit. Plot No. 5705 and Plot No. 5588 were registered in the names of the 16th and 17th Applicants on 7th June 2011 and 2nd September 2011, respectively, before the filing of the suit.
20. Plot No. 6056, Plot No. 7276, Plot No. 7277, Plot No. 5139, Plot No. 6619, Plot No. 5915, Plot No. 5870, Plot No. 5845 and Plot No. 5846, Plot No. 6912 and Plot No. 5893 were registered in the names of 6th, 7th, 8th, 9th, 11th, 12th, 13th, 14th, 15th and 18th Applicants in 2014, 2015 and 2016 after the filing of this suit.
21. I have not found any evidence on record showing the registration of Plot Nos. 6913 and Plot No. 5145 in the name of any of the Applicants. The title deeds for these plots were not annexed to the affidavit in support of the application dated 8th July 2024. There is also no evidence showing that the 10th Applicant owns any land within Registry Index Map Sheet No.18, Kogony Registration Area, Kisumu.
22. Plot No. 6055, Plot No. 5850, Plot No. 5934 and Plot No. 6183 which are the subject of the application dated 9th July 2024 were registered in the names of the 19th, 20th, 21st, and 22nd Applicants in May 2014, September 2015, October 2016 and February 2014 respectively after the filing of this suit on 20th December 2012.
23. The 1st, 2nd, 3rd, 4th, 5th, 16th and 17th Applicants have demonstrated that they were the registered owners of Plot Nos. 6245, 6023, 5143, 5144, 5118, 6191, 5705 and 5588 at the time this suit was filed in 2012. The title deeds annexed to the Applicants' affidavit in support of the application dated 8th July 2024 show that the 1st, 2nd, 3rd, 4th, 5th, 16th and 17th Applicants' properties are located within Registry Index Map Sheet No. 18. In the impugned judgment of this court, the court declared that all land comprised in the Registry Index Map Sheet No. 18 which included land parcel Nos. Kisumu/Kogony/5000 to 6012 was the Plaintiffs' ancestral land, and that the same should revert to the Plaintiffs. The court also cancelled all the title deeds that had been issued to the Defendants and other third parties in respect of land that was falling within the Registry Index Map Sheet No. 18.



24. I am satisfied from the evidence before me that the 1st, 2nd, 3rd, 4th, 5th, 16th and 17th Applicants' parcels of land were affected by the impugned judgment. The parcels of land that were declared to belong to the Plaintiffs and whose title deeds were cancelled included the parcels of land owned by the 1st, 2nd, 3rd, 4th, 5th, 16th and 17th Applicants. This suit was filed by Plaintiffs when the 1st, 2nd, 3rd, 4th, 5th, 16th and 17th Applicants were registered as the proprietors of their respective parcels of land. I agree with the 1st, 2nd, 3rd, 4th, 5th, 16th and 17th Applicants that they had a right in the circumstances to be heard before their parcels of land were declared to belong to the Plaintiffs and their titles to the said parcels of land cancelled. It is therefore my finding that the 1st, 2nd, 3rd, 4th, 5th, 16th and 17th Applicants were condemned unheard in violation of the rules of natural justice. A case has therefore been made for the setting aside of the impugned judgment to the extent that it affected their rights. However, for the reasons that I will give later in the ruling, I do not think that setting aside the said judgment is the most appropriate order to make in the circumstances.
25. As for the 6th, 7th, 8th, 9th, 11th, 12th, 13th, 14th, 15th, 19th, 20th, 21st, and 22nd Applicants, the evidence placed before the court shows that they acquired their parcels of land after the filing of this suit. There is no way that the Plaintiffs would have known that they had interests in the said parcels of land warranting their joinder in the suit. As correctly submitted by the Plaintiffs, the transfer of the said parcels of land to the 6th, 7th, 8th, 9th, 11th, 12th, 13th, 14th, 15th, 19th, 20th, 21st, and 22nd Applicants offended the doctrine of *lis pendens*. In *Mawji v. US International University & Another* [1976-80] 1 KLR 229 Madan J. cited *Bellamy v Sabine* (1857) 1 De G & J 566, 584, where Turner LJ stated as follows on the doctrine of *lis pendens*:
- “It is ... a doctrine common to the Courts both of law and equity, and rests, as I apprehend, upon this foundation – that it would plainly be impossible that any action or suit could be brought to a successful termination, if alienations *pendente lite* were permitted to prevail. The plaintiff would be liable in every case to be defeated by the defendant's alienating before the judgment or decree, and would be driven to commence his proceedings *de novo*, subject again to be defeated by the same course of proceeding.”
26. In the same case, Madan L J also cited *Gour*, on the Indian Transfer of Property Act, 7th Edition, Volume 1 at page 579, where the author stated that:
- “Every man is presumed to be attentive to what passes in the Courts of justice of the State or Sovereignty where he resides. Therefore, purchase made of property actually in litigation, *pendente lite*, for a valuable consideration, and without any express or implied notice in point of fact affects the purchaser in the same manner as if he had such notice, and he will accordingly be bound by the judgment or decree in the suit.”
27. Since the 6th, 7th, 8th, 9th, 11th, 12th, 13th, 14th, 15th, 19th, 20th, 21st and 22nd Applicants acquired their parcels of land after the filing of this suit, the Plaintiffs cannot be faulted for not joining them in the suit when the suit was filed. There is also no evidence that the Plaintiffs became aware of the 6th, 7th, 8th, 9th, 11th, 12th, 13th, 14th, 15th, 19th, 20th, 21st, and 22nd Applicants' interests in the said properties before the hearing and determination of the suit. In the circumstances, the failure of the Plaintiffs to join the 6th, 7th, 8th, 9th, 11th, 12th, 13th, 14th, 15th, 19th, 20th, 21st, and 22nd Applicants in the suit is not a valid ground for setting aside the judgment of 18th March 2022.

DIVISION - Conclusion



28. In conclusion, I will dismiss the 19th, 20th, 21st and 22nd Applicants' application dated 9th July 2024 and allow the 1st to 18th Applicants' application dated 8th July 2024 only in respect of the 1st, 2nd, 3rd, 4th, 5th, 16th and 17th Applicants. I will, however, not set aside the entire judgment of the court delivered on 18th March 2022. As I mentioned in my ruling of 24th April 2024, the Plaintiffs, the Defendants and the Interested Parties who participated in the hearing of this suit are bound by the said judgment as they have not challenged the same. It would not be appropriate in the circumstances to disturb the judgment as far as the rights of the Plaintiffs and the Defendants settled by the said judgment are concerned. For that reason, I would grant the Applicant's alternative prayer. I therefore make the following orders;

1. The Notice of Motion application dated 9th July 2024 is dismissed.
2. I hereby review and vary the judgment delivered herein on 18th March 2022 and strike out from it any reference to the land parcel Nos. Kisumu/Kogony/6245, 6023, 5143, 5144, 5118, 6191, 5705 and 5588 owned by the 1st, 2nd, 3rd, 4th, 5th, 16th and 17th Applicants who were not parties to the suit.
3. The said judgment shall not in any way affect the creation and ownership of land parcel Nos. Kisumu/Kogony/6245, 6023, 5143, 5144, 5118, 6191, 5705 and 5588.
4. Either party (the Plaintiffs or the 1st, 2nd, 3rd, 4th, 5th, 16th and 17th Applicants) shall be at liberty to institute a fresh suit for the determination of the issue of the legality of the creation and ownership of the said parcels of land.
5. Each Party shall bear its costs of the applications dated 8th July 2024 and 9th July 2024.

DELIVERED AND SIGNED AT KISUMU THIS 10TH DAY OF JULY 2025

S. OKONG'O

JUDGE

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform in the presence of:

Mr. Nyakiangana for the Plaintiffs

Ms. Okaka h/b for Mr. Yogo for the 1st, 2nd and 3rd Defendants

N/A for the Interested Parties

Mr. Odeny for the Applicants

Ms. J. Omondi-Court Assistant

