



REPUBLIC OF KENYA



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**Tarus & 51 others v Attorney General & 4 others; Kebene & 16 others (Interested Parties)
(Constitutional Petition 8 of 2020) [2025] KEELC 6104 (KLR) (18 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6104 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
CONSTITUTIONAL PETITION 8 OF 2020
CK YANO, J
SEPTEMBER 18, 2025
IN THE MATTER OF THE CONSTITUTION OF KENYA, 2010 AND
IN THE MATTER OF ARTICLES 3(1), 19(1)(2), 21(1), 28, 29, 40
AND 43 OF THE CONSTITUTION OF KENYA, 2010
AND
IN THE MATTER OF NATIONAL LAND COMMISSION ACT, 2012
AND IN THE MATTER OF THE CONSTITUTION OF KENYA
(PROTECTION OF RIGHTS
AND
FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE
RULE) RULES 1, 2, 3, 4, 10, 11, 20, 21, 33 AND IN THE
MATTER OF SECTIONS 18, 37, 38 & 43 LIMITATIONS OF
ACTIONS ACT
AND
IN THE MATTER OF ORDER 37 RULE 7 CIVIL PROCEDURE
RULES AND IN THE MATTER OF ABUSE, THREAT TO ABUSE
AND INFRINGEMENT OF THE PETITIONERS' HUMAN AND
FUNDAMENTAL CONSTITUTIONAL RIGHTS
AND
IN THE MATTER OF A PORTION OF TITLE NO.
KIPLOMBE/KIPLOMBE, BLOCK II (FORMERLY KNOWN AS LR.
NO. 9723 (LR. 15449) SERGIT RIVER FARM



BETWEEN

ERICK KIBIWOTT TARUS	1 ST PETITIONER
LUDIA SAMOEI	2 ND PETITIONER
KELMAS INVESTMENT LIMITED	3 RD PETITIONER
JAPHATE KIPKEMBOI MAGUT	4 TH PETITIONER
EZEKIEL RONO	5 TH PETITIONER
SERGOIT RIVER CATTLE DIP	6 TH PETITIONER
REGISTERED TRUSTEES, AIC CHURCH	7 TH PETITIONER
THE BOARD SERGOIT RIVER FARM SCHOOL	8 TH PETITIONER
PAULIMA CHUMA	9 TH PETITIONER
ELIJAH CHEMAIYO	10 TH PETITIONER
LILIAN JERUTO KITUR	11 TH PETITIONER
STANLEY KIPTOO METOO	12 TH PETITIONER
WILFRED KIMALAT	13 TH PETITIONER
QUANDS ACHIM	14 TH PETITIONER
JOSHUA KIPROTICH MAGUT	15 TH PETITIONER
ROSA JERUBET BIWOT	16 TH PETITIONER
JEPLETING MITEI	17 TH PETITIONER
JOAN BERNARD SICARD	18 TH PETITIONER
GRACENTINI SICARD	19 TH PETITIONER
SAMWEL KIPRONO SAMOEI	20 TH PETITIONER
PAUL KIPSANG MENGECH	21 ST PETITIONER
EDWARD KIPLAGAT SOI	22 ND PETITIONER
MARTHA ONYANGORE	23 RD PETITIONER
BERNATE ANYONGO	24 TH PETITIONER
MARY NEKESA SOGHO	25 TH PETITIONER
AUGUSTINE LELIT	26 TH PETITIONER
NORBART MAINGI MUYA	27 TH PETITIONER
MONICA JERUTO RUTO	28 TH PETITIONER
NICHOLUS ROP KIPKEMBOI	29 TH PETITIONER
NELSON KIPRONO ORGUT	30 TH PETITIONER



BENJAMIN KUTO	31 ST PETITIONER
LINUS CHERUIYOT	32 ND PETITIONER
PAUL KIPKORIR SUM	33 RD PETITIONER
KIMUTWAL CHERUIYOT	34 TH PETITIONER
JOSEPH KOMEN	35 TH PETITIONER
SISUMA INVESTMENT	36 TH PETITIONER
BRI ROP	37 TH PETITIONER
DAVID KIMUREI MENGICH	38 TH PETITIONER
JOSEPH KIBET ROTICH	39 TH PETITIONER
PERES JEMELI KOIMUR	40 TH PETITIONER
FRANCIS OSANO OMWENGA	41 ST PETITIONER
DANIEL KOMEN	42 ND PETITIONER
JOSHUA KIPLETING SULAI	43 RD PETITIONER
JOHN KIPKEMBOI KOECH	44 TH PETITIONER
PROF GABRIEL MISANGO ANABWANI	45 TH PETITIONER
DAVID KIPTALAM BETT	46 TH PETITIONER
MARY OLOO SLA	47 TH PETITIONER
DR SILVANO KIPYEGO ROTICH	48 TH PETITIONER
EVERLINE JEPKEMBOI KEINO	49 TH PETITIONER
BARABARA LAGAI	50 TH PETITIONER
PROF MARTIM HENRY KIMUREI	51 ST PETITIONER
WILSON CHUMA	52 ND PETITIONER

AND

ATTORNEY GENERAL	1 ST RESPONDENT
NATIONAL LAND COMMISSION	2 ND RESPONDENT
CHIEF LAND REGISTRAR	3 RD RESPONDENT
ESTATE OF ESMAIL NURANI	4 TH RESPONDENT
ESTATE OF NYONGIO KIMITEI	5 TH RESPONDENT

AND

ZADRACK KEBENEI	INTERESTED PARTY
JAPHETH KIPKEMBOI MAGUT	INTERESTED PARTY
WILFRED KIPTUM KIRU	INTERESTED PARTY



GRACE M SICARD	INTERESTED PARTY
NERBERT MAINGI MUYA	INTERESTED PARTY
BENSON KIPCHUMBA CHERONO	INTERESTED PARTY
MARGARET JEMISTO TUITOEK	INTERESTED PARTY
JUDITH CHEBET KEMBOI	INTERESTED PARTY
LILIAN JERUTO KITTUR	INTERESTED PARTY
ELIJAH CHEMAIYO	INTERESTED PARTY
WILFRED KIMALAT KITUR	INTERESTED PARTY
MARTHA ONYANGORE	INTERESTED PARTY
JOAN JEPKORIR KOMEN	INTERESTED PARTY
BENJAMIN KUTO	INTERESTED PARTY
NELSON ORGUT	INTERESTED PARTY
BOARD OF MANAGEMENT AIC ITIGO PRIMARY SCHOOL	INTERESTED PARTY
BOARD OF MANAGEMENT AIC ITIGO SECONDARY SCHOOL	INTERESTED PARTY

RULING

1. Before this Court are four applications as well as a preliminary objection raised for determination.

A. Notice of Motion Dated 03.03.2025

2. The first Application dated 3rd March, 2025 is brought by the 5th Respondent/Applicant and he seeks the following orders:-
 - a. Spent
 - b. That this Honourable court be pleased to order the Petitioners (1-52 Interested Parties), their agents servants and/or family members to move and leave vacant possession from the suit land namely Kiplombe/Kiplombe/Block II, pursuant to the judgment delivered by this court vide ELD ELC Constitution Petition No. 8 of 2020 on 26/02/2025.
 - c. That the Petitioners to pay the costs of this Application.
3. In support of this Application is a Supporting Affidavit sworn by Kenneth Kipkoech Korir, who described himself as the “representative of 5th Respondent”. He deponed that after a contested legal battle between the Petitioners, the 5th Respondent and the Interested Parties, judgment was delivered on 26th February, 2025 dismissing the Petition with costs to the 1st, 2nd, 3rd and 5th Respondents. He deponed that the 5th Respondent was declared the lawful owner of the parcel of land known as Kiplombe/Kiplombe/Block II (the suit property).
4. He averred that the Petitioners, who are in illegal occupation of the suit property, have refused to move and/or vacate from the land. He deponed that the Petitioners’ and Interested Parties’ conduct



is deliberate and meant to lower the dignity and authority of the court, hence the need for an order directing them to give vacant possession of the suit property. He stated that the 5th Respondent stands to suffer great loss and damage as a result of the said conduct, and that it is in the interest of justice that the application be allowed and the orders sought granted. He further averred that the application was made promptly and in utmost good faith.

5. The Application was opposed by the 1st Petitioner through his Replying Affidavit sworn on 8th May, 2025. He averred that the orders declaring ownership that the 5th Respondent was relying on to seek eviction and vacant possession were made as obiter dicta and cannot be enforced without a substantive suit and finding. He accused the 5th Respondent of attempting to go round Rule 15(3) of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice Procedure Rules, and file a cross petition post judgment. He cited Article 23(3), and alleged that where a petition fails, the court declines the reliefs and issues a negative order but cannot go beyond that and rule on issues that were never before it.
6. The 1st Petitioner termed the Application an error apparent on the face of the record, and alleged that the 5th Respondent ought to bring a substantive suit for eviction and obtain a judgment in that regard. He also cited Section 19 of the *Environment and Land Court Act*, as well as Order 21 Rule 4, stating that the application sought to evict the Petitioners unprocedurally, instead of following the full course of the law. He pointed out that the judgment had generated the four applications under consideration herein, and urged the court to invoke its jurisdiction under Section 99 of the *Civil Procedure Act* and amend the error on the judgment before it causes mayhem.
7. The Application was also opposed by the 2nd - 52nd Petitioners through the Replying Affidavit sworn by Edward Kiplagat Soi on 28th April, 2025. The said Replying Affidavit is a replica of the Affidavit sworn by the 1st Petitioner herein summarised as herein above.
8. On behalf of the 1st and 3rd Respondents as well as the 1st and 2nd Interested Parties, the AG filed Grounds of Opposition dated 6th May, 2025. The AG sought to have the Application dated 3rd March, 2025 dismissed with costs on the following grounds:-
 - i. The Application is a non-starter, mischievous and devoid of merits.
 - ii. The Application seeks the implementation of a non-binding remarks and or obiter dictum of the court as contained in paragraph 58 of the judgment.
 - iii. That there is an application for review and or setting aside the impugned paragraph 58 which was erroneously made by the court.
9. The 1st to 15th Interested Parties also opposed the Motion. They filed a Replying Affidavit sworn by the 1st Interested Party, Zadrack Kebenei, claiming that the Application is misconceived, bad in law, a non-starter and abuse of court process, and in addition, it is frivolous and vexatious. He deponed that eviction orders are not sought through applications, neither can they be granted if they were never sought in the main proceedings. He deponed that without a cross-petition, this court could only pronounce itself on the prayers contained in the Petition.
10. Aside from the Replying Affidavit, the Interested Parties also filed a Notice of Preliminary Objection dated 8th May, 2025 seeking a dismissal of the application on the following grounds:-
 - i. The application offends the provisions of part XI of the *Land Act*.
 - ii. The Application offends the provisions of Sections 152B, 152E & 152G of the *Land Act*.



iii. The Application is a non-starter and founded on no proper legal provisions.

B. Notice of Motion Dated 10th March, 2025

11. In this Application, the Applicants seek the following orders:-

a. Spent

b. The Hon. Court be pleased to join Sally Jepkemboi Laboso, Musa Kipkosgei, Faith Jerop Mengich, Felix Kiptoo Murey, Gladys Jepng'etich, Barnabas Kibet Biwott, Joel mworia Nganga, Michael K Kolele, Jones Kipkoech, Edwin Kipruto Kiprono, Jemutai Joyce Sila, Silas Kiplagat, Martin Kering Cheptaiget, Thomas Kibichi, Josephat Rotich Kemboi, Kanide Deborah Sutter, Kiplagat Kipyego, Leah Koech, Emmy Jemugor Koech, Philip Kipchirchir Korir, John Kibet Rono, Lilian Jemutai Rono, Wellborne Kosgey Ndiwa, Monica Jeptanui Kimutai and John Kiprotich Kosgei as Interested Parties ex parte in the first instance.

c. Costs in the cause.

12. The Proposed Interested Parties filed a joint Affidavit dated 10th March, 2025 in support of their Application. They deponed that they have been in possession and occupation of parts of 477 Acres of L.R. No. 9723 (IR No. 15449) currently reflected in parcel register number Kiplombe/Kiplombe/Block II (Sergoit River Farm) for over 30 years. They averred that they are conversant with the purchase details, current possession, occupation, location, size and title details of their respective parcels on the suit land. The Proposed Interested parties proceeded to give the said details in respect of their various portions.

13. The Proposed Interested Parties claim that they have made significant developments on their respective portions. They particularised the details and nature of the alleged developments and investments, which they claim have solidified their interests in the property under Article 40. They accused the 5th Respondent of failing to take any action to halt their said developments to their detriment, and is now precluded by the doctrine of estoppel by acquiescence from asserting any claim inconsistent with their established rights.

14. The Proposed Interested Parties claim that they became aware of the judgment delivered herein that awarded the suit land to the 5th Respondent, upon seeing the eviction notice dated 28th February, 2025. They deponed that their parcels, which existed out of the 854 Acres comprising of the suit properties, have been awarded to the 5th Respondent without their participation in the case contrary to Article 50(1) of *the Constitution*, rendering the judgment null and void. Further, that since the court did not issue an order of eviction in its judgment, the 5th Respondent is by law required to move the court formally for an eviction order, but has not done this.

15. The Proposed Interested Parties termed the eviction notice of 28th February, 2025 non-compliant with law and procedure and thus invalid and unenforceable. They averred that they were bona fide purchasers without notice of defect to the title. They faulted the 5th Respondent for obtaining a judgment in his favour without serving them despite being aware of their possession. They claimed that one Anna Kimitei, the legal representative of the Estate of Nyongio Kimitei died prior to the judgment and no substitution was made, and a finding without such substitution is null and void.

16. The Proposed Interested Parties claimed that they are entitled to joinder even after judgment since their rights under Article 40 and 47 are directly affected. They claim that they stand to suffer irreparable loss by being evicted from their homes, if they are not allowed to present their case. They deponed that their joinder into the suit will facilitate a just, expeditious and affordable resolution of all claims



over the suit property. They further explained that their joinder would enable them to file a review application to address the infringement of their rights. They urged that their application is brought in good faith and it is imperative and in the interest of justice that it is allowed.

17. The 5th Respondent Opposed this Application through an Affidavit sworn by Kenneth Kipkoech Korir on 27th March, 2025. He pointed out that the Applicants had moved the court after conclusion of the suit without leave, and urged that a party can only be enjoined to proceedings pending before a court, otherwise there is nothing to litigate as the court is functus officio. He claimed that the Proposed Interested Parties purchased the land from third parties without inquiring into whether they had authority to sell the land. He alleged that the said third parties had no consent to sell the land, either by way of Power of Attorney or Grant of Letters of Administration. He pointed out that the Proposed Interested Parties had not demonstrated any agreement between them and the 5th Respondent's family.
18. He further deponed that on the demise of Anne Kimitei, he took over the administration of the Estate, hence the suit has not abated. He claimed that it is unclear how the Proposed Interested Parties came into the suit property as they had not demonstrated how they purchased the land from strangers. He urged them to pursue a refund from the 1st Petitioner who sanctioned the illegal sale of the land. On joinder, he deponed that a party must demonstrate the personal interest, which must be proximate enough and not merely peripheral or remote. He concluded that the application lacks merit and ought to be dismissed.
19. Responding to the Replying Affidavit, the Proposed Interested Parties filed a Supplementary Affidavit dated 29th March, 2025 in further support of the Motion. They deponed that the suit land was never transferred to the late Anne Kimitei. That currently, the Estate of Nyongio Kimitei in whom the land is vested, lacks an administrator thus Kenneth Kipkoech Korir lacks locus standi. They also denied the averments in the 5th Respondent's Replying Affidavit, and claimed that the estate had not demonstrated any prejudice it would suffer if they were joined to the suit.
20. The Proposed Interested Parties urged that the joinder is not intended to re-open the whole suit, but to give them procedural standing to allow them seek review of the judgment. They urged that the 5th Respondent had raised complex and contested issues on the validity of their agreements. That these issues can only be resolved at a full hearing, which can only be done once they are joined to the suit. They reiterated that their joinder was necessary for the determination of all material questions over the suit land, and would avoid piecemeal litigation and multiplicity of suits. They stated that they would suffer extreme prejudice, including loss of property, being condemned unheard and possible dispossession without due process.

C. Notice of Motion Dated 12th March, 2025

21. The third Application dated 12th March, 2025 is brought by the Attorney General and seeks the following reliefs:-
 - a. Spent
 - b. Spent
 - c. The judgment delivered on 26th February, 2025 and particularly the obiter dictum made at paragraph 58 thereof together with all consequential processes and instruments including the eviction notices dated 28th February, 2025 addressed to the Interested Parties herein be reviewed, vacated, set aside and vitiated.



- d. The court do clarify that since the 5th Respondent did not cross-petition for declaration of ownership and eviction, it was erroneous for the Trial Judge to observe and direct as he did at paragraph 58 of the Judgment hence the said paragraph is clearly an error apparent on the face of the record hence it is amenable to review.
- e. The costs of the Application be provided for.
22. The grounds in support of the Motion are set out on the face of it, as well as in two Supporting Affidavits, the first of which is dated 10th March, 2025 and is sworn by Leah Ngetich, the head teacher of the 16th Interested Party. She confirmed that the two schools operate from the suit property, and to her knowledge the land is registered in the name of the Permanent Secretary to Treasury. She deponed that neither the Respondents nor the Interested Parties cross-petitioned for a declaration of ownership nor raised a claim for adverse possession. She acknowledged that the learned Judge found no merit in the Petition herein and dismissed it with costs.
23. She deponed that at paragraph 58 of the judgment, the judge erroneously observed that the 5th Respondent was the registered owner of the suit property, and nothing could stop him from evicting the occupants of the land. That the 5th Respondent had misconstrued the said observation to imply the Trial Judge issued an order of eviction, and has pursuant thereto issued a notice requiring the occupants to vacate the land and for advocate's legal fees. She averred that there was no order declaring the 5th Respondent as the owner of the suit land or an eviction order as they were never sought.
24. She accused the 5th Respondent of attempting to execute a non-existent eviction. She faulted the 5th Respondent for demanding legal fees when the Applicants herein were represented by the Attorney General, whereas no orders of costs were issued against the 1st and 3rd Respondents. She urged that the Application was made timeously and in good faith and ought to be allowed as no prejudice will be occasioned. She claimed that the Interested parties would be condemned unheard if they are not granted an opportunity to be heard.
25. The second Supporting Affidavit is dated 12th March, 2025 and is sworn by Evelyne Morogo the Principal of 17th Interested Party. She adopted the averments made in the Affidavit of Leah Ngetich, and urged the court to allow the application for joinder of the Proposed Interested Parties.
26. The 5th Respondent once again opposed the Application through a Replying Affidavit sworn by Kenneth Kipkoech Kipkorir on 27th March, 2025. He deponed that the court in its judgment dated 26th February, 2025 held that the suit property has always been private land not available for alienation by the Government. Further, that the court found the purported allotment to the 1st and 3rd Respondent was null and void and went ahead to dismiss the Petition. He claimed that the fact of ownership of the land by the 5th Respondent is not in dispute.
27. He deponed that the Petition did not raise constitutional issues and the court did not have jurisdiction to issue the orders sought. He stated that the title deeds issued to the 16th and 17th Respondents were declared null and void. He further deponed that the Motion is frivolous, vexatious and an abuse of court process. He further stated that the court is functus officio and that the intended Applicants had not filed a memorandum or notice of appeal.

Notice of Motion Dated 21st March, 2025

28. The final application is dated 21st March, 2025 and is brought by the 1st to 14th Interested Parties seeking the following orders:-



- a. Spent
 - b. Spent
 - c. That this Honourable Court be pleased to grant a stay of execution of the Judgment and decree delivered on 26/02/2025 and all consequential orders arising therefrom pending the hearing and final determination of the intended appeal.
 - d. This Honourable Court be pleased to stay the execution of the Judgment dated and delivered on 29th October, 2024 and all consequential orders pending the hearing and determination of this appeal.
 - e. That the costs of this application be provided for.
29. In support of this Application, the Interested Parties filed a Supporting Affidavit of even date sworn by the 1st Interested Party, Zadrack Kebenei, who deponed that the Interested Parties have since lodged an appeal against the judgment delivered on 26th February, 2025. That despite no eviction order being issued, the 5th Respondent issued an eviction notice against the 1st - 14th Interested Parties and instituted eviction proceedings in execution of the said judgment. That the Interested Parties thus stand to be evicted if the 5th Respondent is allowed to enforce the judgment in the pendency of the Appeal.
30. He deponed that the intended appeal raises triable issues with overwhelming prospects of success, and would be rendered nugatory if stay of execution is not granted. He averred that the Interested Parties would suffer irreparable loss and damage if the stay is not granted. He claimed that sufficient cause exists to warrant the issuance of the order of stay of execution. That the Application had been made timeously and in good faith, and that they are willing and able to furnish such reasonable security as the court may direct. Further, that no prejudice will be occasioned on the Respondents that cannot be compensated by an award of damages, thus it is in the interests of justice that the application be allowed.
31. The Motion was opposed by the 5th Respondent through the Replying Affidavit of Kenneth Kipkoech Korir sworn on 27th March, 2025 who claimed to have taken over administration of the Estate of the late Nyongio Kimitei. He deponed that the Interested Parties had not demonstrated how they came into the suit land. He averred that the Applicants were required to show that if the intended Appeal was successful, it would be rendered worthless. He deponed that the Application lacks merit and should be dismissed with costs.

Submissions

32. On 2nd April, 2025 when the matter was mentioned, the court directed that the four applications would be heard together. The court further directed that the Applications would be canvassed by way of written submissions. The Parties complied and filed their respective submissions.

Analysis and Determination

33. I have considered the four Applications, the Affidavits and annexures filed in support thereof, the Responses thereto as well as the submissions of the parties. I am convinced that the issues that lend themselves for determination by this court are:-
- i. Whether Kenneth Kipkoech Korir has locus standi to plead on behalf of the Estate of the late Nyongio Kimitei;
 - ii. Whether the Proposed Interested Parties should be joined to the suit;



- iii. Whether the judgment delivered on 26th February, 2025 ought to be reviewed;
- iv. Whether an order of stay of execution of the judgment dated 26th February, 2025 should be granted;
- v. Who shall bear the costs of the Applications?

a. Whether Kenneth Kipkoech Korir has locus standi to plead on behalf of the Estate of the late Nyongio Kimitei;

34. There is no dispute that the late Anne Kimitei was the Administrator of the Estate of Nyongio. According to the Certificate of Confirmation of Grant dated 31st January, 2019 the suit property wholly devolved to the Late Anne Kimitei, who was the only administrator of his Estate. In case of the death of a personal representative, Section 81 of the Law of Succession Act provides that:-

81. Powers and duties of personal representatives to vest in survivor on death of one of them

Upon the death of one or more of several executors or administrators to whom a grant of representation has been made, all the powers and duties of the executors or administrators shall become vested in the survivors or survivor of them:

35. In this case however, there was only one administrator appointed over the Estate of the Late Nyongio Kimitei, that was Anne Kimitei who is now deceased. Notably, Section 76(e) of the Law of Succession Act provides that a grant of representation, whether or not confirmed, may at any time be revoked or annulled if it becomes useless and inoperative through subsequent circumstances.

36. In *Julia Mutune M'mboroki vs John Mugambi M'mboroki, Gikundi M'mboroki, Linet Nthiori Ndingu & Naomi Gatimba* (2016) KEHC 7023 (KLR), the court explained that death of a sole administrator can render a grant useless and/or inoperative. The court explained that:-

“I also think it is worth mentioning that the Law of Succession Act does not talk of substitution of administrator; it provides for making of a grant to another person or persons after revocation of grant or on the death of the administrator or on renunciation of right to apply or executorship etc... In my view, therefore, where the sole administrator is a natural person, and he or she dies, the grant becomes useless or inoperative by reason of subsequent event of his demise. I am aware that the Law of Succession Act does not define or say what constitutes “the grant has become useless and inoperative through subsequent circumstances”. But, in my opinion, death of an Administrator would be a sufficient reason to revoke a Grant for having become useless and inoperative due to subsequent demise of its holder. Accordingly, in such case, the proper procedure is to apply for revocation of grant of letters of administration under section 76(e) of the Law of Succession Act on the reason that the grant has become useless and inoperative through subsequent circumstances and a grant to be made to another person named in the application.”

37. I agree with the above authority that the death of a sole Administrator is one of the circumstances that renders a Grant of letters of Administration useless or inoperative. Since no application was made for revocation of the Grant, at the moment, the Estate of Nyongio Kimitei currently lacks an administrator.

38. In addition, the land was never transferred to Anne Kimitei, and title still remains in the name of Nyongio Kimitei. Upon the Demise of Anne Kimitei, a Limited Grant of Letters of Administration Ad Litem was granted to Kenneth Kipkoech Korir on 22nd March, 2023 over her estate. To my



understanding, this Grant only allows Kenneth Kipkoech Korir to administer the Estate of the Late Anne Kimitei, but does not give him authority over the Estate of Nyongio Kimitei. Therefore unless he can show that the initial Grant made to Anne Kimitei was revoked and a new one issued to him, he is not a personal representative of the 5th Respondent.

39. Kenneth Kipkoech Korir thus lacks locus standi to bring any application on behalf of the 5th Respondent or to act for the said estate. This also means that there is currently no one with the authority to issue any eviction notice on behalf of the 5th Respondent. That being the case, the Application dated 3rd March, 2025 is made by a stranger to these proceedings, is improperly before the court and is for striking out. In addition, even the Replying Affidavits sworn in response to the other applications herein are for striking out.
40. The Application dated 3rd March, 2025 having been struck out, this determination then also determines the PO by the Interested Parties filed in response thereto.

b. Whether the Proposed Interested Parties should be joined to the suit;

41. I now turn to the issue of joinder of the intended Interested Parties. Joinder of parties is governed by Order 1 Rule 10 of the Civil Procedure Rules. Order 1 Rule 10(1) specifically allows the court, either of its own motion or on application of either party, to join to the suit any party whose presence may be necessary to enable it effectually and completely to adjudicate upon and settle all questions involved in the suit. This can be done at any stage of the proceedings.
42. Courts have held however, that joinder of parties may be refused where such joinder will lead into practical problems of handling the existing cause of action together with the one of the party being joined, it is unnecessary; or it will just occasion unnecessary delay or costs on the parties in the suit.
43. In other words, joinder of parties will be declined where the cause of action being proposed or the relief sought is incompatible to or totally different from existing cause of action or the relief. The determining factor in joinder of parties is that a common question of fact or law would arise between the existing and the intended parties.
44. Notably, the Proposed Interested Parties have approached court after the delivery of the judgment in the Petition. The question therefore is whether joinder can be allowed in this case since the application was made after judgment. In answering this question, I find guidance in the case of JMK vs MWM & Another (2015) eKLR, where the Court of Appeal held that:-

“We would however agree with the respondent that Order 1 Rule (10)(2) contemplates an application for amendment or joinder of parties where proceedings are still pending before the Court. Sarkar’s Code, (supra) quoting as authority, decisions of Indian Courts on the provision, expresses the view that an application for joinder of parties can be filed only in pending proceedings. In the same vein, the Court of Appeal of Tanzania, while considering the equivalent of Order 1 Rule 10(2) of our Civil Procedure Rules, in Tang Gas Distributors Ltd V. Said & Others [2014] EA 448, stated that the power of the court to add a party to proceedings can be exercised at any stage of the proceedings; that a party can be joined even without applying; that the joinder may be done either before, or during the trial; that it can be done even after judgment where damages are yet to be assessed; that it is only when a suit or proceeding has been finally disposed of and there is nothing more to be done that the rule becomes inapplicable; and that a party can even be added at the appellate stage.”



45. As to the instances in which a party may be joined to a suit post-judgment, in *Bellevue Development Company Limited vs Vinayak Builders Limited & another* (2014) KEHC 5507 (KLR), the court explained that:-

“Joinder of parties is possible after judgment. I will give some example where such joinder of parties is permitted; 1) in cases of representative suits; or 2) substitution of one or more parties, for instance, in case of death, or incapacity of a party or change of status of a party; or 3) in execution process. In the broader sense, it is deemed to be a kind of joinder of parties where a contemnor was not a party in the suit where judgment has already been entered and for which he is being cited for contempt of court. Equally, it is a joinder of parties where an objector raises objection to execution under Order 22 rule 51 of the CPR. However, any joinder of parties post-judgment will have to surmount any possible constitutional objections on the front of rules of natural justice and the principle of finality of litigation.”

46. Another such instance is given by the Court of Appeal in *JMK v MWM & Another* (Supra), where the court explained its decision to allow joinder of a party post-judgment as follows:-

“In this appeal, the appellant was entitled to contend, as he did, that the judgment of the Industrial Court which directly affected him, was in breach, not only of the law, but also of *the Constitution* in so far as it condemned him without an opportunity to be heard and in breach of the right to a fair hearing guaranteed by Article 50(1). He was also entitled to contend that to the extent that the judgment found him guilty of sexual harassment without affording him an opportunity to be heard, that in itself constituted sufficient reason for review of the judgment.”

47. Evidently, in the instant Petition, the Petitioners claimed to have acquired interests over the suit property by way of effluxion of time, and that the Respondents or anybody claiming under them have had their rights extinguished by prescription. The Proposed Interested Parties on the other hand claim to have purchased their respective portions of land, and have annexed copies of Agreements for sale as proof thereof. Whereas it may be said that this raises a whole new cause of action different from that which was advanced by the Petitioners in the Amended Petition, and which it could be properly addressed through a separate suit, I have seen the purported Notice of Eviction dated 28th February, 2025 issued on behalf of the 5th Respondent, giving notice to the Interested Parties to vacate the land within 14 days or be evicted. There is no doubt that the said notice, if acted upon, will adversely affect the Proposed Interested Parties, yet they were not parties to this suit and neither were they given an opportunity to present their case.

48. In my considered view, the Proposed Interested Parties, by virtue of the fact that they live on the suit land and are likely to be affected by the actions of the 5th Respondent herein, have established an identifiable stake or legal interest in this suit. They are therefore entitled to be joined to the suit to allow them a fighting chance to protect their properties.

49. As to whether the court is functus, it must be noted that the prayers being sought by the Proposed Interested Parties are based on matters which arose after delivery of the judgment, and its purported implementation by the 5th Respondent. This court therefore has the jurisdiction to allow their joinder into the suit.



c. Whether the judgment delivered on 26th February, 2025 ought to be reviewed

50. The application dated 12th March, 2025 seeks to have this court review its judgment of 26th February, 2025. In particular, they seek a review and setting aside of paragraph 58 of the judgment and all consequential processes and instruments including the 5th Respondent's eviction notices dated 28th February, 2025 addressed to the Interested Parties. This court has already rendered itself on the purported eviction notice purported to have been issued on behalf of the Estate of Nyongio Kimitei.
51. Turning to the review of paragraph 58 of the judgment, under Order 45 Rule 1 of the Civil procedure Rules, an application for review can be premised on the grounds that there must be an error apparent on the face of the record, or that there is discovery of new and material evidence that were not within the Applicant's knowledge at the time the decision was made. A court's decision may also be reviewed for any sufficient reason.
52. According to the AG, the application for review is pegged on the ground that there is an error on the face of the Record. The AG submitted that the statements contained at the impugned paragraph of the judgment amount to obiter dictum, which is an opinion outside of the pleadings, but was being misconstrued by the 5th Respondent to evict the Interested Parties. The AG urged that the said paragraph 58 that declared the 5th Respondent the owner of the suit land is an error on the face of the record, that ought to be corrected.
53. I am in agreement with the AG that the court never issued an eviction order in this case. While dismissing the Petition, the Honourable (Obaja J) held at paragraph 58 of his judgment that:-
- “ 58. The Petitioners cannot therefore be granted orders of adverse possession. Equally the government cannot be compelled to complete a process which was illegal in the first place. As matters stand, it is the Estate of Nyongio Kimitei who owns the suit property and they cannot be restrained from dealing with the same including evicting the Petitioners therefrom.”
54. It is this part of the judgment that has resulted in the Applications that form the subject matter of this ruling, one of them being the AG's application for review, I note also that at the preceding paragraph 57, the court had found that:-
- “ 57. The Estate of Nyongio Kimitei owns the suit property. There were allegations that Nyangio Kimitei had intention to purchase the share of Bahadurali Nurani but this did not materialize. There is no evidence that this was the case. The title to the entire property got lost. The provisional certificate of title which was issued pursuant to Gazette Notice No. 4024 of 30th April, 2021 is incomplete as it does not show the entry of the name of Nyongio Kimitei and Bahadurali Nurani and their respective shares. It is also not clear whether the shareholding of the two was 50:50 or 60:40%.”
55. While giving a background of the case, the learned Judge at paragraph 3-5 of the judgment noted that:-
- “ 3. There is no clear record on how and when the land was transferred to Nyongio Kimitei and Diamondali Nurani. This is because the original title was lost from the Lands Registry. According to the materials filed by the parties in this petition, the petitioners and the Respondents are giving backgrounds which only suit their positions. It is therefore not easy to trace the history between



the time the land was transferred from Donald James Gear to the time when the Moiben Divisional Land Control Board at its meeting of 13th March, 1985 approved subdivision of the land. During this meeting, the Board approved a proposal to partition the land into 477 and 377 acres in favour of Bahadurali Nurani and Nyongio Kimitei. The approval was made under minute number 73/85.

4. Under minute number 74/85 a proposal by Mr. Bahadurali Nurani to sell 377 acres to the Government of Kenya at a consideration of Kshs.1,696,500/= was approved. Under minute 75/85 a proposal by Mr. Bahadurali to sell 80 acres to Eric Tarus at a consideration of Kshs.180,400/= was approved. In the same meeting a proposal by Mr. Bahadurali to transfer 20 acres to the Government of Kenya by way of gift was approved.
5. On 25th July, 1985, the Provincial State Counsel Rift Valley Province wrote to the District Land Registrar Uasin Gishu District asking him to cause subdivision of the 377 acres and give the same to the landless. The 377 acres were subdivided into blocks of 5 acres each and these are the plots which the Petitioners claim were given to them.”

56. Going by the above summary and evidence produced before the court, the learned Judge arrived at certain findings according to his discretion. If the learned Judge erred as argued by the A.G, such decisions can only be a subject of appeal and not a review. I am of the view that the issue raised by the A.G is one to be determined on Appeal, and to purport to review/correct the judgement as sought herein would amount to sitting on appeal on a judgment issued by this court, a matter for which I have no jurisdiction.

d. Whether an order of stay of execution of the judgment dated 26th February, 2025 should be granted;

57. The 1st to 14th Interested Parties in their Application dated 21st March, 2025 seek an order of stay of execution of the judgment pending their intended Appeal. The granting of stay of execution pending appeal is governed by Order 42 Rule 6 of the Civil Procedure Rules. Subrule (1) thereof allows the court to order a stay of execution where sufficient cause has been established.

58. The conditions for grant of an order of stay of execution are set out at Order 42 Rule 6(2), under which a party seeking stay must demonstrate that:-

- a. Substantial loss may result to the applicant unless the order is made,
- b. The application has been made without unreasonable delay, and
- c. Such security as the court orders for the due performance of the decree or order as may ultimately be binding on the applicant has been given by the applicant.

59. In his final disposition, the learned Judge made the following finding:-

“From the above analysis, it is clear that the Petitioners’ Petition is devoid of merit. The same is dismissed with costs to the 1st, 3rd, and 5th Respondents.”

60. The Interested Parties therefore seek to stay the judgment of this Court delivered on 26th February, 2025 dismissing the Petition. In dismissing the Petition, the court did not make any other orders capable of being executed. The dismissal itself took effect immediately, and did not place any obligation on any of



the parties capable of being executed or stayed. This dismissal is for all intents and purposes a negative order, which in essence puts the parties in the situation they were in before coming to court, and it would ideally be incapable of being stayed because there is nothing to stay. (See the case of *Western College of Arts and Applied Sciences vs EP Oranga & 3 others* (1976) eKLR).

61. However, the unique position in this case is that a Notice of Eviction was issued on 28th February, 2025 on behalf of the 5th Respondent, purporting to give the Interested Parties 14 days within which to vacate the land or face eviction. The 5th respondent, it would appear, is under a misconception that he was granted an eviction order under the judgment, which he now intends to execute.
62. It is therefore imperative that I address the 5th Respondent's actions of attempting to evict the Interested Parties or the Petitioners herein. Aside from the issue of lack of locus standi that this court has already determined, it must be clearly understood that the said eviction is not premised on any positive order and/or decree issued by this court. The 5th Respondent is clearly sneaking around and trying to interpret the judgment of this court as having issued an eviction order against the Interested Parties, whereas in truth, that is not the case.
63. The Learned judge in his judgment did not issue any positive order which the 5th Respondent could purport to execute. For what it's worth, any purported eviction claimed to be done under the judgment of this court made on 26th February, 2025 is misconceived and has no legs to stand on. This court cannot allow the 5th Respondent's misconception of the judgement made on 26th February, 2025 to go on.
64. No doubt that if the 5th Respondent manages to evict the other parties from the suit land, the Appeal filed by the Interested Parties, as well as the Appeals filed by the other parties against the judgment, will be rendered nugatory. For this reason, and to avoid the Appeal filed by the 1st - 14th Interested Parties from being rendered otiose, I will grant an order of stay of execution of the judgment to allow the Interested Parties pursue their Appeal without the threat of eviction looming over their heads.

e. Who shall bear the costs of the Applications?

65. I now turn to the issue of costs of the four Applications. On costs, Section 27 of the [Civil procedure Act](#) provides that:-

27. Costs

- (1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers:

Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.

66. The award of costs is therefore a matter in which the court is given discretion, which discretion must be exercised wisely. It is under this discretion that the proviso to Section 27 of the [Civil Procedure Act](#), allows a court to depart from the general rule that costs should follow the events. This can be done for good reasons as the court may indicate.



67. In the current situation, there are four applications filed by the various camps. I note that all four applications arose out of what appears to be a lack of comprehension of this court's judgment. For this reason, I see no need to make an award of costs to any of the Applicants herein. As a result, each party shall bear their own costs.

Orders:-

68. In conclusion, I hereby make the following orders:-

- a. The 5th Respondent's Application dated 3rd March, 2025 is hereby struck out for lack of locus standi.
- b. The Applications dated 10th March 2025, is allowed with the effect that this court hereby joins Sally Jepkemboi Laboso, Musa Kipkosgei, Faith Jerop Mengich, Felix Kiptoo Murey, Gladys Jepng'etich, Barnabas Kibet Biwott, Joel mworia Nganga, Michael K Kolele, Jones Kipkoech, Edwin Kipruto Kiprono, Jemutai Joyce Sila, Silas Kiplagat, Martin Kering Cheptaiget, Thomas Kibichi, Josephat Rotich Kemboi, Kanide Deborah Sutter, Kiplagat Kipyego, Leah Koech, Emmy Jemugor Koech, Philip Kipchirchir Korir, John Kibet Rono, Lilian Jemutai Rono, Wellborne Kosgey Ndiwa, Monica Jeptanui Kimutai and John Kiprotich Kosgei as Interested Parties in this suit.
- c. The Application dated 21st March, 2025 is allowed, and consequently, an order of stay of execution of the judgment dated and delivered on 26th February, 2025 and all consequential orders pending the hearing and determination of the intended Appeal.
- d. The Application dated 12th March, 2025 is without merit and the same is dismissed.
- e. The Interested Parties Preliminary Objection dated 8th May, 2025 is allowed.
- f. Each party shall bear their own costs.

69. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT ELDORET ON THIS 18TH DAY OF SEPTEMBER, 2025 VIDE MICROSOFT TEAMS.

HON. C. K. YANO

ELC, JUDGE

In the presence of;

Mr. Ngigi for Petitioners.

Ms. Odeyo for A.G for 1st & 3rd Respondents & 1st & 2nd Interested parties.

Mr. Chirchir holding brief for Ms. Chesoo for proposed Interested party.

Mr. Omboto for 5th Respondent.

Court Assistant - Laban.

