



**Keekonyoike Community Trust (Suing through the Duly Appointed Trustees)
v Chief Land Registrar & another (Environment and Land Miscellaneous
Application E008 of 2025) [2025] KEELC 4710 (KLR) (25 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4710 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E008 OF 2025
LC KOMINGOI, J
JUNE 25, 2025**

BETWEEN

**KEEKONYOIKE COMMUNITY TRUST (SUING THROUGH THE DULY
APPOINTED TRUSTEES) APPLICANT**

AND

THE CHIEF LAND REGISTRAR 1ST RESPONDENT

**THE PRINCIPAL SECRETARY, MINISTRY OF LANDS, HOUSING AND
URBAN DEVELOPMENT 2ND RESPONDENT**

RULING

1. Before the court are two Applications filed by two factions of Trustees that claim to have been elected by the Keekonyokie Community. The first is dated 12th February 2025 filed on behalf of the community by Moses Masek Monik, Hannah Silapei Tuuko, Emmanuel Litei Shokore, Parsereti Ngomea Ngussur, John Kamnuye Kiok, Peris Katito George, and Sentero Ole Ntaingono (herein after referred to as the Monik Group) who allege to have been elected on 7th June 2024, and the second is dated 11th March 2025 filed on behalf of the same community by Moses Parantai Shukuru, Mkaru Pulei, Makarios Leisanka Tuukuo, Lawrence Sentero, Moses Mparia Orkeri, Beatrice Tumuti Kosiom and Kelero Ene Kenoi (herein after referred to as the Parantai Group) who claim to have been elected on 4th June 2024.
2. The Notice of Motion dated 12th February 2025 is brought under Article 40 and 159 of *the Constitution*; Section 1A, 3A and 63(e) of the *Civil Procedure Act*; Section 33 of the *Land Registration Act* and other enabling provisions. It seeks:
 - i. Spent;



- ii. This honourable Court be pleased to issues orders, orders directing the Chief Land Registrar, to issue a Provisional Title to LR No Ngong/Ngong/ 12418 to the Applicant, through Masek Monik, Hannah Silapei Tuuko, Emmanuel Litei Shokore, Parsereti Ngomea Ngussur, John Kamnyue Kiok, Peris Katito George and Sentero Ole Ntaingono, being the newly elected members of the board of trustees of the Applicant.
 - iii. Costs of this application be provided for.
3. The Notice of Motion dated 11th March 2025 is brought under Order 2 Rule 15(d) of the Civil Procedure Rules. It seeks orders that;
 - i. Spent
 - ii. The Notice of Motion dated 12th February 2025 and filed herein in the name Keekonyokie Community Trust through Prof. Tom Ojienda & Associates be and is hereby struck out.
 - iii. The costs of this Application and of the struck out Notice of Motion filed by Prof Tom Ojienda & Associates be paid by Moses Masek Monik personally.

Submissions of the Applicant in support of Notice of Motion 12th February 2025

4. In support of the Notice of Motion dated 12th February 2025, Counsel submitted that Section 33 of the [Land Registration Act](#) provides gives authority to the Registrar to issue replacement of Title or Certificate of Lease once satisfied through evidence of the loss or damage. Reference was made to *Kositany vs Chania Logistics Limited & 3 others* [2024] KECA 151 (KLR). It was submitted that it was on record that the previous Board of Trustees were asked to surrender the said Title in Court but failed to adhere to the said orders which could only be assume to be lost or misplaced. This meant that the new elected Board of Trustees could not carry out any activities of the Community without Title to the property and it was imperative that these orders be granted to protect the Community interests.

Submissions of the Applicant in the Notice of Motion dated 11th March 2025

5. To support the application dated 11th march 2025, Counsel submitted that this was a defective suit and could not be sustained because it was neither a Petition, a Complaint or Originating Summons as per Section 2 of the [Civil Procedure Act](#) as read together with Order 3 Rule 1(1) of the Civil Procedure Rules. To support this argument, reference was made to *Proto Energy Ltd vs Hashi Energy Ltd* (2019) eKLR and *Insurance Regulatory Authority vs Directline Assurance Co. Ltd & Others*, Misc. No. E470 of 2019. Therefore, the Notice of Motion application dated 12th February 2025 should be struck out.
6. Counsel also submitted that this application was res judicata as it was already determined in ELC 410 of 2017. He argues that in that suit, Moses Masek Monik claimed to be the duly elected chairman of Keekonyokie Community Trust but this claim was dismissed on 4th April 2024 by the Court holding that he had not proved that he was duly elected. In this application, he was once again claiming to be duly elected without establishing that an election was conducted in the manner required by the Trust Deed. Therefore, the question of leadership and entitlement to the Certificate of Title was the same and courts are prohibited from determining matters that have been determined previously by Section 7 of the [Civil Procedure Act](#). Reference was made to the Court of Appeal case of *Jimmy Parnyumbé Luka & Others vs The Chairman Land Adjudication Committee and Others* (2023) eKLR.
7. On abuse of the Court process, it was submitted that the title to the property was neither lost nor misplaced and therefore the application for a provisional title was a misrepresentation and thus abuse of the Court. Counsel also submitted that an application for provisional title under Section 33 of the



Land Registration Act should be made to the Registrar and not the Court as was in this case. Counsel also argued that the fact that the 1st and 2nd Respondents acceded to this request in their Replying Affidavit showed that there was collusion with the 1st and 2nd Respondents officers to help Moses Masek Monik fraudulently acquire the property with reference to the Judgement in ELC 410 of 2017 where the Court pronounced itself on the 1st and 2nd Respondents' conduct. He also argued that Moses Masek Monik swore falsely that the certificate of title had been lost/misplaced as an attempt to mislead the Court and defraud the Community, citing the Court of Appeal's holding in Mas Construction Ltd vs Abdul Waheed Sheikh Civil App No. E789 of 2023 (UR).

8. On the issue of locus standi, it was submitted that Moses Masek Monik was not the Chairman of Keekonyokie Community Trust and that question could only be determined by the High Court under Section 14 of the Trustees (Perpetual Succession) Act and not by this Court through a Notice of Motion application with reference to Majestic Security Systems Ltd vs Magnate Ventures Ltd and Others ELC No. 212 of 2018 (UR).
9. As such, this application should be struck out with costs to be paid by Moses Masek Monik.

Submissions of the Applicant in opposition of the Notice of Motion dated 11th March 2025

10. On whether the suit was defective, counsel submitted that the application did not seek to determine any rights, there was no cause of action that was being enforced or tried and sought orders that were not adverse to any party. Thus, it could not be termed as a suit within the meaning of the Civil Procedure Act and bringing it as a miscellaneous application was not defective. Reference was made to the following cases that differentiated between a miscellaneous application and a normal suit: Rono & 9 others vs Kenya Forest Service & 4 others [2023] KEELC 535 (KLR) and Joseph Kibowen Chemor vs William C. Kaser (2013) eKLR.
11. On whether the application was res judicata, counsel submitted that this argument was misplaced because the application dated 12th February 2025 only sought orders for issuance of a provisional certificate and there was no question of trusteeship. That this issue only came up when counsel for the Applicants introduced the issue of Trusteeship and claimed that his clients were the duly elected Trustees. Therefore, the Application was not within the precincts of Section 7 of the Civil Procedure Act because it was neither between the same parties nor raising the same questions raised in ELC 410 of 2017. Reference was made to the following cases on res judicata: Abok James Oders vs John Patrick Machira Civil Application No. 49 of 2001 and Gladys Nduku Nthuki vs Letshengo Kenya Ltd; Mueni Carles Maingi (Intended Plaintiff) 2022 eKLR.
12. On whether the application was an abuse of the court process, counsel argued that it was on record that the ousted officials had on several occasions been asked to surrender the title to Court but failed to do so and were even cited for contempt and paid a fine in that regard. Therefore, the only logical conclusion was that the title had been lost or misplaced. And once the applicants became duly elected, they sought to get a provisional certificate of title.
13. On whether the Applicant had locus standi to file the application, counsel submitted that as per Clause 6(o) of the Declaration of Trust, the Trustees had powers to institute, prosecute or defend suits affecting the Applicant and they did not require an authority to act. As such, the application dated 11th March 2025 should be dismissed with costs.
14. By way of back ground, the two groups of Trustees appear to tussle over the existence or lack thereof, of the original Title to L.R No. Ngong/Ngong/12418, with the Monik Group believing that the original title, previously in the custody of Moses Parantai, is lost and therefore a Provisional Title should be



issued; and the Parantai Group asserting that the title is not lost and that in fact, the same is in the custody of the lawful Trustees of Keekonyokie Community Trust.

15. The crux of the Application dated 12th February 2025 is that by a Judgment dated 4th April 2024, the Honorable Lady Justice Christine Ochieng', in ELC Suit No. 410 of 2017 (Formerly Milimani No. 683 of 2015) Keekonyokie Community Trust versus Moses Parantai and Others found that "there were no valid Trustees of the Keekonyokie Community Trust as the elections held on 10th and 24th October 2013 respectively, changing the Trustees did not adhere to the Declaration of Trust." The Honorable Judge further directed that the Keekonyokie Community Trust do hold fresh elections of the trustees within Ninety Days from the date of the Judgement.
16. The Monik group submits that in line with the Judgment, they caused the publication of a Gazette Notice No. 6709 on 31st May 2024, Notices in the Nation Newspaper on 1st June 2024 and the County Press, informing members of the public of community elections to be held on 7th June 2024. They further submit that the elections were held on 7th June 2024, upon which the Monik Group were duly elected as the Trustees of the Applicant.
17. In support of fact of the Appointment, the Monik Group annexed a Certificate of Incorporation showing an entry dated 26th June 2024 in which the Monik Group is listed as the appointed new trustees of the Keekonyokie Community Trust. They equally annexed a letter dated 10th July 2024 from the Assistant Registrar of Companies to Amina A Hashi Advocates listing the Monik group as the Trustees of the Plaintiff. Finally, they annexed a Gazette Notice No. 2417 informing the public that Moses Masek Monik, Hannah Silapei Tuuko, Emmanuel Litei Shokore, Parsereti Ngomea Ngussur, John Kamnuye Kiok, Peris Katito George, and Sentero Ole Ntaingono had been appointed as the new Trustees of the Plaintiff.
18. Conversely, the Parantai group confirmed that indeed the Judgement by the Honorable Justice Ochieng' directed that fresh elections be held by the community. They have annexed a Notice published in the Daily Nation informing the public of elections to be held by the Keekonyokie Community Trust on 4th June 2024, and another Notice in the same news paper announcing the appointment of Moses Parantai Shukuru, Mkaru Pulei, Makarios Leisanka Tuukuo, Lwarence Sentero, Moses Mparia Orkeri, Beatrice Tumuti Kosiom and Kelero Ene Kenoi as the new Trustees of the Applicant.
19. Similarly, the Parantai group annexed a Gazette Notice No. 7360, being a declaration of Moses Parantai Shukuru, Mkaru Pulei, Makarios Leisanka Tuukuo, Lwarence Sentero, Moses Mparia Orkeri, Beatrice Tumuti Kosiom and Kelero Ene Kenoi as persons elected as Trustees of the Applicant on 4th June 2024.
20. While both factions made passionate arguments in favor of why either of them are the legitimate Trustees of the Keekonyokie Community Trust, the one issue that appears to cut across is whether the original title is lost. If the answer to this question is in the negative, should a Provisional Title be issued? If it is positive, what orders should the court issue?

Analysis

Whether the Application dated 12th February 2025 is Res Judicata

21. The Supreme Court in Independent Electoral & Boundaries Commission vs Maina Kiai & 5 Others [2017] eKLR, prescribed the test that must be satisfied when invoking the doctrine of res judicata in the following terms;

“(a) The suit or issue was directly and substantially in issue in the former suit.



- (b) That former suit was between the same parties or parties under whom they or any of them claim.
 - (c) Those parties were litigating under the same title.
 - (d) The issue was heard and finally determined in the former suit.
 - (e) The court that formerly heard and determined the issue was competent to try the subsequent suit or the suit in which the issue is raised.
22. The court in *Ndolo v Reuben & 72 others* (Environment & Land Case E019 of 2022) [2023] KEELC 21521 (KLR) (8 November 2023), while making reference to Independent Electoral & Boundaries Commission (*Supra*) had the following to say
- “From the foregoing, it is clear that for *res judicata* to suffice, a Court should look at all the four elements set out above namely; the matter directly and substantially in issue in the subsequent suit must be the same matter which was directly and substantially in issue in the former suits; the former suit must have been between the same parties or parties under whom they claim; the parties must have litigated under the same title; the Court which decided the former suit must have been competent and the former suit must have been heard and finally decided by the Court in the former suit.”
23. The Parantai Group submitted that the claim by the Monik Group was previously determined in the Judgement dated 4th April 2024. On the other hand, in a Replying Affidavit dated 17th March 2025, Moses Monik deponed that the Judgment turned on whether or not the elections were conducted in accordance with the Declaration of Trust and that the Court did not pronounce itself on the custody of the original title.
24. Both groups annexed the Judgment in their respective applications, which I shall make reference to. The Honorable Court, at page 20 of the Judgment distilled four issues for determination. That is;
- a. Who are the valid trustees of the Keekonyokie Community Trust?
 - b. Whether the Change of Trustees was properly done in accordance with the Declaration of Trust?
 - c. Whether the Plaintiff is entitled to orders sought in the Plaintiff?
 - d. Who shall bear the costs of this suit?
25. Further, the court at page 22 proceeds to state the following “from the pleadings, evidence presented including parties’ submissions, I find that the main fulcrum of the dispute herein revolves around the identity of validly elected trustees of the Plaintiff (emphasis added) which is claimed by two factions, drawn from both the Plaintiff and the 1st Defendant respectively.” In line with this statement, the court embarked on a detailed analysis of the facts leading up to two separate elections that saw both factions claiming to be the trustees. Ultimately, the court had this to say “... from the two Lists of attendees produced by the two factiobs as having attended the AGM and SGM respectively, there are very many glaring anomalies which as a court I cannot ignore...it is my considered view that the purported AGM and SGM seemed to have been conducted haphazardly without adhering to the laid down legal procedures governing corporate bodies as well as the Declaration of Trust...”
26. Needless to restate what is agreed by the parties, the court’s final orders were directions that an election be held within Ninety (90) days of the Judgment. The question that begs to be answered is, can a



reasonable person, reading the judgment in its totality, arrive at a conclusion that the issue addressed and determined by the court was who, between the two factions, should have custody of the original title?

27. Borrowing from the test established by the Supreme Court, the issue that was directly and substantially in issue, as canvassed, analyzed and finally determined by the Honorable Judge is who, between the two factions was validly elected as Trustees of the Applicant. It is my considered view that the court did not pronounce itself on what would occur, in so far as the custody of the original title is concerned, after the elections held as per the directions of the court. I therefore find that the issue as to who ought to keep custody of the original title was not determined.

Whether Moses Monik has locus standi to espouse any claim in the name of Keekonyokie Community Trust

28. The Application dated 11th March 2025 asserts that the Application dated 12th February 2025 is ripe for striking out as it has been filed by a person that is not a trustee of the Applicant and more so, that his intention for filing the same is to steal the suit property.
29. Upon perusal of the Application dated 11th March 2025, the supporting affidavit thereof and the annexures therein, I have noted that while Parantai group alleges, passionately so, that Mr. Monik is out to steal the suit property through filing of an Application before this court, he has not annexed any evidence as proof of such scheme.
30. Section 107 (1) of the Evidence Act, Cap 80 Laws of Kenya, provides that:-Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist. Further in *Anne Wambui Ndiritu vs Joseph Kiprono Ropkoi & Another* [2005] 1 EA 334, the Court of Appeal held that:-
- “As a general proposition under Section 107 (1) of the Evidence Act, Cap 80, the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue. There is however the evidential burden that is case upon any party the burden of proving any particular fact which he desires the court to believe in its existence which is captured in Sections 109 and 112 of the Act.”
31. In the absence of any proof of the allegations leveled against Mr. Monik, the same cannot be believed. Moreover, the issue as to whether Mr. Monik lacks locus standi to bring a claim on behalf of the Community on account of him not being a trustee is a question of fact that can be discerned from the documents on record.
32. Mr. Monik, in his Further Affidavit dated 27th February 2025 annexed the Certificate of Incorporation whose last entry shows that he, amongst others are registered as the appointed as the new Trustees of the Community on 26th June 2024. He also annexed a letter from the Assistant Registrar of Companies and a Gazette Notice No. 2417, which bear his name as one of the elected Trustees.
33. Thus, reverting back to the general principle under Section 107, the onus was on Moses Parantai to demonstrate that the documentation presented by Mr. Monik indicating is appointment were either forgeries, or obtained through fraud. Unfortunately, he did not go beyond asserting that Mr. Monik is not a Trustee.
34. Having found that there was no evidence controverting the facts presented by Mr. Monik, I am constrained to find that, on the basis of documentation provided, he is in fact a Trustee, and more so the chairperson, hence had the locus to bring a claim on behalf of the Community.



Whether the Application dated 12th February 2025 is a defective suit

35. Mr. Havi for the Parantai group submitted that the proceedings commenced through the Notice of Motion dated 12th February 2025 by Moses Monik are fatally defective and should be struck out for offending the provisions of Order 3 Rule (i) and (ii) which provides that every “suit” shall be instituted by way of a Plaint or other originating pleading such as petitions, or originating summons.
36. The operative word here is “suit”. The word “suit” has several meanings. Black’s Law Dictionary defines “suit” as any proceedings by a party or parties against another in a court of law. “suit of a civil nature” is defined to be a civil action. “A civil action” is an action brought to enforce, redress, or protect a private or civil right. A suit therefore can be defined as a civil action brought by one party against another, in which the former seeks to assert his rights against the latter and demands redress. The outcome of a suit is the determination of one person’s right as against another.
37. What then happens to matters that do not call upon the court to weigh two interests, and which require that the court only make an order. It ought to be noted that the Section 19 of the [Civil Procedure Act](#) envisions a situation where other procedures may govern the institution of a suit which is not contentious.
38. The Application dated 12th February 2025 sought specific orders, that this court be pleased to issue an order directing the Chief Land Registrar to issue a provisional title in respect of the suit property. None of the orders, as sought, were of a contentious nature. Importantly, the Attorney General, for the Respondents, indicated that the 1st Respondent did not intend, and in deed it did not, challenge the Application.
39. Therefore, it is my finding that owing to the nature of the orders sought in the Application dated 12th February 2025, there were no rights sought to be enforced against another party. It needed not be filed through the normal originating processes.

Whether the Application dated 12th February 2025 is merited

40. As stated earlier, the issue in contention is whether or not, as prayed in the Application, a Provisional Title should be issued to the Monik Group. While the Monik group asserts that the original title to the suit property is either lost or misplaced, Moses Parantai firmly asserts that the title is lost, but that it is with the lawful trustees of Keekonyokie Community Trust.
41. The Parantai Group submitted that Section 33 of the [Land Registration Act](#) provides for the procedure of replacing a lost or destroyed Certificate of Lease or Title. The section specifically provides that the person claiming loss shall produce evidence to satisfy the registrar of the loss or destruction of the previous Certificate of Title or Certificate of Lease.
42. What then is the remedy of a person that does not have evidence that the title is lost or destroyed? How are they expected to convince the Registrar that there is a need to issue a Provisional Title? This Court is equipped, under Section 13(2)(c) of the Environment and [Land Act](#), with original jurisdiction to determine matters arising from land administration and management. In this case, issuance of titles falls squarely within this mandate. The nature of loss and misplacement, as shall be highlighted below, warrants interrogation and determination by the court.
43. As earlier stated, proof as to whether the Title is lost is one of facts, discernable from pleadings filed in court. For instance, in rebuttal to the claim that the title is not lost, Monik, in his Replying Affidavit to the Application dated 11th March 2025 stated that Moses Parantai has had occasion to tender proof to the court that the title is not lost.



44. The first opportunity was provided, as seen from the record, by the Honorable Justice Gacheru, who in issuing status quo orders on 14th October 2016 directed that the Title Deed of the suit property be deposited in court pending hearing and final determination of the suit. The record reflects that the Title was not deposited. Furthermore, Moses Parantai has not advanced any reason as to why he did not comply with the court orders.
45. The second opportunity came through orders issued on 25th June 2018 by the Lady Justice Ochieng' who found Moses Parantai alongside his counterparts, in contempt of the orders issued on 14th October 2016, and further directed them to surrender the title to court. Instructively, as admitted by Parantai, he did not deposit the title to court.
46. If a party does not trust that the court has the capability to secure crucial documents and does not conclusively explain where the document is other than saying he has it, going as far as disobeying court orders, what other conclusion can be made other than that what is being sought is lost.
47. Instructively, both Monik and Parantai submitted that the members of Keekonyokie Community have been held hostage by the wrangles between the officials as many of them wait to finally own a piece of their land as evidenced by the Intended Interested Parties' Application dated 11th March 2025. As the officials "fight" the community suffers.
48. On whether the Application dated 12th February 2025 was an abuse of court process, I find that seeking the issuance of a provisional title on account of years of being taken round in circles as to its existence or lack thereof is a legitimate cause which the court is well placed to determine. It is well settled that the court must jealously guard the sanctity of its orders. Consistent disregard of court orders does not point to a party who has respect for court process.
49. The upshot of the matter is that the Notice of Motion dated 11th March, 2025 is not merited and it is dismissed.
50. Having addressed the issues and analyzed the documents on record, it is evident that the Notice of Motion dated 12th February 2025 is merited and is allowed in the following terms;
 - i. Moses Parantai Ole Shukuru is hereby directed to surrender the Original Title to L.R No. Ngong/Ngong/12418 to the 1st Respondent within Seventy two (72) hours of the date of this Ruling.
 - ii. In default of (i), the 1st Respondent do issue and register a Provisional Certificate of Title to L.R No. Ngong/Ngong/12418 in the names of Moses Masek Monik, Hannah Silapei Tuuko, Emmanuel Litei Shokore, Parsereti Ngomea Ngussur, John Kamnuye Kiok, Peris Katito George, and Sentero Ole Ntaingono (the duly elected Trustees of Keekonyikie Community Trust).
 - iii. Each party to bear their own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 25TH DAY OF JUNE 2025.

L. KOMINGOI

JUDGE.

In The Presence Of :

Ms. Misiati for Prof. Ojienda (SC) for the Applicant.

Mr. N. Havi with Mr. Kyobika for the Applicants in the Notice of Motion dated 11th March 2025.



N/A for the Respondents.

Court Assistant – Elly.

