



**Gidjoy Investments Limited v Zeropoint Construction Company Limited
& 69 others; Mwaura & 2 others (Interested Parties) (All Suing as Bonafide
Officials and Trustees of Sovesava Self Help Group) (Environment & Land
Case 301 of 2018) [2025] KEELC 4561 (KLR) (18 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4561 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 301 OF 2018**

CG MBOGO, J

JUNE 18, 2025

BETWEEN

GIDJOY INVESTMENTS LIMITED PLAINTIFF

AND

**ZEROPOINT CONSTRUCTION COMPANY LIMITED & 69 OTHERS & 69
OTHERS & 69 OTHERS & 69 OTHERS DEFENDANT**

AND

STANLEY MWANGI MWAURA INTERESTED PARTY

LYDIA MURUGI WANJOHI INTERESTED PARTY

AMOS OWINO NG'ONG'O INTERESTED PARTY

**ALL SUING AS BONAFIDE OFFICIALS AND TRUSTEES OF SOWESAVA SELF
HELP GROUP**

RULING

1. Before me is the notice of motion dated 24th January, 2025 filed by the 2nd interested party/applicant and it is expressed to be brought under Orders 14 Rule 2 (2), Order 16, Order 19 Rules 2 & 9, and Order 51 Rule 1 of the Civil Procedure Rules and Sections 1A, 1B, 2 and 3A of the [Civil Procedure Act](#) seeking the following orders:-
 1. Spent.
 2. This honourable court be pleased to order the 64th defendant to release the original sealed copy of the Registry Index Maps (RIM) for suit property known as Nairobi/ Block 82/7333 and Nairobi/Block 82/7375 situated within Nairobi.



3. This honourable court be pleased to issue summons to the 63rd, 64th, 65th and 67th defendants to produce their records of ownership and or transition in respect of the suit property known as Nairobi/ Block 82/ 7333 and Nairobi/ Block 82/ 7375 situated within Nairobi.
 4. An order directed to the 70th defendant to produce their determination findings of acquisition and ownership of the suit property known as Nairobi/Block 82/7333 and Nairobi/Block 82/7375 situated within Nairobi.
 5. The costs of this application be provided for.
2. The application is premised on the grounds inter alia that the 63rd, 64th and 67th defendants/ respondents are the custodians of the original registry index maps (RIM) and all titles relating to the suit properties. The application is supported by the affidavit of the 2nd interested party/ applicant sworn on even date. The 2nd interested party/ applicant deposed that together with the authority of the 1st and 3rd interested parties, he realized that there is need for an order directed to the 64th defendant/ respondent to release the original sealed copy of the Registry Index Map (RIM) for the suit properties. Further, that there is need for the 63rd and 64th defendants/ respondents to produce their records of ownership of Nairobi/ Block 82/7333. The 2nd interested party/applicant further deposed that this court should order the 70th defendant to explain the circumstances under which Nairobi/ Block 82/ 7333 was allocated to it. He deposed that the prayers sought will enable this court to reach a fair and just determination of the suit.
 3. The Attorney General acting for the 63rd to 66th defendants/respondents filed its grounds of opposition dated 5th March, 2025 challenging the application on the following grounds: -
 1. That the litigation before the court is a solemn process which is owned by the parties' subject to the provisions of the law and thus each party, the 63rd to 66th defendants/ respondents herein not excepted, are the best driver of own case/cause. Simply put, the court in the exercise of its jurisdiction is not tasked to decree how the matter should be conducted and what witnesses should be called by the party. Reference was made to the case of *Trusted Society of Human Rights Alliance v Mumo Matemu & 5 others* [2014] eKLR.
 2. That our jurisdiction embraces the common law system, which espouses the adversarial system wherein each party is chargeable of choosing the nature of pleadings to file and the evidence, if any, to tender and produce before the court. *Independent Electoral and Boundaries Commission & another v Stephen Mutinda Mule & 3 others* [2014] eKLR.
 3. That it is for the 2nd interested party who are spectators in this civil suit to prove his case if any without seeking the benefits or assistance from the 63rd to 66th defendants/respondents to assist in proving his case. Reference was made to the case of *David Sironga Ole Tukai v Francis Arap Muge & 2 others* [2014] eKLR.
 4. That the place and significance of the doctrine of departure and essentially the aspect that parties are the owners of their case was espoused and highlighted by the Court of Appeal in the case of *Dakianga Distributors (K) Ltd v Kenya Seed Company Limited* [2015] eKLR.
 5. That the court must remain an impartial arbiter and allow the parties to bring forth and propagate their respective cases albeit taking into account the established rules of procedure and not otherwise. Reference was made to the case of *Stanley Mombo Amuti v Kenya Anti-Corruption Commission* [2019] eKLR.



6. That *the Constitution* and the statutes provides an elaborate procedure for any party who wishes to obtain any information or documents held by the state. That the 2nd interested party/ applicant herein is bound by the provisions of Article 35 of *the Constitution* and the *Access to Information Act (Act No. 31 of 2016)* which provides the modalities of obtaining any information held by the state or another person. Reliance was placed in the case of Njonjo Mue & another v Chairperson of Independent Electoral and Boundaries Commission & 3 others [2017] eKLR.
7. That the Practice Directions on Proceedings in the Environment and Land Court, and on proceedings relating to the Environment and the use and occupation of and title to and proceedings in other courts are provided under Legal Notice No. 5178, the Mutunga Rules.
8. That the provisions of Section 68 of the *Evidence Act* are succinct on proof of documents by secondary evidence.
9. That a party seeking to rely on a document to prove the issues in court will not succeed to do so unless the court exercises its discretion under Section 69 (iv) of the *Evidence Act* to dispense with the need for production of the document. Reference was made to the case of Kenneth Nyaga Murage v Austin Kiguta and others [2015] eKLR.
10. That under Section 64 of the *Evidence Act*, a document can be proved either by primary or secondary evidence.
11. That Section 67 of the *Evidence Act* is explicit that documents must be proved by primary evidence and can only be proved by secondary evidence in the circumstances provided under Section 68 of the *Evidence Act*, the primary purpose of pretrial disclosure is to minimize objections to the production of original documents.
12. That the notice to produce is contra the provisions of Order 11 Rule 3 (1) of the Civil Procedure Rules.
13. That the provisions of the law are clear in respect of the applicability of Section 68 (1) of the *Evidence Act* and compliance requirements envisaged under Section 69 of the *Evidence Act*.
14. That it is evident that the documents sought to be produced emanate from the said defendants and the notice to produce by the 7th defendants fail to comply with directions given under Order 11 Rule 3 (1)(d) of the Civil Procedure Rules and can only be raised at the proper time and not as an afterthought.
15. That while a party is entirely within their rights to object to the production of any document, that demand must be made at the pretrial stage and not during the main hearing of the suit. Direction 28(g) of the Practice Directions acts as a reflux valve to facilitate progress and avoid stagnation in resolution of disputes. Judicial resources and more specifically judicial time is finite, in view of the enormous demand for access to justice. Hence every party and or advocate who appears before court is obligated to assist the court to further the overriding objective by complying with what needs to be done at the appropriate time.
16. That the burden of proof in respect of the claim by the 2nd interested party/applicant rests with the 2nd interested party/ applicant and the 63rd to 66th defendants/ respondents have no obligation to assist the 2nd interested party/applicant to meet its burden to prove its claim.
17. That the application herein is an abuse of the court process purely intended to delay the hearing and determination of this matter.



18. That the parameters to be met and/or satisfied before one can be joined as an interested party were amplified and elaborated upon by the Supreme Court of Kenya in the case of Francis Kariuko Muruatetu v Republic [2016] eKLR.
 19. That the application is an abuse of the court process, lacks merit and thus ought to be dismissed with costs to the 63rd to 66th defendants/respondents.
4. The 67th defendant/respondent filed grounds of opposition dated 24th March, 2025 challenging the application on the following grounds:-
1. That the 2nd interested party through his motion dated the 24th January 2025 is misconceived and legally untenable and an abuse of the court process as it is a matter pertaining tendering of evidence under the Evidence Act.
 2. That the prayers of the 2nd interested party violates Section 4 of the Physical and Land Use Planning where reason as to the change of legality of title can only be made to the Registrar of Land.
5. In the affidavit sworn on 10th April, 2025, the 2nd interested party/applicant filed his response to the grounds of opposition dated 5th and 24th March, 2025. The 2nd interested party/applicant deposed that the 63rd to 67th defendants/respondents are public institutions which are neutral and any party has a right over them by calling them as witnesses for production of documents in their custody. Further, that the allegation of the Attorney General being an adverse party is not true as they are obliged to advise as a matter of law on the safe custody of the titles and processes. That as interested parties/applicants, they are not a lesser party or spectators, and if any evidence or documents can assist in the just determination of the case, then this court is obliged to allow the same.
6. The 2nd interested party/applicant further deposed that access of information can be obtained from the court legal process and it cannot be feted by protocols and bureaucratic process at state offices. Further, that in his own letter dated 10th July, 2023, the learned counsel for the 63rd to 66th defendants/respondents wrote to the 64th defendant/respondent and in that case the 66th defendant/respondent wants to condemn the 2nd interested party without being heard. It was further deposed that the provisions of law quoted in the grounds of opposition as well as in his application cannot be read in isolation, and further, that the pre-trial process does not stop a party from making an application as the same is in the interest of justice as it is in this case. He deposed that the grounds of opposition is scandalous, vexatious, full of malafides and the same ought to be dismissed with costs.
7. The application was canvassed by way of written submissions. The 2nd interested party/applicant filed his written submissions dated 28th April, 2025. While reiterating the issues canvassed in his application and affidavits, the 2nd interested party/applicant submitted that the application ought to be allowed as prayed as this will enable this court reach a fair and just determination or in the alternative, the 63rd to 67th defendants/respondents give an assurance that the necessary ownership documents will be produced, and that they will avail the witnesses for cross-examination.
8. The 67th defendant/respondent filed its written submissions dated 8th May, 2025 where it raised one issue for determination which is whether the 2nd interested party is entitled to the orders sought in the motion dated 30th January, 2025 (sic). On this issue, the 67th defendant/respondent submitted that the 2nd interested party/applicant is not a party to the cause ab initio and that the application is an abuse of the court process. While relying on the case of Francis Karioko Muruatetu & Another v Republic & 5 Others [2016] eKLR, the 67th defendant/respondent submitted that the 2nd interested party/applicant has no legal standing to make an application for production of a document where the primary party has



not. Further, it was submitted that the best evidence rule requires production of original document in line with Sections 65 and 69 of the *Evidence Act*. Further, that the notice referred is not the purported notice under Order 14 of the Civil Procedure Rules, and that the 2nd interested party/applicant has failed to give reasons why they are seeking documents after almost eight years after instituting the suit. The 67th defendant/respondent relied on the cases of *Carolyn Indasi Mwononyo v Kenya Bus Service Ltd* [2012] eKLR and *Philip Mbote Njoroge v KAgunyi Ruoro* [2021] eKLR.

9. I have considered the application, the grounds of opposition, and the written submissions filed by the 2nd interested party/applicant and the 67th defendant/respondent. The 2nd interested party/applicant seeks orders for the production of documents with regards to the suit properties in the custody of the 63rd, 64th, 65th and 67th defendants/respondents. He also sought an order directing the 70th defendant/respondent to produce determination findings in their records over the suit properties. In my view, the issue for determination is whether the said orders can issue in the circumstance.
10. On 18th September 2024, the 2nd interested party/applicant was admitted in these proceedings, and upon his admission, the court gave other orders as follows: -
 1. The application dated the 6/08/2024 be and is hereby allowed/ granted.
 2. Consequently, the Applicants be and are hereby admitted as the second set of Interested Parties in the matter.
 3. The admitted Interested Parties herein shall be at liberty to file and serve their pleadings and documents and the same to be filed and served within fourteen (14) days from the hereof.
 4. Thereafter, the Plaintiff and the rest of the parties shall be at liberty to file and serve corresponding pleadings and documents, if any, and the same to be filed and served within fourteen (14) days from the date of service by the second set of the Interested Party.
 5. In default by either party to file and serve the pleadings and documents within the set timelines, the window shall lapse/close and the party at fault shall be deemed to have forfeited the right to file any pleadings and documents.
 6. In any event, the default if any, shall not be relied upon to abort subsequent proceedings and/or hearing.
 7. Costs shall be in the cause.
11. Looking at the orders issued above, the 2nd interested party/applicant was given the liberty to file any documents or pleadings within the timelines provided. At the close of that period, such liberty was deemed to have been forfeited. In his application, the 2nd interested party/applicant argued that there is need for the production of the documents which are in the records held by the 63rd, 64th, 65th, 66th and 70th defendants/respondents to enable the court arrive at a fair determination. In response thereto, the 63rd to 66th defendants/respondents contended widely that the system is adversarial, that parties retain the right to prosecute their own case, and further that the 2nd interested/ party is a spectator who cannot rely on the aid of the 63rd to 66th defendants/respondent to prove his case. The Attorney General argued that the law provides for an elaborate procedure to be followed when one needs to obtain documents held by the state, and such request ought to be made at the pretrial stages. In addition, the Attorney General argued that the provisions of the *Evidence Act* have not been adhered to in this case. The 67th defendant/respondent submitted that the 2nd interested party/ applicant is not a primary party to the suit and thus has no authority to request for the production of these documents. In his response, the 2nd



interested party/applicant argued that the cited respondents are public institutions which are neutral parties and any party has the right to call them as witnesses.

12. While I have considered the arguments raised by the respective parties, I do not agree with the 2nd interested party/applicant on a number of issues. First, they became part of these proceedings on 18th September, 2024. Such an application would have sufficed within the first two weeks from this date. None of it was done. Secondly, the 63rd, 64th, 65th, 66th, 67th and 70th defendants/respondents being the custodians of the documents sought to be relied upon are not neutral parties to this case. They have been sued as well, and they are out to defend themselves. The nature of our legal system is one that is adversarial and the analogy that would best describe this is that of a boxing ring where there are contenders and the referee as the neutral party. In this case, this court is the referee and its role is only to find where justice lies. The tone set by the 2nd interested party/applicant is one that would want this court to compel the cited defendants/respondents to aid him in proving his case.
13. The notice of motion dated 24th January, 2025 lacks merit and it is hereby dismissed. Costs in the cause. Orders accordingly.

DATED, SIGNED & DELIVERED VIRTUALLY THIS 18TH DAY OF JUNE, 2025.

HON. MBOGO C.G.

JUDGE

18/06/2025.

In the presence of:

Mr. Benson Agunga - Court assistant

Mr. Kariuki for the Plaintiff

Mr. Allan Kamau for 63rd to the 66th Defendants/Respondents

Mr. Korir for the 1st Interested Party

Mr. Gitau Mwaru for the 2nd, 10th, 11th, 12th, 16th, 17th, 21st, 22nd, 23rd, 24th, 28th, 29th, 30th, 31st, 34th, 35th, 36th, 37th, 39th, 42nd, 49th, 50th, 54th, 55th, 56th, 57th and 62nd Defendants/Respondents

Mr. Amollo holding brief for Ms. Kabita for the 69th Defendant and also Mr. George Gilbert for the 68th Defendant /Respondent

