

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

ELCC 148 OF 2018

HASSAN SHABA ADAN 1ST PLAINTIFF/
APPLICANT

DANIEL KIPKORIR KOECH.....2ND PLAINTIFF/
APPLICANT

-VERSUS.

LUCY WANJIRU GACHARIDEFENDANT/RESPONDENT

ESTHER WANJA WARUI.....1st PROPOSED INTERESTED
PARTY /APPLICANT

STEPHEN MUSELI NGUMBI.....2nd PROPOSED INTERESTED PARTY /
APPLICANT

JOSEPH KENNEDY OMANYALA.....3rd PROPOSED INTERESTED PARTY /
APPLICANT

HALIMA IBRAHIM MOHAMED.....4TH PROPOSED INTERESTED PARTY /
APPLICANT

JAMES WAMBUA.....5TH PROPOSED INTERESTED PARTY /
APPLICANT

JOSEPHAT MASAAI KAMANDE6TH PROPOSED INTERESTED PARTY /
APPLICANT

ABDNEGO MSEMBI WILLY.....7TH PROPOSED INTERESTED PARTY /
APPLICANT

MOHAMMED OMAR.....8TH PROPOSED INTERESTED
PARTY/APPLICANT

GIDEON YATOR.....9TH PROPOSED INTERESTED
PARTY/APPLICANT

PHILEMON KANGOR.....10TH PROPOSED INTERESTED
PARTY/APPLICANT

PETER KIBET TUEI..... 11TH PROPOSED INTERESTED
PARTY/APPLICANT

ERICK KIPTANUI NAIPET.....12TH PROPOSED INTERESTED
PARTY/APPLICANT

JOSPHAT KASIVA NTHUKA13TH PROPOSED INTERESTED
PARTY/APPLICANT

JOSPHAT KISAMU MUSYOKI.....14TH PROPOSED INTERESTED
PARTY/APPLICANT

ABDI YUSUF.....15TH PROPOSED INTERESTED
PARTY/APPLICANT

EDDA KIMUTAI.....16TH PROPOSED INTERESTED
PARTY/APPLICANT

KIBET SEGUTON.....17TH PROPOSED INTERESTED
PARTY/APPLICANT

CHEPKEMOI CHEPKONGA.....18TH PROPOSED INTERESTED
PARTY/APPLICANT

ALEX MBITHI.....19TH PROPOSED INTERESTED
PARTY/APPLICANT

MAGARET TOROTICH.....20TH PROPOSED INTERESTED

PARTY/APPLICANT

ABARUBA GODANA.....21TH PROPOSED INTERESTED

PARTY/APPLICANT

ABDULAH MUSE ABDI.....22TH PROPOSED INTERESTED

PARTY/APPLICANT

MARVIN AKWANYI.....23TH PROPOSED INTERESTED

PARTY/APPLICANT

BILLY PARSEEN OLE KOSHAL.....24TH PROPOSED INTERESTED

PARTY/APPLICANT

JAMES WAMBUA MUSYOKI..... 25TH PROPOSED INTERESTED

PARTY/APPLICANT

AMOS KYONDU NGUMBI.....THIRD PARTY

RULING

(In respect of the Plaintiffs/ Applicants' Notice of Motion dated 29/10/2024, and 1st to 25th Proposed Interested Parties' applications dated 18/03/2025 & 24/04/2025)

Background

1. This ruling is in respect of the Plaintiffs/Applicants' Notice of Motion dated 29th October, 2024 and the two applications by the Intended Interested Parties.
2. The Plaintiffs' application is brought under Sections 1A, 1B and 3A of the Civil Procedure Act, Orders 22 and 51 of the Civil Procedure Rules and Article 50 of the Constitution seeks for the following prayers;

1) *Spent*

2) *Spent*

3) *Spent*

4) *That upon inter parte hearing, the Honourable Court be pleased to stay execution by issuing an injunction to restrain the 1st Defendant and Moran Auctioneers by themselves or through their employees, servants, agents, workmen and or any other persons acting on their behalf or on behalf of the Defendant from howsoever attaching, removing, any goods, distressing, entering into and or remaining in or harassing the Plaintiffs or interfering with their quiet and peaceful enjoyment of the premises they occupy.*

5) *Costs of the Applications be provided for.*

3. The Application is premised on the grounds on the face of it as well as the Supporting Affidavit of Hassan Shaba Adan sworn on 29th October, 2024 who depones that they were ambushed with warrants of attachment and proclamation Notices dated 15th and 17th October, 2024 respectively in respect of Certificate of Taxation dated 9th May, 2024 which sought recovery of Ksh.1,135,445/=. The Applicants decry that they were never granted an opportunity to participate in the taxation proceedings for they were not aware of it neither were they served with a hearing notice for the said proceedings. Consequently, they contest the decretal sum which they claim is exorbitant.
4. The Plaintiffs' pleads with the court to issue the orders sought because the Defendant actions are illegal and motivated by bad faith. They maintain that it is in the interest of justice, equity and good conscience that they be granted

the orders sought failure to which they will suffer substantial loss. The Plaintiff further avers that their Application was filed without unreasonable delay.

1st Defendant's response to the Plaintiffs' application

5. The Application is opposed by Lucy Wanjiru Gachari, the 1st Defendant/Respondent herein through her Replying Affidavit sworn on 15th November, 2024. While seeking for its dismissal for being frivolous, vexatious, misleading and abuse of court process, she avows that the 1st Plaintiff has not demonstrated he was authorized by the 2nd Plaintiff to prosecute the Application on his behalf. She further described the Plaintiffs' assertions on ambush as untrue for they were fully aware of the taxation proceedings. According to the 1st Defendant, the proclamation notice was duly served upon the 1st Plaintiff's wife.
6. It is contended that on 1st July, 2022, the Plaintiffs' then counsel on record, Itaya & Company Advocates acknowledged receipt of the Bills of Costs, Notice of Taxation and a Ruling notice dated 13th June, 2022, 24th June, 2024 and 4th March, 2024 respectively on 1st July, 2022, 24th June, 2024 and 7th March, 2024 in that order.
7. According to the Deponent, the Application has been overtaken by events and it is a mere academic exercise and waste of judicial time because the Plaintiffs had removed all proclaimed items to unknown locations hence defeating the proclamation process. The 1st Defendant beseeches the court not to grant the Plaintiffs audience because they are in contempt of its orders for failure to vacate the suit premises as directed by the court.

8. It is further contended that the Applicants ought to have vacated the suit premises and settled the taxed costs specified in the Decree and Taxation Certificate issued on 30th May, 2022 and 9th May, 2024 respectively. Given that the Plaintiffs have approached the court with unclean hands, the 1st Defendant states that they must be compelled to deposit security for costs. This is because they are using this Honorable Court to defeat justice and prevent her from reaping the benefits issued in his favor by the court. The 1st Defendant opines that if the Plaintiffs are aggrieved with assessed costs, they ought to challenge the taxation proceedings.

A. 1st and 2nd Proposed Interested Party Chamber Summon dated 18th March, 2025

9. The 1st to 7th proposed Interested Party Chamber Summons dated 18th March, 2025 predominantly seeks for following orders

(a) That Esther Wanja Warui, Stephen Museli Ngumbi, Joseph Kennedy Omanyala, Halima Ibrahim Mohamed, James Wambua, Josephat Masaai Kamande and Abdnego Msembi Willy be joined as Interested Parties in this suit.

(b) That the Interested Parties be granted leave to issue and serve Third Party Notice upon Amos Kyondi Ngumbi as per the annexed draft Third Party Notice Marked as "EWW6".

(c) That the judgment and decree issued herein, and all consequential orders be reviewed and or set aside and the Interested Parties herein be heard on their respective defences

(d) Any other order that this Honorable court may deem necessary and just to grant

(e) Costs of the Application be provided for.

10. The Application is supported by the Supporting Affidavit of Esther Wanja Warui sworn on 18th March, 2025. She avers that the Applicants are exposed to real threat of eviction due to the judgment delivered on 30th May, 2022 directing the Plaintiff and other occupants residing on KAJIADO/KITENGELA/3707 to be evicted as well as permanent injunction restraining them from interfering with the Defendant's use of the property.
11. It is the Applicants' case that they have a strong claim of beneficial ownership and right to indemnity from Amos Kyondu Ngumbi on damages, costs and interests over portions of 0.04 ha of suit property. It is alleged that if eviction proceeds, the Applicants' families will be rendered destitute and homeless. This is because they have established permanent structures and intensive developments on their respective parcels wherein they reside.
12. Premised on the above assertions, the Applicants allege it is only fair and just that they be granted the orders sought since they were not granted an opportunity to be heard nor ventilate their claim against the third party amounting to a violation of their right to a fair hearing.
13. The Defendant through the Replying Affidavit sworn on 22nd April, 2025 deposes that the Application is an afterthought and is *Res Judicata* because the proposed 1st - 7th Interested Parties were fully aware of the subsistence of this suit. It is contended that if they had conducted due diligence, they would have

known that the suit property was subject to litigation at the time they purportedly bought the plots.

14. According to the Defendant, as at the time of filing the suit only the Plaintiff had undertaken construction on the suit property. It is affirmed that although most of the pleadings and decree were served upon all persons residing on the suit property, they refused to acknowledge service with the exception of Joseph Kennedy Omanyala and James Wambua.
15. It is averred that based on the judgment of the court, the Applicants' Application is supported by forged documents. Further, Amos Kyondu Ngumbi, did not have the capacity to sell the suit property because as at 3rd November, 2014, it belonged to the Defendant's husband.
16. The 1st Defendant explains that following the theft of the suit property's green card, it was not reconstructed neither was she issued with its title deed as prior registration documents which disappeared could not be traced. Later, she was issued with a title deed on 21st August, 2017 following institution of legal proceedings against the 3rd Defendant wherein they were directed to reconstruct the green card.
17. It is the 1st Defendant's case that when she discovered the Plaintiffs had put up structures on the suit property, they defied her orders and summons by NEMA and Kajiado CID Officers to move out of the property. It is alleged that in 2019, some Applicants put up structures on the suit property claiming that the Plaintiff and Amos Kyondu Ngumbi had authorized them to do so.
18. It is contended that if at all the Plaintiff and Amos Kyondu Ngumbi had genuine title, they would not have been charged and arraigned in court for

forceful detainer after the Defendant reported them at Kitengela Police Station. In addition, none of the Applicants have produced any statutory and supporting documents to demonstrate they purchased the suit property.

19. According to the Defendant, KAJIADO/KITENGELA/3707, a resultant subdivision of KAJIADO/KITENGELA/75473 alleged to have be bought by the 1st and 3rd Applicants and which is not located near the suit property is non-existent due to lack of documentation on proof of ownership. The Defendant is of the view that the Applicants only recourse is to vacate the suit property and sue Amos Kyondu Ngumbi in a different suit to recover their purchase price monies.
20. It is further alleged that occupation of the suit property by the Plaintiffs and Applicants is subject to investigation by the DCI. According to the Defendant, the Applicants seek to stop her from being reinstated back to the suit property as its legal and lawful owner by OCS Kitengela. It is the Defendant's case that the Applicants do not deserve any court audience nor remedy because they are in contempt of its orders. Further, until they purge the contempt, they should be barred from conducting any further proceedings.
21. The Defendant avers that the court cannot deal with any other issue post judgment because it is *functus officio*. In addition, its orders cannot be reviewed because there is no discovery of new evidence nor is there any evidence which was not within the knowledge of the parties during the subsistence of the suit. Consequently, the court is urged to dismiss the Application with costs because it is bad in law, frivolous, vexatious, and misleading and abuse of court processes.

B. Proposed Interested Parties' Chamber Summon dated 24th April, 2025

22. The 8th to 25th Proposed Interested Parties' Chamber Summon dated 24th April, 2025 is also brought under Order 1 Rules 10(2) and 22 of the Civil Procedure Rules, Section 3,3A and 63(e) of Civil Procedure Act and seeks for the following orders;

(a) That the Honourable court be pleased to join Mohammed Omar; Gideon Yator; Philemon Kangor; Peter Kibet Tuei; Erick Kiptanui Naipet; Josphat Kasiva Nthuka; Josphat Kisamu Musyoki; Abdi Yusuf; Edda Kimutai Kibet Seguton; Chepkemoi Chepkonga; Alex Mbithi; Magaret Torotich; Abaruba Godana Abdulahi Muse Abdi; Marvin Akwany; Billy Parseen Ole Koshal; James Wambua Musyoki as additional interested parties.

(b) That the additional parties be granted leave to file their respective pleadings and participate fully in these proceedings.

(c) That the additional interested parties be granted leave to issue and serve a Third-Party Notice upon Amos Kyondi Ngumbi.

(d) Costs of the Application.

23. The Application is supported by the Affidavit of Esther Wanja Warui sworn on 24th April 2025. It is affirmed that according to the judgment delivered on 30th May, 2022, eviction orders were issued against the Plaintiffs and any occupants residing on KAJIADO/KITENGELA/3707 as well as a permanent injunction restraining Plaintiffs from interfering with the use of the property by the Defendant. The proposed 8th - 25th Interested Parties assert that they face

an immediate threat of eviction yet they have beneficial interests in 0.04ha portions of KAJIADO/KITENGELA/3707 purchased from Amos Kyondu Njumbi.

24. It is asserted that they were excluded from the proceedings thereby being denied an opportunity to be heard and ventilate their claim against the third party prior to issuance of eviction orders. They plead that this violates their right to a fair hearing under Article 50 of the Constitution. They further avow that their joinder in these proceedings is necessary for the conclusive determination of the matters and to avoid multiplicity of suits.

25. According to the 8th -25th proposed Interested parties, intervention by this honorable court is necessary because the eviction will disrupt their livelihoods and render them homeless.

1st Defendant/Respondent Response

26. Lucy Wanjiru Gachari, the 1st Defendant/Respondent herein opposes the Chamber Summon Application dated 25th April, 2025 through a Replying Affidavit sworn on 2nd May, 2025. She deposes that the Applicants have not produced any photographic evidence to prove they reside and own homesteads on the suit property. It is averred that out of the 25 proposed Interested Parties, only James Wambua Musyoki produced a sale agreement dated 20th March, 2017. The Agreement having been executed prior to the institution of this suit relates to Plot No.4 hived from KAJIADO/KITENGELA/77672.

27. The 1st Defendant alleges that KAJIADO/KITENGELA/77672 has no connection with the suit property neither have the Applicants demonstrated whether the proposed third party acquired or owned the suit property.

According to the Defendant, the Applicants recourse ought to be against Amos Kyondu Njumbi who duped them and received their moneys through sale of non-existent land.

28. The deponent describes the Applicants as busy bodies and frivolous litigants whose intention is to prevent her from enjoying the fruits of her judgement. The Court is implored to dismiss the Application with costs for the reason that it is based on fraud, illegality and non-existent evidence

Determination

29. On 30th May, 2022, M.N.Gicheru delivered judgment in favor of the 1st Defendant's Counterclaim dated 28th May, 2019 against the Plaintiffs. According to the judgment, a permanent injunction was issued restraining the Plaintiffs from interfering with the suit property. The court similarly issued eviction order against the Plaintiffs, and any person who purchased from them or resided on the suit property with the Plaintiffs' permission.

30. With respect to the Plaintiffs' Notice of Motion dated 29th October, 2024, the same is premised on the ground that the Plaintiffs were denied an opportunity to participate in the taxation. In essence they are objecting to the Certificate of Taxation dated 9th May, 2024 for Ksh.1,135,445/=. The Applicants decry that they were never granted an opportunity to participate in the taxation proceedings for they were not aware of it neither were they served with a hearing notice for the said proceedings. Consequently, they contest the decretal sum which they claim is exorbitant. That is their reason for seeking to restrain the Defendant from executing the same.

31. I must categorically state that a taxation cannot be challenged the way the Plaintiffs are purporting to in their application. As was held by Ringera, J (as he then was) in **Re: Leisure Lodges Limited Nairobi (Milimani) HCWC No. 28 of 1996,**

“a party who is aggrieved by any decision of the taxing officer whether interlocutory or final and whether it be on the quantum awarded on the bill as a whole or any items thereof has a recourse to the High Court by way of a reference under paragraph 11 of the Advocates Remuneration Order. A decision made by a Taxing Officer on an application such as the one the subject of the objection herein would clearly be an interlocutory decision and, according to the Judge, whose decision I, with respect associate myself, amenable to challenge under paragraph 11 aforesaid.”

32. What is before me is not a reference as contemplated under the Advocates’ Remuneration Order. The taxation certificate issued by the Taxing Officer remains legally valid and enforceable as against the Plaintiffs. I find no legal basis for allowing the Plaintiffs’ application.

33. I hereby proceed to strike out the Plaintiffs’ Notice of Motion dated 29/10/2024 with costs to the 1st Defendant.

34. The two applications by the Intended Interested Parties pose a monumental legal question whether there is legal basis for the joinder of Interested Parties after a final judgement has been entered in a case.

35. The **Supreme Court of Kenya** in the case of **Everton Coal Enterprises Ltd vs Rose Wakanyi Karanja & 5 Others, Civil Application No. E026 of 2023**, was categorical on the issue noting that;

“This question has been settled in a long thread of past decisions. For Example in JMK vs MWM & ano (2015) eKLR, the court stressed that;

‘...an application for joinder of parties can be filed only in pending proceedings; that the power of the court to add a party to proceedings either before or during the trial; and 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.’”

36. In the referred case of JMK vs MWM & ano (2015) eKLR, the court of appeal had addressed the question of joinder of interested parties after a final judgement citing with approval the decision of the Tanzanian court of appeal in Tang Gas Distributors Ltd vs Said & others (2014) EA 448, in the following words;

“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...”

37. In this case, the suit between the Plaintiffs and the Defendant was finally disposed of by the judgement delivered by my predecessor in this matter. There is nothing more to be done. There are no proceedings to which the Intended Interested Parties may be joined into. Consequently the applications by the Intended Interested Parties are hereby dismissed with costs to the 1st Defendant.

It is so ordered.

Dated Signed and Delivered at Kajiado Virtually this 16th Day of October 2025.

**M.D. MWANGI
JUDGE**

In the virtual presence of:

Mr. Kandie for the Plaintiffs/Applicants

Ms. Andati for the 1st Defendant/Respondent
Mr. Kariuki for the Intended Interested Parties
N/A by the 2nd and 3rd Defendants
Court Assistant: MPoye

M.D. MWANGI
JUDGE

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