



Cheruiyot & 5 others v Kirobon Farmers Company Limited & another (Environment and Land Case E067 of 2024) [2025] KEELC 6717 (KLR) (6 October 2025) (Ruling)

Neutral citation: [2025] KEELC 6717 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND CASE E067 OF 2024
MAO ODENY, J
OCTOBER 6, 2025**

BETWEEN

**ERIC KIPLANGAT CHERUIYOT 1ST PLAINTIFF
DOROTHY CHELANGAT SOI 2ND PLAINTIFF
ALFRED KIBIEGON CHERUIYOT 3RD PLAINTIFF
WINDY RIDGE COMPANY LIMITED 4TH PLAINTIFF
FINE TRADE LIMITED 5TH PLAINTIFF
DANAMAX INVESTMENTS LIMITED 6TH PLAINTIFF**

AND

**KIROBON FARMERS COMPANY LIMITED 1ST DEFENDANT
SAMUEL ONCHORU NYARANGI (SUED AS THE ADMINISTRATOR
OF THE ESTATE OF THE LATE JUSTICE JAMES ONYIEGO
NYARANGI) 2ND DEFENDANT**

RULING

1. This ruling is in respect of three applications. The first one is the Plaintiffs' Notice of Motion Application dated 11th October, 2024 which seeks the following orders:
 - a. Spent
 - b. Spent
 - c. Pending the hearing and determination of this suit, an order of injunction be and is hereby issued restraining the Defendants whether by themselves their agents or servants from trespassing onto, remaining upon, invading, disposing of, transferring, leasing, evicting,



interfering with and/or in any manner dealing with all the parcel of land known as Molo South/Langwenda Block 17/148, 152, 151, 150, 149 and 153 (Seguton), which order shall be enforced by OCPD Sirikwa Police Station and/or Officer Commanding Sirikwa Police Station.

- d. The costs of this application be provided for.
2. The application is supported by the annexed affidavit of Eric Kiplangat Cheruiyot, the 1st Plaintiff, sworn on 11th October, 2024, where he deponed that he is the Director of the 4th Plaintiff, and the lawful and registered owner of the suit property known as Molo South/Langwenda Block 17/148 (Seguton) measuring approximately 4.80Ha which he purchased at a consideration of Kshs. 3,600,000/= from the 1st Defendant vide a sale agreement dated 7th August, 2016.
3. It was his deposition that the 4th Plaintiff is the lawful and registered owner of the suit property known as Molo South/Langwenda Block 17/150 (Seguton) measuring, approximately 10.12 Ha which it had purchased at a consideration of Kshs. 8,750,000/= from the 1st Defendant vide a sale agreement dated 7th August, 2016.
4. He further deponed, that prior to the purchase of the suit properties, they conducted due diligence through a search and established that the suit properties were registered in the name of the 1st Defendant and that they were both resultant subDIVISIONs of LR No Molo South/Langwenda Block 17/1 (Seguton), which was also registered in the name of the 1st Defendant.
5. The Applicant also deponed that, upon purchase of the suit properties, the 1st Defendant duly executed transfer instruments which were registered in their favour upon payment of the requisite stamp duty. It was his case that on 2nd October 2024, the 2nd Defendant with the aid of the County Commissioner of Kuresoi North Sub-County, OCPD Sirikwa Police Station and OCS Sirikwa Police Station, invaded their parcels of land with the illegal aim of evicting them without any justifiable reasons. The 1st Plaintiff urged the court to grant the orders sought to protect their proprietary rights and interests.
6. Samuel K. Birir, the Director and Chairman of the 1st Defendant Company filed a Replying Affidavit sworn on 16th December, 2024, opposed the application and deponed that there are three pending applications before the Honourable Court dated 11th October 2024, 28th November, 2024 and 10th December 2024. He further deponed that the suit land belongs to the 1st Defendant and the Plaintiffs as per the existing titles on the suit land and there is no evidence adduced by the 2nd Defendant that the suit land belongs to them.
7. The 1st Defendant's company Director, prayed that the status quo be maintained on the suit land as per the orders of this Honourable Court issued on 14th October 2024, 29th November 2024 and 21st June 2022 pending hearing and determination of the suit.
8. Sammy Onchuru Nyarangi, the 2nd Defendant, filed a Replying Affidavit sworn on 6th February, 2025, opposed the application and deponed that the suit property being Molo South/Langwenda Block 17/148; 152, 151, 150, 149 and 153 (Seguton) are not the resultant subDIVISIONs of LR Molo South/Langwenda Block 17/1 as the certified copy of the green card in regards to Molo South/Langwenda does not show any such subDIVISIONs before the issuance of the alleged titles. It was his deposition that the failure by the Plaintiffs to disclose the existence of Court orders in ELC No 29 of 2017 despite their knowledge, renders the application dated 11th October 2024 an abuse of court process.
9. He deponed that the title to Molo South/ Langwenda Block 17/1 having been cancelled by the Honourable Court, renders any resultant subDIVISIONs null and void, hence the Plaintiffs have no cause of action against him but should pursue the 1st Defendant.



10. The second application is by the Plaintiffs dated 28th November, 2024, seeks the following orders:
- a. Spent
 - b. That Mr. Samuel Onchuru Nyarangi, the 2nd Defendant herein, Mr. Moses Onyapidi, the OCS Sirikwa Police Station, Mr. Judah Gathenge, the OCPD Kuresoi North and Mr. John Ngunjiri of Tango Auctioneers be committed to civil jail for a term of six (6) months for deliberately disobeying the orders of this court issued on 14th October, 2024 and extended on the 7th November, 2024 in the presence of all parties herein.
 - c. That further to the above, this court do order Mr. Samuel Onchuru Nyarangi, the 2nd Defendant herein, Mr. Moses Onyapidi, the OCS Sirikwa Police Station, Mr. Judah Gathenge, the OCPD Kuresoi North and Mr. John Ngunjiri of Tango Auctioneers to pay a fine of Kshs 500,000/= each in addition to serving the above sentence.
 - d. That this Honourable Court be pleased to order that the 2nd Defendant be denied audience until he purge the disobedience of the court order by restoring the status quo obtaining when the orders were issued and served.
 - e. That a declaration be and is hereby issued that by disobeying the orders issued by the Court on 14th October, 2024 and extended on the 7th November, 2024, Mr. Moses Onyapidi, the OCS Sirikwa Police Station and Mr Judah Gathenge, the OCPD Kuresoi North violated Articles 10 and 232 of *the Constitution* and therefore unfit to hold any public office including their current positions which they hold.
 - f. That an order be issued by this court compelling Mr. Moses Onyapidi, the OCS Sirikwa Police Station to remove his officers from the suit land forthwith and to demolish the police post structure erected on the suit land on 25th November, 2024.
 - g. That this court do issue an order allowing the Plaintiffs and their agents to access the suit land unconditionally and carry out their daily activities on the land until the application dated 14th October, 2024 is heard and determined.
 - h. That this court be pleased to issue such other or further punitive order in respect of the said disobedience as may be necessary for ends of justice to be met.
 - i. Costs of this application be provided for.
11. The application was supported by the annexed affidavit of Eric Kiplangat Cheruiyot, sworn on 28th November, 2024, where he deponed that despite being aware of the orders of this court issued on 14th October, 2024 and extended on 7th November, 2024, the 2nd Defendant together with Mr. Moses Onyapidi, the OCS Sirikwa Police Station, Mr. Judah Gathenge, the OCPD Kuresoi North and Mr. John Ngunjiri of Tango Auctioneers forcibly gained entry onto the disputed suit land on 25th November 2024 and destroyed all the Plaintiffs' semi-permanent structures valued at Ksh 4,000,000/= in blatant violation of the order issued by this court.
12. Samuel K. Birir, the 1st Defendant's Director and current Chairman, filed a Replying Affidavit sworn on 17th December, 2024, in support of the application and deponed that the Respondents have disobeyed clear orders of this court, hence should not be heard until they purge their contempt. On the court record is also a Replying Affidavit sworn by Daniel Kandie sworn on 9th May, 2025, where he relied on the facts in the Replying Affidavit sworn by Samuel K. Birir and a Further Affidavit sworn on 9th June 2025.



13. Sammy Onchuru Nyarangi, the 2nd Defendant filed a Replying Affidavit sworn on 17th December, 2024, where he deponed, that the orders granted pending the hearing of the application inter-parties were issued by the Court without the knowledge that there was a decree on the suit property and there was no order stopping the execution of the decree issued on ELC 29 of 2017. It was his deposition that the order issued on 14th October, 2024 did not stop or stay the decree of the court issued amended on 13th April, 2023 together with orders issued on 12th February, 2024 directing Tango Auctioneers to proceed with the execution process.
14. He deponed that the orders issued on 14th October, 2024, were obtained through fraud and non-disclosure of material facts and the same did not stop or stay the subsequent orders issued in ELC 29 of 2017, and it only caused embarrassment to the court and the parties bearing parallel orders over the same subject matter. He urged the court to dismiss the current application with costs and vacate any interim orders issued in the current suit.
15. The third Notice of Motion application is dated 10th December, 2024, filed by the 2nd Defendant which seeks the following orders:
 - a. Spent
 - b. That this Honourable Court be pleased to set aside the orders issued on 14th October, 2024 and 29th November, 2024.
 - c. That upon prayer 2 being granted, the Honorable Court be pleased to order that the status quo of the suit property be maintained pending the hearing of the suit.
 - d. That costs be provided for.
16. The application was supported by the annexed affidavit of Sammy Onchuru Nyarangi, the 2nd Defendant, sworn on 10th December, 2024, where he deponed that the Plaintiffs obtained ex-parte orders issued on 14th October, 2024 and 29th November 2024 for non-disclosure of material facts. Further that during the pendency of ELC NO. 29 of 2017, the 1st Defendant/ Respondent never disclosed to the court that it had subdivided and transferred the suit land being Molo South/Langwenda Block 17/1 into Molo South/Langwenda Block 17/148, 152, 150, 149, and 153 (Seguton) if the alleged subDIVISIONs were genuine.
17. The deponent also stated that the sale agreement attached and marked as “ECK3a” in the Applicant’s supporting affidavit is clear that the sale agreement took place when the matter was active in court.
18. The 2nd Defendant stated that the Plaintiff/Applicants who acknowledged to have done due diligence before purchasing the suit land and confirmed to have been on the suit land since 2016 never bothered to be joined in ELC No 29 of 2017, to claim their interest until after they were served with a decree to vacate within 30 days, is when they attempted to be joined in the Appeal before the Court of Appeal. It was his deposition that the Honourable Court should vacate all the orders issued in the instant suit, as there are parallel orders over the same subject matter.
19. Eric Kiplangat Cheruiyot, the 1st Plaintiff and a Director of the 4th Plaintiff, filed a Replying Affidavit sworn on 16th December, 2024, where he deponed that if the Applicant felt that the interim orders were obtained as a result of non-disclosure of material facts, he ought to have raised the same at the first instance which he did not.
20. He deponed, that the applicant has not denied the destruction of the Plaintiffs properties, urged the court to punish him together with his agents for contempt and urged the court to dismiss the application with costs.



21. Sammy Onchuru Nyarangi filed a Supplementary Affidavit sworn on 11th February, 2025, and further deponed that Samuel K. Birir is neither a Director nor the Chairman of the 1st Defendant and based on Civil Suit No E016 of 2021, he does not have any instructions to represent the 1st Defendant together with Ochieng Gai Advocates. He further deponed that this matter has been heard and determined and there is an existing judgment and decree hence both the Plaintiffs and the 1st Defendant should pursue an appeal.
22. He also deponed that the 1st Defendant's appeal is pending before the Court of Appeal, Civil Appeal 105 of 2022 and Civil Appeal 113 of 2024 was dismissed and withdrawn on 10th February, 2025.
23. Sammy Onchuru Nyarangi also stated that ELC Misc No. E009 of 2023 which was filed without his knowledge, did not invalidate the court decree which was already registered against the green card and further that the Land Registrar did not interfere with the entry of the decree on the green card. According to the Applicant, other than the eviction orders that have taken place, the decree was served on all concerned government offices for compliance as shown in the green card. He urged the court to allow the application dated 10th December, 2024, to set aside the orders issued by the court on 14th October and 29th November 2024.

Plaintiffs' Submissions

24. Counsel for the Plaintiffs filed submissions dated 30th January, 2025 and identified the following issues for determination:
 - a. Whether the Plaintiffs application for contempt is merited?
 - b. Whether the 2nd Defendant's application to set aside the interim orders of 14th October, 2024 and 29th November, 2024 is merited?
 - c. Which order to issue in the circumstances?
25. On the first issue, counsel submitted that the Respondents have not refuted service and/or knowledge of the court orders issued on 14th October, 2024, and the Respondents do not deny that the said interim orders were extended on 7th November, 2024, by consent.
26. Mr. Opar, submitted that the Respondents have not disputed their forcible entry onto the suit property on 25th November, 2024 and destruction of the Plaintiffs' property valued at Ksh 4,000,000/= in blatant disregard of the court orders.
27. Counsel urged the court to find the Respondents in contempt of the orders of 14th October, 2024 as they have not refuted that at the time of forcible entry on the suit land, the orders had not been set aside, and relied on the cases of Econet Wireless Kenya Limited v Minister for Information and Communication of Kenya Authority [2005] eKLR, T.N Gadavarman Thiru Mulpad v Ashok Khot and Another [2005] 5 SCC, Mwangi Stephen Muriithi & 2 others v Ann Nguthi Gakobu & Another (2016) eKLR, Republic v Ahmad Abolfathi Mohammed & Another (2018) eKLR, Refrigeration & Kitchen Utensils Limited v Gulabchand Popatial Shah (2017) eKLR and Katsuri Limited v Kapurch and Depar Shah [2016] eKLR.
28. On the second issue, counsel submitted that the application filed by the 2nd Defendant was after the Plaintiff had filed a contempt application dated 28th November, 2024. Counsel further submitted that the 2nd Defendant's main ground for the discharge of the interim orders issued on 14th October, 2024 was on non-disclosure of material facts of an existing order.



29. It was Mr. Opar's submission that the Plaintiffs were not parties to ELC No. 29 of 2017 nor were they aware of the said parallel decree, and further that the suit properties in this case were not subject to litigation in ELC No. 29 of 2017 and therefore the Plaintiffs cannot be blamed for non-disclosure of material facts which they did not know of. Counsel relied on the case of *St Patricks Hill School Ltd v Bank of Africa Kenya Ltd* [2018] eKLR and urged the court to dismiss the 2nd Defendant's application with costs, and allow the orders to remain in force until the hearing of the main suit on merit.
30. Counsel for the Plaintiff filed supplementary submissions dated 5th May, 2025 in respect of the application dated 11th October, 2024 and identified the following issues for determination:
 - a. Whether or not the Plaintiff/Applicants' have made out a case for grant of an order of injunction?
 - b. Which orders to grant in the circumstances?
31. On the first issue, counsel submitted that they have a prima facie case with a probability of success as the Plaintiffs own the suit parcels having purchased the same for value. Counsel relied on Article 40 of *the Constitution* of Kenya and the cases of *Giella v Cassman Brown* (1973) EACA, *Nguruman Ltd v Jan Bonde Nielsen and 2 others* (2014) eKLR, *Kenya Commercial Finance Co Ltd v Afraha Education Society* (2001) vol 1 EA 86 and *Mrao Ltd v First American Bank of Kenya Ltd and 2 others* (2003) eKLR.
32. Counsel submitted that if the orders are not granted, an award of damages cannot adequately compensate the Applicants as the Plaintiffs are on the verge of losing their suit parcels, their structures and trees worth millions of Kenya shillings, demolished.
33. Counsel submitted that the applicants have satisfied all the three conditions for the grant of an order of injunction pending the hearing and determination of the suit. Counsel urged the court to find merit in the application and allow the same as prayed with costs.

2nd Defendant's Submissions

34. Counsel for the 2nd Defendant filed submissions dated 11th February, 2025 and identified the following issues for determination:
 - a. Whether the Plaintiff/Applicants' have met the threshold for the grant of an order of injunction?
 - b. Whether execution of the decree in Nakuru ELC No 29 of 2017 by the 2nd Defendant/ Respondent with assistance of Mr Moses Onyapidi, the OCS Sirikwa Police Station, Mr Judah Gathenge, the OCPD Kuresoi North and Mr John Ngunjiri T/A Tango Auctioneers amounted to a contempt of court?
 - c. Whether this Honourable court should set aside the orders issued on 14th October, 2024 and 29th November, 2024?
35. On the first issue, counsel submitted that the Plaintiff/Applicants were evicted from the subject properties by Tango Auctioneers acting on valid court orders and executed the decree of the Court after following all the due processes provided by the law. It was counsel's submission that the injunction sought has been overtaken by events as the action intended to be prevented has already taken place.
36. Counsel submitted that the Plaintiffs application dated 14th October, 2024, lacks merit and ought to be dismissed, and relied on Section 26 of the *Land Registration Act* and the cases of *Giella v Cassman*



Brown & Co Ltd [1973] EA 358, Mrao Ltd v First American Interested Party of Kenya Ltd & 2 others (2003) eKLR, Nguruman Ltd v Jan Bonde Nielson & 2 others: Civil Appeal No 21 of 2014, Alice Chemutai Too v Nickson Kipkurui Korir & 2 others, Elijah Makeri Nyangwara v Stephen Mungai Njuguna & Another, Eldoret ELC Case No 609 B Of 2012 and Habiba Ali Mursal & 4 others v Mariam Noor Abdi [2018] eKLR.

37. Mr. Chumba submitted that pending the hearing and determination of Nauru Court of Appeal Civil Appeal No E105 of 2023, the Estate of James Nyarangi and Margaret Nyarangi (Deceased) where the 2nd Defendant is one of the Administrators are the absolute an indefeasible owners of Molo South / Langewnda Block 17/1(Seguton). Counsel therefore submitted that 2nd Defendant has no intention of alienating, transferring and or selling the suit property, hence the same is not in any danger of being sold and/or wasted in any manner.
38. Counsel submitted on the second issue in respect of the Plaintiff's application dated 28th November, 2024, and urged the court to dismiss the application owing to non-disclosure of material facts by the Plaintiff/Respondents, as there are parallel orders in place in regard to the same subject matter.
39. On the third issue in respect of the application dated 10th December, 2024, counsel submitted that the ownership of Molo South/Langewnda Block 17/1 and the mother title to the properties herein is scheduled for determination before Nakuru Civil Appeal No 105 of 2023. Counsel urged the court to set aside the orders in the instant suit in their entirety or stay these proceedings pending the determination of the said appeal so as to prevent a situation of having conflicting orders emanating from two or more different courts over the same subject matter.
40. Counsel relied on Sections 3A and 6 of the *Civil Procedure Act* and the cases of Kenya National Commission on Human Rights v Attorney General, I.E.B.C & 16 others [2020] eKLR and Kenya Bankers Association v Kenya Revenue Authority, 2019 eKLR, and urged the court to allow the 2nd Defendant's application and dismiss the Plaintiff's application with costs.
41. Mr. Chumba filed further written submissions dated 9th May, 2025 in respect of the application dated 11th October, 2024, and urged the court to dismiss the application as allowing it would amount to sanctioning the Plaintiff/Applicants' illegal activities. Counsel submitted that the Plaintiffs have not met the conditions set out under Order 40 Rule 1 of the Civil Procedure Rules to warrant granting of the orders sought, and relied on the case of Michael Mwaura Njoroge v Peter Kamau Munene, Beatrice Kori (Interested Party) 2019 eKLR.

Analysis And Determination

42. The issues for determination are as follows:
 - a. Whether the 2nd Defendant's application to set aside the interim orders of 14th October, 2024 and 29th November, 2024 has merit.
 - b. Whether the Plaintiffs have met the threshold for the grant of an order of injunction?
 - c. Whether the Plaintiffs' application for contempt has merit?
43. There are three applications in this matter, one for injunctive orders, the second one is for contempt of court, and the last one for setting aside the ex-parte orders due to non-disclosure of material facts. For good orderliness, the court will first deal with the Application for setting aside the ex-parte orders which if the result is in the affirmative, will have a bearing on the application for injunction and contempt proceedings against the alleged contemnors.



44. The suit land in question has a checkered history, which has been litigated in this court and another one pending before the Court of Appeal. It is not disputed that there was a suit in respect of the suit land being Nakuru ELC No. 29 of 2017 between the 1st and 2nd Defendant herein where the court delivered a Judgment dated 21st June 2022 and issued the following orders:
- a. The plaintiffs case is hereby dismissed;
 - b. The lease and certificate of lease registered in favour of the plaintiff on 21/3/2016 are hereby cancelled;
 - c. The National Land Commission and the Ministry of Lands Housing and Urban Development shall undertake all steps necessary to ensure that the suit land occupied by the defendant and his family within Seguton Farm, is properly surveyed at the defendant's expense and title issued in the name of the Administrator of the Estate of James Nyarangi and Margaret Nyarangi, (Deceased).
 - d. An order of permanent injunction is hereby issued against the plaintiff restraining the plaintiff, its servants, employees and or authorized agents from trespassing upon, entering, farming, leasing and or interfering with the defendant's peaceful possession and use of the suit land formerly referred to in the land register before cancellation of title in order No. (b) herein above as LR No. Molo South/Langwenda Block 17/1 (Seguton).
 - e. The plaintiff shall bear the costs of the suit and of the counterclaim.
45. It is further not disputed that the Plaintiffs' counsel, Mr. Opar, filed Civil Appeal Application No. E105 of 2022 in the Court of Appeal seeking joinder of the Plaintiffs as Interested parties in respect of the Judgment in ELC No 29 of 2017, which application was withdrawn.
46. Similarly, the 1st Defendant filed an application for stay of execution in the Court of Appeal which was dismissed on 6th October 2023, and the Appeal is still pending before the court.
47. A party filing a claim and seeking equitable orders or any other order must disclose to the court all material facts to enable the court to deal with the matter in a wholesome manner without withholding certain facts which are useful in the just determination of a suit.
48. The 2nd Defendant filed a replying affidavit and attached documentary evidence of the history of litigation of the suit land, which has not been controverted by the Plaintiffs. Counsel for the Plaintiff submitted that the Plaintiffs were not parties to the previous case being ELC No 29 of 2017, between the 1st and 2nd Defendants.
49. It should be noted that the same counsel Mr. Opar filed an Application in the Court of Appeal vide Civil Appeal No. E105 of 2022 to join the Plaintiffs in the suit as the orders obtained in the Judgment in ELC No. 29 of 2017 would affect them and sought that the Plaintiffs be allowed to adduce additional evidence. This Application was withdrawn and this might be the reason this matter is before this court to counter the judgment vide a fresh suit. The concluded matter was in respect of the same parcel of land where the titles issued to the 1st Defendant, Kirobon Farmers Co. Ltd on whose titles the Plaintiffs anchor their claim, were cancelled by the court decree which has not been set aside.
50. The court has discretionary powers to set aside ex-parte orders as per the case of *Patel v E.A Cargo Handling Services Ltd* (1974) EA 75, where the court held that:
- “There are no limits or restrictions on the Judge's discretion to set aside or vary an ex-parte judgment except that if he does vary the judgment, he does so on such terms as may be just.



The main concern of the Court is to do Justice to the parties and the court will not impose conditions on itself to fetter the wide discretion given it by the Rules.”

51. The legal threshold to consider before exercising the said discretion is whether the Applicant has demonstrated a sufficient cause to warrant the setting aside of the ex-parte order was held in the case of *Wachira Karani v Bildad Wachira* (2016) eKLR where the court held that:

“Sufficient cause is a question of fact and the court has to exercise its discretion in the varied and special circumstances in the case at hand. There cannot be a strait-jacket formula of universal application....”

52. The 2nd Defendant stated that the Plaintiffs are guilty of non-disclosure of material facts as they deliberately failed to disclose that there is an existing judgment in ELC No. 29 of 2017 in respect of the same suit land, which decree has not been set aside and further that there is a pending Appeal being Civil Appeal No. E105 of 2023.

53. As earlier stated, that a party or a claimant must disclose all material facts in a suit, the issue of non-disclosure is a serious issue and where a court finds that a claimant is guilty of such, then such a claimant cannot benefit from the discretion of the court. Parties have been dealt a blow where the court found out that there was non-disclosure of material facts by setting aside the orders already granted.

54. In the case of *Ruaha Concrete Company Limited & 2 others v Paramount Universal Bank Ltd & 2 others* [2009] KEHC 2095 (KLR), the Court enumerated the fundamental principles of non-disclosure of material facts as follows:

- a. the Applicant is under an obligation to the court to make the fullest possible disclosure of all material facts within his knowledge,
- b. The duty of disclosure therefore applies not only to material facts known to the Applicant but also to any additional facts which he would have known if he had made sufficient inquiries.
- c. The extent of the inquiries which will be held to be proper, and therefore necessary, must depend on all the circumstances of the case including (a) the nature of the case which the applicant is making when he makes the application, (b) the order for which the application is made and the probable effect of the order on the defendant, and (c) the degree of legitimate urgency and the time available for the making of the inquiries.
- d. Whether the fact not disclosed is of sufficient materiality to justify or require immediate discharge of the order without examination of the merits depends on the importance of the fact to issues which were to be decided by the judge in the application.
- e. The question whether the non-disclosure was innocent, in the sense that the fact was not known to the applicant or that its relevance was not perceived, is an important consideration but not decisive by reason of the duty on the applicant to make all proper inquiries and to give careful consideration to the case being presented.
- f. Finally, it is not every omission that the injunction will be automatically discharged

55. The question is whether, the non-disclosure was innocent, whether facts not disclosed by Plaintiffs were not known to them or the relevance of the facts were not important. The Plaintiffs would not pass this test as they were all aware of the existence of the case that rendered a judgment in respect of the suit parcel of land, they attempted to be joined in the Appeal as Interested parties post-judgment and to adduce additional evidence but withdrew the application only to resurface with this case.



56. Similarly, in the case of Kilima Limited & another v Samuel Ruto – Chairman & 21 others; Carewell Farmers Company Limited & another (Interested Parties) eKLR this court held that:

“This emphasizes the need for parties to come to court with honesty and integrity. Parties should not take advantage of the absence of the other party because when they finally come, the truth will always come out. When this happens then the offending party will have to shoulder the consequences of the dishonesty.”

57. In the case of Tate Access Floor v Boswell (1990) 3 All ER 303, the court held at page 316 thus:

“No rule is better established and far more important than the rule (the golden rule) that a Plaintiff applying for ex parte relief must disclose to the court all matters relevant to the exercise of the court’s discretion whether or not to grant relief before giving the defendant an opportunity to be heard. If that duty is not observed by the Plaintiff, the court will discharge the ex parte order and may mark its displeasure, refuse the Plaintiff further inter-partes relief even though the circumstances would otherwise justify the grant of such relief. ”

58. The above cited cases speak to the importance of material disclosure of facts when a Plaintiff is applying for ex-parte relief to the exercise of the court’s discretion whether or not to grant such order before giving the defendant an opportunity to be heard. If a party squanders such a chance then they will have to suffer the consequences, as the discretion cannot be used to aid a bat an illegality.

59. I have perused the Plaint dated 11th October 2024 and have not seen anywhere, in the body disclosing that there was a judgment in respect of the suit properties. In fact, paragraph 18 of the Plaint declares that there are no pending or previous proceedings between the parties herein relating to a claim over the suit properties in this or any other court having jurisdiction over the subject matter.

60. The existence of the judgment in ELC No. 29 of 2017, and the pending Appeal in the Court of Appeal and the Application for joinder in the Appeal case is of sufficient materiality to justify immediate discharge of the order without examination of the merits as the facts are important in the determination of this application.

61. This court is dealing with the issue of non-disclosure elaborately as it will determine whether the other applications for injunction and contempt of court require any further consideration. If the court finds that the Applicants were guilty of non-disclosure, then the two applications will fall flat and not see the light of day.

62. When an Applicant does not disclose material facts, it amounts to coming to court with unclean hands, an order of injunction being an equitable remedy, an applicant must come to court with clean hands and good faith in order to benefit from the court’s discretion. In the case of Nahashon Njage Nyaggah v Savings & Loan Kenya Limited & another [2006 eKLR - Kasango J.) stated in discharging interim injunctive reliefs that:

“When a party approaches a court for such a remedy they are expected to be even handed in the presentation of evidence before court. The court requires such a party to act uberrima fide in seeking for an injunction order. A party should not suppress the truth nor should such a party tell untruths with a view to persuading the court to grant an injunction.”

63. I have considered the three Applications, the Affidavits, annexures and the submissions by counsel, and find that the Plaintiffs are guilty of non- disclosure of material facts. They can therefore not benefit



from the discretion of the court. The ex-parte injunctive orders granted against the Defendants are hereby set aside and discharged.

64. It follows that the Applications for injunction and contempt of court against the named contemnors are dismissed with costs, as the orders were anchored on non-disclosure of material facts.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 6TH DAY OF OCTOBER 2025.

M. A. ODENY

JUDGE

