



REPUBLIC OF KENYA



KENYA LAW
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**Kamau v Wahome & 20 others (Environment and Land Case
81 of 2019) [2025] KEELC 6726 (KLR) (7 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 6726 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND CASE 81 OF 2019**

JA MOGENI, J

OCTOBER 7, 2025

BETWEEN

GLADYS WAITHIRA KAMAU PLAINTIFF

AND

MARY NYAMBURA WAHOME 1ST DEFENDANT

JOYCE WANGARE MWANGI 2ND DEFENDANT

ALICE WANGARI KARIUKI 3RD DEFENDANT

DOMINIC KUNGU NJOROGE 4TH DEFENDANT

EVANS LYULA SHIECHELO 5TH DEFENDANT

PATRICK ZACHARIA ONDIEKI 6TH DEFENDANT

JANE MUTHONI MWANGI 7TH DEFENDANT

LUCY WAIRIMU 8TH DEFENDANT

SAMUEL NDUNGU NGUGI 9TH DEFENDANT

CLEMENT OMONDI OYUCHO 10TH DEFENDANT

HARMONY 2013 REAL ESTATE DEVELOPER 11TH DEFENDANT

BENEDICT MOTAI KAVUVA 12TH DEFENDANT

ELIAS KIBUNJA KIRIGIA 13TH DEFENDANT

ELIZABETH WANJIRU GICHUHI 14TH DEFENDANT

MOSES KARURIA THEMU 15TH DEFENDANT

JANE WAMBUI MOKABU 16TH DEFENDANT

FLORENCE WAIRIMU GACHAGUA 17TH DEFENDANT



JAMES KINYANJUI MBURU 18TH DEFENDANT
PAULINE N. NYAMBURA 19TH DEFENDANT
BENSON KIGAI MUG 20TH DEFENDANT
ISAAC NDTCHU & LOISE NDUITA 21ST DEFENDANT

RULING

1. The Notice of Motion dated 25/02/2025 filed by the 14th Defendant before this Honourable Court seeking the following order:
 - a. For an order that the Honorable Court be pleased to send for the record of Thika Chief Magistrate MCL & E No. 3 of 2019 (formerly Thika ELC Case No. 310 of 2018) Elizabeth Wanjiru Gichuhi Vs Mwihoko Housing Company LTD and inspect the same.
 - b. That the costs of this application be in the cause.
2. The application is brought by Leo Masore Nyang’au Advocates Counsel for the 14th Defendant under the provisions of Order 14 Rule 6 of the Civil Procedure Rules Cap 21 Laws of Kenya.
3. The application was premised on the grounds, facts and testimony on the face of the application and the averments made out under the 7 Paragraphed annexed Affidavit of Leo Masore Nyang’au, an Advocate of the High Court of Kenya and practicing as such under the auspices of Messrs. Masore Nyang’au and Company Advocates and in personal conduct of the suit on behalf of the 14th Defendant/Applicant herein. The Deponent averred that he represented the 14th Defendant in MCL & E Case No. 3 of 2019 who was in that case the Plaintiff while the Plaintiff in the instant suit was the 2nd Defendant.
4. It is his averment that the case was fully heard and Judgment delivered in favour of the 14th Defendant on 6th October 2020 as shown by a copy of the Judgment annexed and marked as “LMN1”.
5. Further that at the time of filing the 14th Defendant’s bundle of trial documents and also during the first hearing of this case the Applicant did not have a copy of the said Judgment. Therefore, it will be in the interest of justice for this Court to send for the record of the said Subordinate Court case filed and inspect it to ascertain the authenticity of the Judgment.
6. The application is unopposed.
7. On 30/04/2025 while the parties were in Court, they chose to canvas the application by way of written submissions and the Court directed them on filing of submissions.
8. However, at the time of writing this Ruling only the Applicant had filed his submissions dated 14th May 2025. The gist of the submissions of the Applicant are that the Defendant had already pleaded that the issue of the suit property which is pleaded in paragraph 7 of the Defendant’s Statement of Defence indicate that the claim is Res Judicata. Further the Applicant’s submissions have reiterated the provisions of Order 14 Rule 6 of the Civil Procedure Rules.



Analysis and Determination

9. I have carefully read and considered the pleadings herein and the relevant provisions made by the parties. In order to arrive at an informed decision, the Honorable Court has framed the following two (2) issues for its determination. These are:
- i. Whether the Notice of Motion dated 25/02/2025 is merited.
 - ii. Who will bear the Costs of Notice of Motion application?

Whether the Notice of Motion dated 25/02/2025 is merited.

10. The main issue here is whether the Applicant has made out a case for granting the orders sought out in the application. This Court is keen to uphold and safeguard the principle of “fair hearing” under the provision of Article 25 (c); 47 and 50 (1) & 2) of *the Constitution* of Kenya, 2010; and “the right to be heard” which is anchored on the Latin Maxim principle of “Audi alteram partem” which basically entails that a party who comes before the Court ought to be given an opportunity to tender his evidence in a fair and just manner.
11. Indeed, the provision of Articles 25 (c) and 50 (1) of *the Constitution* provides that:-
- “Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a Court or, if appropriate, another independent and impartial tribunal or body.”
12. According to the Applicant, one of the critical aspects that had arisen in this matter and which the Court will need to effectively interrogate so as to justly dispose of this case shall be the Judgment delivered on 6/10/2020 by the then Chief Magistrate Hon. I. M. Nangea who the Plaintiff/ Respondent objects to because he alleges that Hon. Nangea delivered the said Judgment when he was already promoted to be a Judge rendering the decision a nullity.
13. From the aversions of the Counsel for the Plaintiff/Respondent, the calling of a Subordinate Court file is a suo motto function of a Court and there is no need of an application being made.
14. I do however believe that the calling of the file whether vide an application or suo motto once the Court is seized of the facts will help shade more light to this suit and enable this Court come to a justified conclusion of the case.
15. Order 14 Rule 6 provides that:-
1. The Court may of its own motion, and may in its discretion upon the application of any of the parties to a suit, send for, either from its own records, or from any other Court, the record of any other suit or proceeding and inspect the same.
 2. Every application made under this rule shall (unless the Court otherwise directs) be supported by an Affidavit showing how the record is material to the suit in which the application is made, and that the Applicant cannot without unreasonable delay or expense obtain a duly authenticated copy of the record or of such portion thereof as the Applicant requires, or that the production of the original is necessary for the purposes of justice.
 3. Nothing contained in this rule shall be deemed to enable the Court to use in evidence any document which under the law of evidence would be inadmissible in the suit.



16. I therefore find merit in the Notice of Motion application dated 25/02/2025. Thus, it is hereby allowed.

Who will bear the Costs of Notice of Motion application?

17. It is now well established that the issue of Costs is at the discretion of the Court. Costs meant the award that is granted to a party at the conclusion of the legal action, and proceedings in any litigation. The Proviso of Section 27 (1) of the Civil Procedure Rules Cap. 21 Laws of Kenya holds that costs follow the events. By the event, it means outcome or result of any legal action. This principle encourages responsible litigation and motivates parties to pursue valid claims. See the cases of “Harun Mutwiri –Versus- Nairobi City County Government [2018] eKLR and “Kenya Union of Commercial, Food and Allied Workers – Versus - Bidco Africa Limited & Another [2015] eKLR, the Court reaffirmed that the successful party is typically entitled to costs, unless there are compelling reasons for the Court to decide otherwise.

18. The events in this case point to compelling reason to award costs but which I will direct to be in the cause is that the Applicant noting the “inconvenience” caused to the Respondent offered to pay the cost of the application. In the circumstances I direct that the same shall abide the cause.

Disposition

19. In a nutshell, I proceed to order the following:-

- a. That the Notice of Motion Application dated 25/02/2025 be and is hereby found to have merit and is allowed.
- b. That an order be and is hereby issued directing the Deputy Registrar to send for the record of Thika Chief Magistrate MCL & E No. 3 of 2019 (formerly Thika ELC Case No. 310 of 2018) Elizabeth Wanjiru Gichuhi Vs Mwihoko Housing Company LTD for inspection by this Honorable Court within seven (7) days from the date hereof.
- c. The hearing date for 7/10/2025 is hereby vacated to allow the Court to examine the record of the Court filed referenced in (b) above.
- d. Next hearing shall be on 3/12/2025.
- e. That costs of this application shall be in the cause.

Orders Accordingly.

DATED, SIGNED AND DELIVERED AT THIKA THROUGH MICROSOFT TEAMS ON THIS 7TH DAY OF OCTOBER, 2025.

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MOGENI J

JUDGE

In the presence of:-

Mr. Momanyi for the Plaintiff

Ms. Waigwa for the 1st – 13th Defendants

Mr. Masore Nyang'au for the 14th Defendant



Ms. Waigwa for the 15th – 20th Defendants

Melita – Court Assistant

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MOGENI J

JUDGE

