



Kerich & another v Langat & 5 others (Environment and Land Case 15 of 2014) [2025] KEELC 7515 (KLR) (30 October 2025) (Ruling)

Neutral citation: [2025] KEELC 7515 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERICHO
ENVIRONMENT AND LAND CASE 15 OF 2014
LA OMOLLO, J
OCTOBER 30, 2025**

BETWEEN

STEPHEN KIPKORIR KERICH 1ST PLAINTIFF

JOSEPH KIMUTAI 2ND PLAINTIFF

AND

DAVID KIPRONO LANGAT 1ST DEFENDANT

FRANCIS KIRUI 2ND DEFENDANT

JOHN CHERUIYOT 3RD DEFENDANT

JOYCE 4TH DEFENDANT

AND

SOTIK POLICE STATION 1ST RESPONDENT

PAUL OLE YALE T/A NASIOKI AUCTIONEERS 2ND RESPONDENT

RULING

Introduction

1. This ruling is in respect of the Plaintiffs/Applicants Notice of Motion application dated 25th April, 2025. It is expressed to be brought under Sections 3A & 95 of the *Civil Procedure Act*, Order 5 Rule 2 & Order 51 Rule 1 of the Civil Procedure Rules.
2. The application seeks the following orders;
 - a. Spent



- b. The Honourable Court be pleased to allow the law firm of Kipkoech Terer & Associates Advocates to come on record for and on behalf of the Applicants in place of the firm Geoffrey Kipngetich & Co. Advocates.
 - c. That the validity of the eviction order issued on 13th November 2015 be extended.
 - d. That upon extension of the validity of the order as prayed, the same be served upon the OCS, Sotik Police Station.
 - e. That the Honourable Court be pleased to issue summons to the Officer Commanding Station (OCS), Sotik Police Station and Paul Ole Yiale, the proprietor of the firm of Nasioki Auctioneers to attend Court on a specified date to explain to the Court the reasons why this Court's order issued on 4th April, 2016 has not been executed to date.
 - f. That the cost of this application be provided.
3. The application is based on the grounds on its face and the supporting affidavit of Joseph Kimutai the 2nd Plaintiff/Applicant. It is sworn on 25th April, 2025.

Factual background.

4. The Plaintiffs/Applicants commenced the present proceedings vide an undated Complaint that was filed on 26th March, 2014 where they sought the following orders;
 - a. Order of eviction of the Defendants from the suit land Kericho/Chemagel/3070.
 - b. Damages for trespass.
 - c. Cost of the suit.
5. The Defendants/Respondents did not enter appearance nor file a Statement of Defence despite being served.
6. The Court in its judgement delivered on 13th November, 2015 held as follows;

“As I mentioned before, the Defendants have not justified their presence on the Plaintiffs’ land. The Plaintiffs are fully entitled to have them removed from their land. I order the Defendants to vacate the suit property within 14 days of service of this judgment or decree and in default, an eviction order do issue. There is a prayer for damages. Little, if any evidence was led to enable the Court make a good assessment of the loss that the Plaintiffs have suffered by the presence of the Defendants on their land. However, the Defendants are clearly trespassers and I will award a token Kshs. 25,000/= to the Plaintiffs in recognition that their rights to the property has been infringed by the Defendants. The Plaintiffs shall also have the costs of this suit.

Judgement accordingly”
7. The application under consideration first came up for hearing on 28th April, 2025. The Court directed that it be served upon the Respondents.
8. On 9th July, 2025 the Court directed that the application be canvassed by way of written submissions.
9. On 22nd September, 2025 the application was mentioned to confirm filing of submissions and then reserved for ruling.



The Plaintiffs/Applicants Contention.

10. The affidavit in support of the application is sworn by the 2nd Plaintiff/Applicant.
11. He contends that on 13th November, 2015 the Court issued an eviction order against the Defendants/ Respondents and goes on to state that the said order was served upon the then OCS Sotik Police Station and the proprietor of Nasioki Auctioneers.
12. He also contends that in the year 2016 he paid Kshs. 60,000/= to Paul Ole Yiale the proprietor of Nasioki Auctioneers as fees to undertake the eviction exercise.
13. He further contends that the then OCS Sotik Police Station acknowledged service of the said order but chose to disobey it.
14. It is his contention that the current OCS Sotik Police Station visited the Court registry recently to confirm the authenticity of the said Court order.
15. It is also his contention that the Court vide the letter dated 9th December, 2024 confirmed the authenticity of the said order.
16. It is further his contention that he has paid Paul Ole Yiale the proprietor of Nasioki Auctioneers an aggregate sum of Kshs. 247,000/= through an Mpesa facility to facilitate the eviction of the Defendants/Respondents from the suit parcel.
17. He contends that both the Officer Commanding Station Sotik Police Station and Paul Ole Yiale have failed to undertake the eviction exercise despite his financial cooperation in terms of facilitation in order to give effect to the order.
18. He also contends that the Officer Commanding Station Sotik Police Station and Paul Ole Yiale are guilty of disobedience of a lawful Court order.
19. He further contends that they have instructed the firm of Kipkoech Terer & Associates Advocates to apply to Court to resuscitate (sic) the order issued on 4th April, 2016 which is yet to be executed.
20. He ends his deposition by urging the Court to allow their application and grant them the orders sought so that they can enjoy the fruits of their judgement.

The 1st Respondent in the application's Response.

21. CI Bennox Amunga, the Officer Commanding Station, Sotik Police Station filed a Replying Affidavit sworn on 3rd June, 2025.
22. He deposes that he has been authorized to swear the said affidavit by the Inspector General of Police.
23. He also deposes that he was served with a Court Order issued in the present matter requiring him to arrange reasonable force as may be deemed necessary to meet any resistance at the time of effecting the said Court Order.
24. He further deposes that he wrote the letter dated 6th December, 2024 to the Kericho Environment and Land Court and received a response dated 9th December, 2024 which confirmed that the eviction order was authentic. He goes on to state that he communicated to the Sub County Police Commander that he had been served with an eviction order.
25. It is his deposition that as a matter of procedure, the Sub County Police Commander called for a Sub County Security Meeting and invited the Plaintiffs/Applicants and Paul Ole Yiale.



26. It is also his deposition that after deliberations, security arrangements were made and they went to the suit parcel and that upon arrival, the Plaintiffs/Applicants were asked to show the boundaries of the suit land but they were not able to.
27. It is further his deposition that they found people in occupation of the suit parcel who stated that they had title deeds for their respective portions of land and goes on to state that given the said circumstances, the eviction exercise could not be carried out.
28. He deposes that the Plaintiffs/Applicants and the persons in occupation of the suit parcel were summoned by the Sub County Police Commander and adds that the Sub County Criminal Investigations Officers were also invited to authenticate the documents in possession of the people who were in occupation of the suit parcel.
29. He also deposes that the said persons presented copies of title deeds for land parcel No's Kericho/Chemagel 2808, 4509, 2807 and 2809 and reiterates that the said persons were in occupation of the parcel of land that the Plaintiffs/Applicants had taken the Police Officers to and stated that it was land parcel No. Kericho/Chemagel 3070.
30. He further deposes that the Sub County Criminal Investigations Officer thereafter wrote a letter dated 25th February, 2025 Ref; DCI/STK/SEC/4/4/VOL.IV/07 to the Land Registrar.
31. It is his deposition that the Land Registrar confirmed that the documents in possession of the said persons were genuine and that their records were in the Lands Registry.
32. It is also his deposition that the Sub County Criminal Investigations Officer wrote another letter dated 14th March, 2025 reference No. DCI/STK/SEC/4/4/IV/08 to the Surveyor requesting him to visit the said parcel of land and establish the boundaries of land parcel No. Kericho/Chemagel 3070.
33. It is further his deposition that the Surveyor wrote a letter dated 21st March, 2025 in response and stated that he was not able to conduct the said exercise because his office had two maps with respect to the said parcel of land and that he needed to have the said issue investigated before directions could be issued as to when the eviction could be effected.
34. He deposes that the Sub County Criminal Investigations Officer visited the Lands Registry on 25th March, 2025 and was given the two certified maps that the County Land Surveyor wanted to be investigated before boundary establishment could be done.
35. He also deposes that efforts have been made to conduct the eviction exercise but they have faced various challenges. He reiterates that the said challenges were that the Plaintiffs/Applicants did not know the actual boundaries of land parcel No. Kericho/Chemagel 3070 and that the County Land Surveyor has not been able to show the boundaries of the said parcel of land.
36. He ends his deposition by stating that the Court should summon and compel the Bomet County Land Surveyor to go to the ground and show the actual boundaries of land parcel No. Kericho/Chemagel 3070 to enable him complete the eviction exercise.

The 2nd Respondent in the Application's Response.

37. The 2nd Respondent filed a Replying Affidavit sworn on 13th June, 2025.
38. He deposes that he was served with an order to evict the Defendants/Respondents.
39. He also deposes that he visited the OCS Sotik Police Station and served him with the order so that he can give him security as ordered by the Court.



40. He further deposes that he has visited the Sotik Police Station severally and has always been ready to execute the said orders and goes on to state that he has always been promised security without success (sic).
41. It is his deposition that the Plaintiffs/Applicants have always accompanied him to the said police station and they are well aware of the situation.
42. He ends his deposition by stating that it was not true that he had disobeyed the orders of the Court as he has always been ready to do his part if given security by the Officer Commanding Sotik Police Station.

Issues for Determination.

43. The Plaintiffs/Applicants filed their submissions on 9th September, 2025 while the Defendants/ Respondents and the Respondents in the application did not file any submissions.
44. The Plaintiffs/Applicants submit that the firm of Kipkoech Terer & Associates Advocates is properly on record for and on their behalf pursuant to the consent dated 10th April, 2025 and that the said consent is signed by the firm of Geoffrey Kipngetch & Co. Advocates and Kipkoech Terer & Associates Advocates.
45. The Plaintiffs/Applicants also submit that they are seeking that summons be issued to the Officer Commanding Sotik Police Station and Paul Ole Yiale to explain the delay in executing the order issued on 4th April, 2016.
46. The Plaintiffs/Applicants reiterate the averments of their affidavit in support of the application and urge the Court to allow the application dated 25th April, 2025 to enable them enjoy the fruits of their judgement.
47. The Plaintiffs/Applicants then set out a summary of the replying affidavits filed by the Officer Commanding Sotik Police Station and Paul Ole Yiale before submitting on the following issues;
 - a. Whether the Respondents jointly and severally disobeyed the Court order dated 4th April, 2016.
 - b. The impediments, if any, in executing the said Court order.
 - c. Way forward.
48. The Plaintiffs/Applicants reiterate that since the eviction order was issued in the year 2016, the OCS Sotik Police Station has never executed it.
49. The Plaintiffs/Applicants submit that it was not necessary for Officer Commanding Sotik Police Station to refer the present matter which is civil in nature to the Criminal Investigations Department for investigation of the titles held by the Defendants/Respondents.
50. The Plaintiffs/Applicants also submit that the said action purported to re-open the Defendants/ Respondents case which was closed years ago.
51. The Plaintiffs/Applicants further submit that the title deeds referred to by the Officer Commanding Sotik Police Station are alien to them and they have not been given an opportunity to interrogate them.
52. The Plaintiffs/Applicants submit that in light of the disclosure by the Officer Commanding Sotik Police Station of the obstacles that he has faced and in light of the recommendations made, they hereby concede.



53. The Plaintiffs/Applicants therefore seek that the Court compels the Bomet County Surveyor to go to the suit parcel in the company of the Officer Commanding Sotik Police Station and point out the boundaries of land parcel No. Kericho/Chemagel/3070 in order for the eviction to take place.

Analysis and Determination.

54. Having considered the Plaintiffs/Applicants application, the responses thereto and the Plaintiffs/Applicants submissions, my view is that the following issues arise for determination:
- a. Whether the firm of Kipkoech Terer & Associates Advocates should be granted leave to come on record for the Plaintiffs/Applicants.
 - b. Whether the eviction order issued on 13th November, 2015 should be extended.
 - c. Whether summons should issue to the Officer Commanding Station, Sotik Police Station and Paul Ole Yiale the proprietor of Nasioki Auctioneers to attend Court to explain why the orders of the Court issued on 4th April, 2016 have not been executed.
 - d. Who should bear costs of the application.

A. Whether the firm of Kipkoech Terer & Associates Advocates should be granted leave to come on record for the Plaintiffs/Applicants.

55. The Plaintiffs/Applicants seek orders that the firm of Kipkoech Terer & Associates Advocates be granted leave to come on record for them in place of the firm of Geoffrey Kipng'etich & Co. Advocates.
56. The Plaintiffs/Applicants submit that a consent was signed by the firm of Kipkoech Terer & Associates Advocates and the firm of Geoffrey Kipng'etich & Co. Advocates dated 10th April, 2025 and they should therefore be allowed to come on record.
57. Neither the OCS Sotik Police Station nor Paul Ole Yiale submitted on this issue.
58. Order 9 Rule 9 of the Civil Procedure Rules provides as follows;

“When there is a change of advocate, or when a party decides to act in person having previously engaged an advocate, after judgment has been passed, such change or intention to act in person shall not be effected without an order of the Court—(a)upon an application with notice to all the parties; or(b)upon a consent filed between the outgoing advocate and the proposed incoming advocate or party intending to act in person as the case may be.”

59. In the judicial decision of *Alice Wambui Nganga v John Ngure Kahoro* [2021] eKLR the Court held as follows;

“The Law Firm of Norman Otieno & Co. Advocates, have sought for leave. The provisions of Order 9, allows the Court to grant leave when a consent is filed and Rule 10, allows the said prayer seeking leave to be brought together with other prayers. The prayer for leave for the said Law Firm has not been disputed nor contested thus the Law Firm of Norman Otieno & Co. Advocates, is properly on record.” (Emphasis mine)

60. A perusal of the Court record shows that on 9th July, 2025 a consent dated 10th April, 2025 was filed. It is signed by the firm of Kipkoech Terer & Associates Advocates and the firm of Geoffrey Kipng'etich & Co. Advocates. It states that the firm of Kipkoech Terer & Associates Advocates should be allowed to come on record for the Plaintiffs/Applicants.



61. In the circumstances nothing is easier than to grant firm of Kipkoech Terer & Associates Advocates leave to come on record for the Plaintiffs/Applicants.

B. Whether the eviction order issued on 13th November, 2015 should be extended.

62. The Plaintiffs/Applicants seek the extension of the eviction order issued on 13th November, 2015.

63. Neither the Plaintiffs/Applicants nor the Respondents submitted on this issue.

64. The Court delivered its judgement on 13th November, 2015 and issued eviction orders against the Defendants/Respondents.

65. A period of about ten years has lapsed since the said eviction orders were issued and it is not disputed that the Defendants/Respondents have not been evicted from the suit parcel.

66. The Court of Appeal in *Willis Onditi Odhiambo v Gateway Insurance Co Ltd* [2014] KECA 186 (KLR) held as follows;

“Execution of judgments and/or decrees is governed by Section 4 (4) of the *Limitation of Actions Act* which is in the following terms:-

“4 (4) An action may not be brought upon a judgment after the end of twelve years from the date on which the judgment was delivered.” [Emphasis Mine]

67. The Plaintiffs/Applicants have twelve years within which to execute the judgment delivered on 13th November, 2015.

68. A period of about ten years has lapsed since the Court issued the eviction orders. It is therefore evident that it shall not be necessary to extend the eviction orders as they are yet to lapse.

C. Whether summons should issue to the Officer Commanding Station, Sotik Police Station and Paul Ole Yiale the proprietor of Nasioki Auctioneers to attend Court to explain why the orders of the Court issued on 4th April, 2016 have not been executed.

69. The Plaintiffs/Applicants are seeking that summons be issued to the Officer Commanding Station, Sotik Police Station and Paul Ole Yiale the proprietor of Nasioki Auctioneers to attend Court and explain why the orders of the Court issued on 4th April, 2016 have not been executed.

70. This Court notes that whereas the Court in its judgement delivered on 13th November, 2015 granted the eviction orders, the said orders were extracted and issued on 4th April, 2016.

71. The Officer Commanding Station, Sotik Police Station in his Replying Affidavit admits that he was served with the said order. He contends that he has not been able to execute it because the Plaintiffs/Applicants are not able to point out the boundaries of the suit parcel.

72. He also contends that when they tried to engage the County Surveyor to assist in pointing out the boundaries, the County Surveyor stated that he was not able to because the said parcel of land had two maps.

73. The Officer Commanding Station, Sotik Police Station therefore contends that the County Surveyor should be compelled by the Court to show them the actual boundaries of the suit parcel to enable him to provide security for the eviction.

74. Paul Ole Yiale in his replying Affidavit also admits to being instructed by the Plaintiffs/Applicants to evict the Defendants/Respondents from the suit parcel. He contends that he has always been willing



to carry out the eviction but he has not been able to because he has never been given security by the Officer Commanding Station, Sotik Police Station.

75. In their submissions, the Plaintiffs/Applicants seem to have abandoned their quest to have the Officer Commanding Station, Sotik Police Station and Paul Ole Yiale summoned to Court.
76. The Plaintiffs/Applicants instead submit that the Court should issue an order that the County Surveyor Bomet goes to the suit parcel and sets out the boundaries before eviction is carried out.
77. It is important to note that in the application under consideration, no such prayer is sought.
78. In the judicial decision of *FMS v MAS* [2020] KEHC 3631 (KLR) the Court held as follows;

“It is trite law that Submissions are not pleadings and that new issues cannot be raised in submissions.”
79. This Court has established that the issue of whether or not the County Surveyor should be ordered to visit the suit parcel and set out the boundaries has only been raised in the Plaintiffs/Applicants submissions.
80. That being the case, this Court cannot consider the said issue on its merits.
81. For avoidance of doubt, the Plaintiffs/Applicants have in their submissions conceded to the explanation given by the Officer Commanding Sotik Police Station, it would not, therefore, be necessary to consider the question whether the summons should issue to him/her.

D. Who should bear costs of the application.

82. On the question of costs, it is now settled that costs shall follow the event. This is in accordance with the provisions of Section 27 of the *Civil Procedure Act* (Cap. 21). A successful party should ordinarily be awarded costs of an action unless the Court, for good reason, directs otherwise.

Disposition.

83. Taking the foregoing into consideration, the Plaintiffs/Applicants application dated 25th April, 2025 succeeds only on one question and I order as follows;
 - a. Leave is hereby granted to the firm of Kipkoech Terer & Associates Advocates to come on record for and on behalf of the Applicants in place of the firm Geoffrey Kipnetich & Co. Advocates.
 - b. Each party shall bear own costs of the application.
84. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO THIS 30TH OCTOBER, 2025.

L. A. OMOLLO

JUDGE.

In the presence of: -

Mr. Malel for Terer for the Plaintiffs/Applicant.

Respondents. Absent

Court Assistant; Mr. Joseph Makori.

