Kones v Sambut Tea Limited & 2 others (Sued as the Administrators of the Estate of the Late Kipkalya Kiprono Kones (Deceased)) (Enviromental and Land Originating Summons E007 of 2024) [2025] KEELC 7425 (KLR) (30 October 2025) (Ruling)

Neutral citation: [2025] KEELC 7425 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERICHO

ENVIROMENTAL AND LAND ORIGINATING SUMMONS E007 OF 2024

LA OMOLLO, J

OCTOBER 30, 2025

BETWEEN

WILSON KIPLANGAT KONES ..... PLAINTIFF

AND

SAMBUT TEA LIMITED ..... 1ST DEFENDANT

LILY CHEPKEMOI KONES ..... 2ND DEFENDANT

PAULINE CHERONO KONES ..... 3RD DEFENDANT

SUED AS THE ADMINISTRATORS OF THE ESTATE OF THE LATE KIPKALYA KIPRONO KONES (DECEASED)

RULING

1. This ruling is in respect of the Plaintiff/Applicant's Notice of Motion application dated 18th October, 2024. It is expressed to be brought under Sections 1A, 1B and 3A of the *Civil Procedure Act*.

2. The application seeks the following orders;

    a. Spent

    b. That the Plaintiff and/or his employees or servants be allowed entry into the suit property to collect his items, tools, personal belongings, and/or farm implements which were left in the property.

    c. That the Honourable Court be and is hereby pleased to review its order of status quo issued pursuant to a ruling delivered on 26th September, 2024 to allow the Plaintiff and/or his employees or servants to gain entry into the

property for purposes of plucking tea on the 116 acres or thereabouts hived off LR No. 9932/3 which was occupied by the Applicant.

d. That the proceeds of the sale of green leaf, less plucking, weeding, transport, fertilizer and outlays, be deposited in Court or in a joint interest earning account of Counsel for the parties, by Kaisugu Tea Limited.

e. That the costs of this application be provided for.

3. The application is based on the grounds on its face and the supporting affidavit of Wilson Kiplangat Kones sworn on 18th October, 2024.

Factual Background.

4. The Plaintiff/Applicant commenced the present proceedings vide the Originating Summons dated 20th March, 2024.

5. The Applicant seeks the following orders;

a. That the Applicant has become entitled by adverse possession to all that piece of land measuring 116 acres hived off LR No. 9932/3.

b. That the Applicant be registered as the proprietor of the said piece of land measuring 116 acres hived off LR No. 9932/3.

c. That the Deputy Registrar of the Honourable Court does execute all necessary documents to facilitate registration of the Applicant as the proprietor of land parcel measuring 116 acres hived off LR No. 9932/3.

d. That costs of this application be provided for.

6. In response to the Originating summons, the 1st Defendant/Respondent filed a Replying Affidavit sworn on 17th May, 2024 by its director, one Sammy Chepkwony.

7. In response to the Originating summons, the 2nd Defendant/Respondent filed a Replying Affidavit sworn on 17th October, 2024 by Hon. Pauline Cherono Kones.

8. The application under consideration first came up for hearing on 25th February, 2025 when the Court directed that it be heard by way of written submissions.

9. On 26th March, 2025 It was mentioned to confirm filing of submissions and then reserved for ruling.

The Plaintiff/Applicant's Contention.

10. The Plaintiff/Applicant contends that he commenced the present proceedings vide the Originating Summons dated 20th March, 2024.

11. The Plaintiff/Applicant also contends that he also filed an application dated 20th March, 2024 seeking for orders of injunction to restrain the Defendants/Respondents from evicting him from the suit parcel.

12. The Plaintiff/Applicant further contends that he also sought orders to restrain the Defendants/Respondents from interfering with his quiet possession of the suit parcel pending hearing and determination of the suit.

13. It is his contention that the Court did not grant any orders. He goes on to state that thereafter, the Defendants/Respondents, their servants and/or employees with the assistance of the member of parliament Belgut Constituency and the Kericho County Senator allegedly entered the suit parcel on 26th April, 2024 and harassed his employees.

14. It is also his contention that he reported the matter at Brooke Police Post under OB No. 12/26/4/24.

15. It is further his contention that after making the report, he was accompanied by police officers from the said police station who visited the farm and were able to reach an agreement that the men who had been sent by the Defendants/Respondents would stay on the land for the night and leave the following day.

16. He contends that at half past seven, on the same day, his farm manager called and informed him that they had been chased away by the goons who were allegedly hired by the Defendants/Respondents.

17. He also contends that on 27th April, 2024 he went to the farm and found his livestock being driven towards Brooke by the men who were allegedly hired by the Defendants/Respondents. He goes on to state that one cow was injured.

18. He further contends that he reported the matter at Londiani Police Station vide OB No. 13/27/4/2024.

19. It is his contention that he filed another application dated 29th April, 2024 seeking orders of status quo ante pending the hearing and determination of the application dated 20th March, 2024 which he had earlier filed.

20. It is also his contention that the said application was not certified urgent and he was therefore allegedly left at the mercy of the Defendants/Respondents and the powerful Belgut Constituency Member of Parliament and the Kericho County Senator.

21. It is further his contention that he was forcefully evicted from the said parcel of land and he left behind his personal belongings, his employees personal effects, farm tools and equipment.

22. He contends that he demonstrated that he had planted tea bushes on the suit parcel and goes on to state that the Respondents admit as much.

23. He also contends that the tea bushes are going to waste and there is a likelihood of massive losses occasioned by the failure to maintain them by the time the suit is heard and determined.

24. He further contends that there is need for the tea bushes to be plucked and maintained by a qualified farm manager. He adds that the state of the tea bushes is wanting.

25. It is his contention that this Court in its ruling delivered on 26th September, 2024 issued an order of status quo that prohibited harvesting and cultivation of the suit parcel.

26. It is also his contention that he is now seeking to be allowed to access the suit parcel for the purposes of plucking tea and selling it to Kaisugu Tea Limited.

27. It is further his contention that upon deducting the expenses and outlays, Kaisugu Tea Limited should be ordered to deposit in Court or in an account to be provided or in a joint interest earning account of Counsel of the parties, the proceeds for sale of green leaf.

28. He contends that no party will be prejudiced if Kaisugu Tea Limited is directed to deposit the said proceeds. He goes on to state that upon conclusion of the matter, the party who would have been declared the owner will be able to access the proceeds.

29. He ends his deposition by stating that he will ensure that the property and the developments made thereon do not go to waste.

The 2nd Defendant/Respondent's Response.

30. The 2nd Defendant/Respondent filed a Replying Affidavit sworn on 3rd March, 2025 by Hon. Pauline Cherono Kones.

31. She deposes that the Plaintiff/Applicant's application for review is a mischievous attempt to appeal through the back door by asking the Court to reopen the applications dated 20th March, 2024 and 29th April, 2024 for fresh hearing and determination.

32. She also deposes that the Court can only review its orders if there is an error apparent on the face of the record, in instances where there is discovery of new and important evidence and/or if there is a sufficient reason.

33. She further deposes that at the time of filing of the suit, the Plaintiff/Applicant was aware that there were tea bushes on the suit parcel.

34. It is her deposition that the Plaintiff/Applicant was in possession of the suit parcel as a caretaker of her late husband's share of the land. She goes on to state that the suit parcel measures 125 acres which is an equal share with the other three shareholders of the 1st Respondent.

35. It is also her deposition that the Plaintiff/Applicant was a licensee on the said land and by virtue of the said position, he was allowed to keep livestock on the land alongside their livestock. She goes on to state that the Plaintiff/Applicant did not have any farm tools or items on the suit parcel as he used their farm tools.

36. It is further her deposition that when the Plaintiff/Applicant was removed from the farm in the year 2021, he did not leave any farm tools or items.

37. She deposes that the Plaintiff/Applicant has therefore not demonstrated any discovery of new and important evidence which could not by exercise of due diligence been placed before the Court at the time the Court was delivering the ruling on the applications dated 20th March, 2024 and 29th April, 2024.

38. She also deposes that had the Plaintiff/Applicant exercised due diligence at the time of filing of the applications dated 20th March, 2024 and 29th April, 2024, then the issues raised in the present application would have been dealt with exhaustively by the Court in its ruling delivered on 26th September, 2024.

39. She further deposes that the grounds set out by the Plaintiff/Applicant cannot be said to be good grounds for review and therefore he has failed to establish the threshold required for review and the setting aside of the orders already issued by the Court.

40. It is her deposition that in the present application, the Plaintiff/Applicant is asking the Court to make a different determination from what it had earlier made. She goes on to state that she is asking the Court not to take this path (sic).

41. It is also her deposition that the Plaintiff/Applicant is seeking to have a second bite of the cherry since he failed to file an appeal against the decision of this Court that issued orders of status quo. She goes on to state that this Court cannot sit on an appeal from its own decision.

42. It is further her deposition that the issues raised in the application under consideration are similar to the issues raised in the applications dated 20th March, 2024 and 29th April, 2024 and she goes on to state that the said applications were subject to the ruling of the Court delivered on 26th September, 2024.

43. She deposes that she has been advised by her advocates on record that this Court is functus officio and further states that the Plaintiff/Applicant is burdening the Court with an application that seeks it to revisit issues that could have been addressed in the ruling delivered on 26th September, 2024.

44. She also deposes that she is advised by her Counsel on record that the Plaintiff/Applicant has not invoked the proper provisions of the law for review which are Section 80 of the *Civil Procedure Act* and Order 45 Rule 1 of the Civil Procedure Rules. She goes on to state that instead, the Plaintiff/Applicant relies on Sections 1A, 1B & 3A of the *Civil Procedure Act* which do not relate to review of Court orders. The present application is therefore defective.

45. She further deposes that she is advised by her advocates on record that litigants must be clear on the jurisdiction they are invoking. She goes on to state that the failure to invoke the correct provisions of the law is not a mere procedural technicality that can be cured under Article 159 of *the Constitution* of Kenya.

46. It is her deposition that the Plaintiff/Applicant has made an application for review without attaching the orders sought to be reviewed which makes the application fatally defective and incompetent.

47. She ends her deposition by reiterating that the Plaintiff/Applicant has failed to meet the strictures of an application for review and therefore the application should be dismissed with costs.

The 1st Defendant/Respondent's Response.

48. The 1st Defendant/Respondent filed Grounds of Opposition dated 25th February, 2025 which are as follows;

    a. That the instant application does not demonstrate any cogent grounds, as set out in Order 45 Rule 1 of the Civil Procedure Rules, to warrant review of the Court's Honourable Court's (sic) ruling delivered on 26th September, 2024.

    b. That the instant application is a tactical maneuver to delay the expeditious disposal of the instant suit and as such constitutes a flagrant abuse of the Court process. The application therefore ought to be dismissed with costs to the Respondents.

Issues for Determination.

49. The Plaintiff/Applicant filed his submissions on 12th March, 2025 while both the 1st and 2nd Defendants/Respondents filed their submissions on 25th March, 2025.

50. The Plaintiff/Applicant submits on the issue of whether the Court should review its ruling delivered on 26th September, 2024 and grant the orders sought.

51. The Plaintiff/Applicant relies on Order 45 Rule 1 of the Civil Procedure Rules, the judicial decisions of Sylvester Nthenge v Johstone Kiamba Kiswili [2021] eKLR, Republic v Public Procurement Administrative Review Board & 2 Others [2018] eKLR and submits that the Court can only review its orders upon discovery of new and important evidence, if there is an error apparent on the face of the record and for any other sufficient reason.

52. The Plaintiff/Applicant also submits that he is seeking that the Court reviews its ruling based on the limb of "any other sufficient reason".

53. The Plaintiff/Applicant further submits that the Court in its ruling failed to consider the unique nature of the tea bushes as they require continuous maintenance and harvesting to preserve their economic value.

54. The Plaintiff/Applicant relies on the judicial decision of Shanzu Investments Limited vs Commissioner for Lands (Civil Appeal No. 100 of 1993) and while reiterating his averments in the affidavit in support of the application, submits that the Court in its ruling delivered on 26th September, 2024 prohibited the harvesting and/or cultivation of the tea bushes.

55. The Plaintiff/Applicant also submits that as a result of the said order, the tea bushes he planted on the suit parcel are rapidly deteriorating and they are likely to be in a devastating state when the matter is concluded.

56. The Plaintiff/Applicant further submits that even though Section 3A of the *Civil procedure Act*, Section 13 of the *Environment and Land Court Act* and Practice Direction No. 28(k) of the Practice directions of this Court contained in Gazette Notice No. 5178 dated 25th July, 2014 give this Court powers to issue orders of preservation of the subject matter of any suit, the continued enforcement of the status quo orders will lead to irreversible damage to the tea bushes thereby occasioning economic loss.

57. The Plaintiff/Applicant concludes his submissions by urging the Court to allow the application as prayed.

58. The 2nd Defendant/Respondent submits on the following issues;

    a. Whether the application for review dated 18th October, 2024 is merited.

    b. Who should bear the costs of this application.

59. On the first issue the 2nd Defendant/Respondent relies on Order 45 Rule 1 of the Civil Procedure Rules, the judicial decisions of Samba t/a JO Samba & Co Advocates v Mengich (Miscellaneous Application 7 of 2022) [2023] KEHC 26997, Muswii v David & 6 Others (Environment & Land Case No. 76 of 2018) [2024] KEELC 5919 (KLR) and while reiterating her averments in her Replying Affidavit, submits that the Plaintiff/Applicant has not met and/or demonstrated any of the grounds for review.

60. It is her submissions that the Plaintiff/Applicant has not shown that there is an error apparent on the face of the record and neither has he demonstrated discovery of new evidence.

61. The 2nd Defendant/Respondent relies on the judicial decision of Kakuta Maimai Hamisi v Peris Pesi Tobiko & 2 Others [2013] eKLR, Mumo Matemu vs Trusted Society of Huma Rights Alliance & 5 Others Civil Appeal No. 290 of 2012 and Nicholas Kiptoo Arap Korir Salat vs Independent Electoral and Boundaries Commission & 6 Others [2013] eKLR and urges the Court to dismiss the Plaintiff/Applicant's application with costs.

62. The 1st Defendant/Respondent submits on whether the application dated 18th October, 2024 has merit. The 1st Defendant/Respondent relies on Order 45 Rule 1 of the Civil Procedure Rules, the judicial decision of The Registered Trustees of the Archdiocese of Dar es Salaam versus Chairman of Bunju Village Government & Others Civil Appeal No. 47 of 2006 and submits that the Plaintiff/

Applicant's contention that the tea bushes may go to waste is not sufficient reason for this Court to review its ruling.

63. The 1st Defendant/Respondent also submits that the Plaintiff/Applicant is attempting to re-argue his earlier applications by introducing issues that were not previously addressed.

64. The 1st Defendant/Respondent further submits that the orders of status quo issued by the Court serve the critical purpose of maintaining the current state of affairs and prevents any party from taking action that could prejudice the outcome of the case.

65. It is the 1st Defendant/Respondent's submissions that the Plaintiff/Applicant was in possession of the suit parcel under a license and therefore should he be allowed to access the suit parcel at this juncture, the integrity of the judicial process will be significantly undermined.

66. It is also the 1st Defendant/Respondent's submissions that if the Plaintiff/Applicant is allowed to take possession of the land, he may take actions that could alter the status of property thereby affecting the rights of the parties involved.

67. The 1st Defendant/Respondent submits that the Plaintiff/Applicant's application has failed to meet the threshold for review as provided for under Order 45 Rule 1 of the Civil Procedure Rules.

68. The 1st Defendant/Respondent concludes its submissions by urging the Court to dismiss the Plaintiff/Applicant's application with costs.

Analysis and Determination

69. I have considered the Plaintiff/Applicant's application, the responses thereto and the rival submissions.

70. It is my view that the following issues arise for determination;

    a. Whether this Court should review its status quo orders issued on 26th September, 2024.

    b. Whether the Plaintiff/Applicant and/or his employees should be allowed to access the suit parcel and collect his items, tools and/or personal belongings.

    c. Whether the proceeds of the sale of green leaf less the expenses should be deposited in Court or in a joint interest earning account by Kaisugu Tea Limited.

    d. Who should bear costs of the application.

A. Whether this Court should review its status quo orders issued on 26th September, 2024.

71. The 2nd Defendant/Respondent contends that the Plaintiff/Applicant has not cited the proper provisions of the law under which he has brought his application.

72. The 2nd Defendant/Respondent also contends that the Plaintiff/Applicant has brought the application under consideration under Sections 1A, 1B & 3A of the *Civil Procedure Act* instead of Section 80 of the *Civil Procedure Act* and Order 45 Rule 1 of the Civil Procedure Rules.

73. The 2nd Defendant/Respondent therefore contends that the jurisdiction of this Court has not been properly invoked and the said omission is not a mere procedural technicality.

74. Neither the Plaintiff/Applicant nor the 1st Defendant/Respondent have submitted on this issue.

75. A perusal of the application dated 18th October, 2024 shows that it has been brought under Sections 1A, 1B & 3A of the *Civil Procedure Act*.

76. In the judicial decision of Thomas Ratemo Ongeri & 2 others v Zachariah Isaboke Nyaata & another [2014] KEHC 6773 (KLR) the Court held as follows;

> "On the defendants' argument that the application has been brought under the wrong provisions of the law, I am fully in agreement. That however is a procedural technicality that this court would overlook for the sake of substantive justice pursuant to Article 159 (2) (d) of *the Constitution* of Kenya." (Emphasis mine)

77. In the judicial decision of NANCY NYAMIRA & ANOTHER V ARCHER DRAMOND MORGAN LTD [2012] KEHC 5452 (KLR) the Court held as follows;

> "31. Next, the Defendant argues that the Plaintiffs' application must fail because it cites the wrong provisions of law. The Enforcement Application cites Order XLIV, Rule 17. The Defendant correctly points out that there is no such rule. As many cases have now held, and notwithstanding Sir Udoma's remarks Salume Namukasa v Yozefu Bukya (1966) EA 433, invoking the wrong provision of law does not necessarily spell doom to an otherwise meritorious application. This was the holding in Gitau v Muriuki [1986] KLR 211 which I now follow to hold that in as long as a party's invocation of the wrong provision of law is not in bad faith, meant to mislead or otherwise causes injury or prejudice to the other side, the Court will not dismiss an application solely on account of wrong invocation of a provision of the law on which the application is grounded." (Emphasis mine)

78. In the above cited judicial decisions, the Court held that reliance on the wrong provisions of the law is a procedural technicality which the Court can overlook for the sake of substantive justice.

79. It is evident that the Plaintiff/Applicant is seeking for orders of review. It is also evident that the Plaintiff/Applicant did not state the provisions of the law pursuant to which he brought this application which is Section 80 of the *Civil Procedure Act* and/or Order 45 Rule 1 of the Civil Procedure Rules.

80. It is my view that the said omission is not fatal and it does not render the application incompetent. I will therefore consider it on its merits.

81. The Plaintiff/Applicant contends that the Court issued orders of status quo on 26th September, 2024 which prohibited any harvesting or cultivation on the suit parcel.

82. The Plaintiff/Applicant also contends that he planted tea bushes on the suit parcel which are going to waste because they are not being maintained.

83. The Plaintiff/Applicant is therefore seeking that the Court reviews the orders of status quo to allow him and his agents to pluck the tea.

84. The 1st Defendant/Respondent in response submits that the Plaintiff/Applicant's contention that the tea bushes might go to waste if the tea leaves are not harvested is not a sufficient reason for this Court to review its orders.

85. The 2nd Defendant/Respondent on the other hand submits that the Plaintiff/Applicant was aware that there were tea bushes on the suit parcel when he filed the applications dated 20th March, 2024 and 29th April, 2024 which were subject of the ruling that was delivered on 26th September, 2024.

86. The 2nd Defendant/Respondent also submits that the Plaintiff/Applicant is trying to have a second bite at the cherry and therefore his application should be dismissed as it has not me the threshold for review.

87. On 26th September, 2024 the Court issued the following orders;

> " However, noting that it may be important to preserve the subject matter of any suit pending hearing and determination, and further noting that Section 3A of the *Civil Procedure Act*, Section 13 of the *Environment and Land Court Act* and Practice Direction No. 28(k) of the Practice directions of this Court contained in Gazette Notice No. 5178 dated 25th July, 2014 give powers to this court generally and specifically to make orders for the preservation of the subject matter of any suit, I hereby issue orders as follows;
>
> a. The status quo obtaining as at the date of this ruling shall be maintained pending the hearing and determination of this suit.
>
> b. For the avoidance of doubt, parties herein are prohibited from cultivation, harvesting, charging and/or transferring the suit property and/or doing all and any activities whose effect shall be to alter the physical or legal status of the suit land pending the hearing and determination of the Originating Summons."

88. Section 80 of the *Civil Procedure Act* provides as follows;

> " Any person who considers himself aggrieved—
>
> (a) by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or
>
> (b) by a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit."

89. Order 45 Rule 1 and 2 of the Civil Procedure Rules provides as follows;

> " (1) Any person considering himself aggrieved—
>
> (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or
>
> (b) by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the Court which passed the decree or made the order without unreasonable delay.
>
> (2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when,

being respondent, he can present to the appellate Court the case on which he applies for the review."

90. In the judicial decision of Republic v Public Procurement Administrative Review Board & 2 others [2018] eKLR the Court held as follows:

> " Section 80 gives the power of review and Order 45 sets out the rules. The rules restrict the grounds for review. The rules lay down the jurisdiction and scope of review limiting it to the following grounds;(a)discovery of new and important matter or evidence which after the exercise of due diligence, was not within the knowledge of the applicant or could not be produced by him at the time when the decree was passed or the order made or;(b)on account of some mistake or error apparent on the face of the record, or(c)for any other sufficient reason and whatever the ground there is a requirement that the application has to be made without unreasonable delay." (Emphasis mine)

91. As was held in the above cited judicial decision, the Court can only review its orders on the following grounds;

a. Discovery of new evidence which was not within the knowledge of the Applicant or could not have been produced at the time an order was made or a decree issued.

b. On account of mistake or error apparent on the face of the record.

c. For any sufficient reason.

92. The Plaintiff/Applicant seeks that the Court reviews its orders of status quo on the third limb i.e. 'for any other sufficient reason'.

93. The Court of Appeal in Board of Trustees National Social Security Fund v Micheal Mwalo [2015] KECA 782 (KLR) held as follows;

> " 17. It is now settled law that "any other sufficient reason" in Order 45 Rule 1 of the Civil Procedure Rules need not be analogous with the other grounds in the order because clearly Section 80 of the *Civil Procedure Act* confers an unfettered right to apply for review and so the words "for any other sufficient reason" need not be analogous with the other grounds specified in the Order (see Sandar Mohamed v. Charan Singh [1959] EA 793 at pg 795 f-h." (Emphasis mine)

94. The Plaintiff/Applicant submits that;-

> " the Court in issuing the orders of status quo on 26th September, 2024, which orders prohibited the harvesting and/or cultivation on the suit parcel, failed to consider the unique nature of the tea bushes as they require continuous maintenance and harvesting to preserve their economic value." (Emphasis mine)

95. It is on this basis that the Plaintiff/Applicant seeks that the said orders be reviewed.

96. In the judicial decision of Omote & another v Ogutu (Civil Appeal E005 of 2021) [2022] KEHC 16441 (KLR) (19 December 2022) (Ruling) the Court held as follows;

> " From the submissions made by the applicant, he believes he was the successful party and ought to have been awarded costs of the appeal. This is akin to asking the Court to sit on

appeal of its decision and reverse it. The fact that a party believes that the Court should have reached a different conclusion or that the decision was erroneous are matters fit for appeal rather than review which is limited in scope..."[Emphasis Mine]

97. In the above cited judicial decision, the Court held that a party should file an appeal and not an application for review, if they believe that the Court ought to have reached a different conclusion.

98. In the present matter, it is evident that the Plaintiff/Applicant is faulting the Court by contending that it failed to consider the "unique nature of the tea bushes which require continuous maintenance and harvesting to preserve their economic value" before it issued status quo orders prohibiting harvesting of tea.

99. If the Plaintiff/Applicant believes that the Court failed to consider certain issues, then he ought to have filed an appeal. This is not a ground upon which the Court can review its orders.

100. Consequently, the Plaintiff/Applicant has not demonstrated sufficient reason for this Court to review the status quo orders issued on 26th September, 2024.

B. Whether the Plaintiff/Applicant and/or his employees should be allowed to access the suit parcel and collect his items, tools and/or personal belongings.

101. The Plaintiff/Applicant is seeking that the Court allows him and/or his employees to access the suit parcel in order to collect his items, tools, personal belongings and/or farm implements.

102. The 1st Defendant/Respondent in response submits that the Plaintiff/Applicant should not be allowed to access the suit parcel as he may take actions that could alter the status of the property.

103. The 2nd Defendant/Respondent on the other hand submits that the Plaintiff/Applicant was in possession of the suit parcel as a licensee.

104. The 2nd Defendant/Respondent also submits that the Plaintiff/Applicant was using the farm tools that belonged to her and therefore, there are no tools left on the suit parcel that belong to him.

105. It is evident that the question whether or not the Plaintiff/Applicant left his items, tools, personal belongings and/or farm implements on the suit parcel is disputed.

106. In the judicial decision of Transeast Limited v Trident Insurance Company Limited; Michael Mutunga & John Katuta Mustisya (suing for and on behalf of the estate of Rosemary Nziza Mutisya - Deceased) (Interested Party) [2021] KEHC 1685 (KLR) the Court held as follows;

> " An enduring principle is that Court orders cannot issue in a vacuum or in vain. Good cause must first be established to attract appropriate relief from the Court."

107. Other than seeking that the Court issues the said orders, the Plaintiff/Applicant has not demonstrated that there are any such tools left on the suit parcel.

108. That being the case, I decline to grant the said order.

C. Whether the proceeds of the sale of green leaf less the expenses should be deposited in Court or in a joint interest earning account by Kaisugu Tea Limited.

109. The Plaintiff/Applicant submits that upon the Court reviewing its status quo orders issued on 26th September, 2024, the Court should allow the Plaintiff/Applicant to pluck tea and supply it to Kaisugu Tea Limited.

110. The Plaintiff/Applicant contends that Kaisugu Tea Limited should thereafter be ordered to deposit the proceeds of the sale of green leaf less the expenses of plucking, weeding, transport and fertilizer in Court or in a joint interest earning account.

111. Neither of the Respondents addressed this issue in their submissions.

112. Given my finding on issue (a) above, it would not be necessary for this Court to make a determination on this issue.

113. Nonetheless, this Court notes that the Plaintiff/Applicant is seeking the said orders against Kaisugu Tea Limited. It is important to note that Kaisugu Tea Limited is not a party to the present proceedings and therefore no orders can be issued against it. This was the finding of the Court in the judicial decision of Ruth Wanja Mwangi v Samuel Mwaura Njuguna, Naivasha Land Registrar & Attorney General [2017] KEELC 2451 (KLR) where it held as follows;

> " Prayer 2 is directed at DCIO Naivasha while prayer 3 is directed at the Registrar of Persons. Both the DCIO Naivasha and the Registrar of Persons are not parties to this suit.
>
> I have perused the plaint herein and I do not see any case pleaded by the plaintiff against the DCIO Naivasha or against the Registrar of Persons. The Court cannot issue orders against persons who are not parties to the case before it and who have therefore not been given a hearing." (Emphasis mine)

D. Who should bear costs of the application.

114. The general rule is that costs shall follow the event. This is in accordance with the provisions of Section 27 of the *Civil Procedure Act* (Cap. 21). This means that a successful party should ordinarily be awarded costs of an action unless the Court, for good reason, directs otherwise.

Disposition.

115. Taking the foregoing into consideration, I find that the Plaintiff/Applicant's application dated 18th October, 2024 lacks merit and it is hereby dismissed with costs.

116. It is so ordered.

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

L. A. OMOLLO.

JUDGE.

In the presence of: -

Mr. Langat for the Plaintiff/Applicant.

Mr. Kipkorir for the 1st Defendant/Respondent.

Mr. Kirui Evanson for the 2nd Defendant/Respondent.

Court Assistant; Mr. Joseph Makori.