

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT THIKA

ELC CASE NO. 114 OF 2017

(FORMERLY NAIROBI ELC NO. 503 OF 2010)

JOHN GUCHU NJOROGE

PLAINTIFF

=VERSUS=

MBOI KAMITI FARMERS COMPANY LTD 1ST

DEFENDANT

PAULINA WANJIKU MUNGAI PROPOSED 2ND

DEFENDANT

PETER MUKUNA NJAAGA 1ST PROPOSED INTERESTED

PARTY

IRENE WAMBUI 2ND PROPOSED INTERESTED

PARTY

ANDREW LOMOSI

BUDEMBESHE 3RD PROPOSED INTERESTED

PARTY

ORIENTAL CONSTRUCTION

COMPANY LTD 4TH PROPOSED INTERESTED

PARTY

AND

JOSEPH MUHIA NJOROGE 1ST OBJECTOR

MOSES GUCHU KARIRI 2ND

OBJECTOR

VINCENT MBURU KIARIE 3RD OBJECTOR

FRANCIS WAIGOI MWANGI	4 TH
OBJECTOR	
JOHN KAMANDE MUCHOKI	5 TH OBJECTOR
LUCY MUMBUA MULILI	6 TH OBJECTOR
ROSE WANJIRU KIMANI	7 TH
OBJECTOR	
JOHN NDONGA MAINA	8 TH
OBJECTOR	
JOSEPH WANJOHI THIONGO	9 TH OBJECTOR
CATHERINE WANJIRU	10 TH OBJECTOR
STELLA SYOMBUA MBUNE	11 TH
OBJECTOR	
VIDELIS THOGORI GITAU	12 TH
OBJECTOR	
SUSAN MICHELE KIAMA	13 TH OBJECTOR
SAMIA PROPERTIES LIMITED	14 TH OBJECTOR
DAVID MITHAMO KABURI	15 TH
OBJECTOR	

R U L I N G

1. Coming up for determination in this Ruling are six applications filed by the Proposed Defendants, Interested Parties and Objectors. I shall consider them in the order in which they were filed.
2. **Peter Mukuna Njaaga** and **Irene Wambui** (the 1st and 2nd Interested Parties) filed a Notice of Motion dated 2nd May 2023 seeking *inter alia* that: (i) the decree of this honourable court of 22nd March 2019 be reviewed/set aside so as to exclude Land Parcel No. Ruiru/Kiu Block 4/2031 from the orders of the court; and (ii)

consequent upon thereof, orders do issue that Land Parcel No. Ruiru/Kiu Block 4/2031 is not part and parcel of the land ordered to be transferred to the Plaintiff John Guchu Njoroge. The application is supported by an Affidavit sworn by Peter Mukuna Njaaga, sworn on even date.

3. He contends that in 2019, he filed Thika ELC No. 59 of 2019(O.S) to assert his rights of proprietorship over Land Parcel No. Ruiru/Kiu Block 4/2031. He explains that the court in the said suit delivered its judgment on 19th November 2021, after which he extracted the decree and prepared transfer documents that the court duly executed. He adds that upon attempting to lodge the documents for registration, he discovered that there existed another decree in ELC No. 503 of 2010, which affected the same property.
4. He further deposes that he has been in continuous, peaceful, and adverse possession of Land Parcel No. Ruiru/Kiu Block 4/2031 since 2003, during which he has developed it by constructing a residential house and a school. He maintains that he is the rightful owner of the property and asserts that the decree in ELC No. 114 of 2017 must be reviewed to enable him to enforce the decree in ELC No. 59 of 2019 (O.S.).
5. The 1st Proposed Interested Party also filed the following responses to the other parties' applications: (i) Grounds of Opposition dated 6th November 2023 in response to the Proposed 2nd Defendant's

application stating that the prayers in the application should be limited to Land Parcel No. Ruiru Kiu/ Block 4/1785; (ii) A Replying Affidavit sworn by him on 6th November 2023 in response to the Proposed 2nd Defendant's application; and (iii) Grounds of Opposition dated 25th June 2024 in response to the 3rd Interested Party's application stating that the prayers in the application should be limited to Land Parcel No. Ruiru Kiu/ Block 4/1785.

6. By Notice of Motion dated 5th September 2023, **Paulina Wanjiku Mungai** (the Proposed 2nd Defendant), seeks an order to be joined in the suit as the 2nd Defendant and that the firm of Ruiru Njoroge & Associates be granted leave to act on her behalf. She also seeks a temporary injunction against the Plaintiff, restraining him or anybody acting on his behalf from dealing with Land Parcel No. Ruiru Kiu/Block 4/1785 or interfering with the Proposed 2nd Defendant's ownership or physical possession of the same. Lastly, she prays for an order to set aside the judgment of the court delivered on 22nd March 2019, and all other consequential orders.
7. The application is supported by Affidavits sworn by her on 5th September 2023 and 27th September 2023. She contends that she is a necessary and proper party to the suit and should therefore be joined as the 2nd Defendant. She avers that she is the lawful owner and in possession of Land Parcel No. **Ruiru Kiu/Block 4/1785**, having acquired it lawfully and for valuable consideration. She adds

that her interest in the land is directly affected by the proceedings, and any orders issued in her absence would gravely prejudice her proprietary rights. She maintains that her joinder is essential to enable the court fully, effectively, and conclusively adjudicate all the issues in dispute.

8. **Joseph Muhia Njoroge** filed a Notice of Motion application dated 20th September 2023. The application is supported by an Affidavit sworn by him on an even date. Through the application, he seeks interim orders restraining the Plaintiff from in any way dealing with Land Parcel No. **Ruiru/Kiu Block 4/1828**, pending the hearing of the objection. He further seeks stay of the orders issued by Hon. Justice B.M. Eboso on 27th October 2022, and maintenance of the *status quo* until his application is determined. Additionally, he requests that the **Chief Land Registrar, Ruiru**, be directed to restrict any dealings with the said property pending the hearing and determination of the application.
9. Together with the application, he filed a Notice of Objection of even date stating that he was objecting to the transfer of Land Parcel No. Ruiru/Kiu Block 4/1828 to the Plaintiff.
10. The 1st Objector, **Joseph Muhia Njoroge**, states that he is the lawful owner of **Land Parcel No. Ruiru/Kiu Block 4/1828**, having purchased it from one **Simon Njuguna Wambugu** through a duly executed Transfer of Lease dated 9th June 2021 for a consideration of

Kshs. 1,100,000. He avers that a Certificate of Lease was subsequently issued in his name and that a Green Card search confirms him as the registered proprietor. The Objector asserts that he was neither a party in this suit nor was he privy to any dealings between the parties in the suit. He contends that the orders issued on 27th October 2022 directing the registration of the property in favour of the Plaintiff were made without disclosure of his ownership and therefore constitute concealment of material facts. He maintains that the transfer and issuance of title to the Plaintiff would be unjust, illegal, and unprocedural. He urges the court to set aside the said orders and preserve the property pending the hearing and determination of his objection, in the interests of justice.

11. **Andrew Lomosi Budembeshe** (the 3rd Proposed Interested Party) filed a Notice of Motion application dated 19th January 2024 seeking an order to be joined in the suit as an Interested Party. The application is supported by an Affidavit sworn by him on 19th January 2024. He claims to be the lawful and registered owner of **Land Parcel Number Ruiru/Kiu Block 4/1697** suit, which he purchased from **Equity Masters Limited** in 2017 for valuable consideration after conducting due diligence through his advocates and confirming the property was free of any dispute. He states that he has been in peaceful possession since the purchase and was unaware of any

existing suit until he was summoned by the DCI and discovered a court order affecting his title.

12. He states that upon inquiry, he learned that neither he nor Equity Masters Limited had been notified or joined in the proceedings. He contends that the Plaintiff intentionally omitted them to defeat justice and failed to verify ownership at the Lands Registry, which would have revealed Equity Masters Limited as the registered owner. He argues that enforcing the court orders of 21st September 2022 would unfairly deprive him of his property without being heard, and therefore urges the court to enjoin him as an interested party to enable a fair and just determination of the dispute.
13. By Notice of Motion dated 19th March 2024, the 2nd to 15th Objectors seek the following orders: (i) that the court be pleased to set aside the judgment delivered in the matter on 22nd March 2019 by Hon. Justice L. Gacheru; (ii) that the Objectors be joined in this suit as Defendants and be granted leave to defend the suit; and (iii) that the costs of the application be provided for.
14. The application is supported by the Affidavit of **Moses Guchu Kariri** (the 2nd Objector, sworn on even date. He explains that he worked closely with the directors of the Defendant company in marketing and processing transfers to *bona fide* purchasers. It is his position that the Defendant had purchased 342 plots from Mwihoko Housing Ltd, which were duly surveyed and numbered. During a Special

General Meeting held on 6th December 2001, the Defendant resolved to sell the Mwihoko plots forming part of the suit properties. He lists the affected parcels, including Ruiru/Kiu Block 4/1681, 1682, 1685, 1690, 1692, 1693, 1694-98, 1700, 1702, 1704, 1705, 1707, 1710, 1712, 1713, 1715, 1730, 1743, 1744, 1748, 1766, 1767, 1785, 1787, 1790, 1791, 1799, 1801, 1802, 1828, 1890, 1891, 1928, 1930, 1969, 1995, 2014, 2031, 2035, and 2050.

15. He adds that deed files for all these plots were opened in 1995 at the Ministry of Lands and placed under the custody of the Records Office and the Director of Land Administration. He avers that the Defendant's operations are currently at a standstill due to orders issued in Kiambu High Court Civil Case No. E030 of 2022 (Pauline Wangari Muchina & Others vs Thuo Mathenge & Others) to maintain the *status quo*, effectively freezing the company's activities.
16. He contends that there was no legally binding contract between the Plaintiff and the Defendant and emphasises that, at the material time, the Defendant's directorship was in dispute. He explains that fresh elections were conducted on 11th December 2006 pursuant to a court order, increasing the number of directors from nine to eleven. He adds that as at 8th December 2006, the *bona fide* office bearers were Stephen Waweru Njenga (chairman), James Ngamau Machua (Vice Chairman), Stephen Kimani Mihiu (Secretary), and John Karuku Kahuno (Treasurer). He insists that Michael Njuguna Kungu

and Peter Wahinya, who purportedly executed the impugned agreement, had been removed from office and therefore could not execute any document on behalf of the Defendant. A meeting held on 15th January 2007 resolved that the former officials be requested to hand over.

17. He asserts that only three office bearers, the Chairman, Secretary, and Treasurer, were lawfully authorised to execute contracts on behalf of the Defendant. He maintains that the alleged agreement between the Plaintiff and Defendant was never approved or ratified by the legitimate board.
18. The 2nd Objector asserts that the plots claimed by the Plaintiff had long been sold to third parties. He further states that certain advocates Njoroge Kibatia & Company and Ngure Mbugua & Company were initially authorised to sell some Mwihoko plots but later continued to transact illegally even after suspension of instructions. He states that the Defendant wrote to them in early 2007 and 2008 demanding the return of documents, and also informed the Commissioner of Lands to halt any further dealings in the Mwihoko properties. He accuses the said advocates, together with ousted officials, of colluding with rogue officers at the Ministry of Lands to illegally open duplicate deed files and defraud the company.

19. He adds that a public notice published in the Standard newspaper on 28th September 2008 warned the public that the firms of Ngure Mbugua & Co. and Mbijiwe Mugo & Co. Advocates had ceased acting for the Defendant. He maintains that the present suit was filed secretly, even though the suit properties were in occupation by the Objectors and other purchasers.
20. He avers that in 2008, Kibatia & Company Advocates caused the opening of 160 deed files for the Mwihoko plots without authority, thereby duplicating the 342 files already opened in September 1995. He claims that the Plaintiff later relied on the second, fraudulent deed files to assert ownership.
21. He further deposes that he is the registered and beneficial owner of LR Nos. Ruiru/Kiu Block 4/1715 and 4/1744, which are now due for attachment in execution of the decree. He lists other affected Objectors who own various plots within the suit properties. He states that neither he nor any Objector was ever joined or served in the original proceedings despite holding title documents and being in possession of the land.
22. He adds that on 27th October 2007, the Defendant sold 20 other plots, including Ruiru/Kiu Block 4/2014, 2031, 2035, 2006-13, 2015, 2032-33, 2036-37, 2041, and 2052 to Samia Properties Ltd. He emphasizes that the suit properties are extensively developed and occupied by Objectors. He further states that on 7th March 2024, the

Plaintiff's agents demolished a residential house on LR No. Ruiru/Kiu Block 4/1690, rendering the owner homeless.

23. He expresses apprehension that unless restrained, the Plaintiff will proceed to execute the decree through further evictions and demolitions without affording the Objectors a hearing.
24. Finally, he urges the Court to find that the judgment of 22nd March 2019 is defective for non-joinder of necessary parties contrary to Order 1 Rule 9 of the Civil Procedure Rules, 2010, since the Objectors, the Land Registrar Ruiru, and the Director of Land Administration were not joined. He asserts that the Plaintiff obtained judgment through misrepresentation and concealment of material facts and prays that the judgment be set aside, the Objectors be joined as Defendants, and they be granted leave to defend the suit in the interests of justice.
25. The 2nd to 15th Objectors also filed a Notice of Objection under Order 22 Rule 51 (1) of the Civil Procedure Rules, objecting to the attachment, transfer and/or sale of Land Parcel Nos. Ruiru/Kiu Block 4/1715, Ruiru/Kiu Block 4/1744, Ruiru/Kiu Block 4/1690, Ruiru/Kiu Block 4/1799, Ruiru/Kiu Block 4/1713, Ruiru/Kiu Block 4/1748, Ruiru/Kiu Block 4/1704, Ruiru/Kiu Block 4/1969, Ruiru/Kiu Block 4/1801, Ruiru/Kiu Block 4/2014, Ruiru/Kiu Block 4/2031, Ruiru/Kiu Block 4/2035, Ruiru/Kiu Block 4/1890, Ruiru/Kiu Block 4/1891, Ruiru/Kiu Block 4/1791, Ruiru/Kiu Block 4/1685 and Ruiru/Kiu Block

4/1802, on the ground that they have legal and equitable interest over the properties.

26. **Oriental Construction Company Ltd** (the 4th Proposed Interested Party) filed a Chamber Summons application dated 10th February 2025, supported by an Affidavit sworn by its Managing Director, **Suryakant C. Patel**, on even date. Through the application, **Oriental Construction Company Ltd** seeks leave to be joined in the suit as an Interested Party.
27. **Suryakant C. Patel**, avers that **Oriental Construction Company Ltd** is the registered proprietor of **Land Parcel No. Ruiru/Kiu Block 4/1801** and **Land Parcel No. Ruiru/Kiu Block 4/1802**, having acquired the properties for valuable consideration, having purchased them from the Plaintiff after conducting due diligence and completing all requisite legal formalities.
28. He refers to several documents in support of ownership attached to his Affidavit, including the sale agreement dated 2nd April 2024, official search, certificates of lease, spousal consent, valuation, and duly registered transfers of lease. He contends that its joinder as an interested party is necessary to enable the court to effectively and conclusively determine all the issues in dispute and to clarify certain factual discrepancies that have arisen in the evidence already presented. He maintains that such joinder will not prejudice the

other parties and that it serves the interests of justice by ensuring a fair and complete adjudication of the matter.

29. He further states that the transaction in question was deliberated upon and approved by the entire committee, and that communication confirming the same was issued to the membership. The affidavit is sworn in support of the present.
30. In response to the applications, the Plaintiff filed a Notice of Preliminary Objection dated 10th July 2023 together with Replying Affidavits sworn by him on 7th September 2023, 29th January 2024 and 12th March 2025. He asserts that all the said applications are misconceived, frivolous, incompetent, and an abuse of the court process, as the main suit has already been heard and determined. He maintains that the Affidavits in support of the said applications contain falsehoods, irrelevant averments, and inadmissible material, and therefore cannot sustain the prayers sought.
31. The Plaintiff explains that the suit properties form part of land he lawfully acquired from the Defendant, Mbo-I-Kamiti Farmers Company Limited, through a legitimate transaction concluded in 2007. He deposes that in that year, he initially purchased twenty (20) acres of land from the Defendant, which included parcels Nginda/Samar/Block 2/10 and Nginda/Samar/Block 2/12 which were later registered in the name of his daughter, Catherine Wambui Guchu, with the consent of the Defendant.

32. He contends that following a dispute that arose with third parties claiming ownership of the same parcels, the Plaintiff demanded compensation from the Defendant's Board of Directors, who convened a meeting on 2nd May 2007, and subsequently issued him with a settlement letter dated 2nd July 2007, acknowledging his claim.
33. He states that he accepted the offer by executing a Letter of Acceptance dated 3rd July 2007, and a Sale Agreement was thereafter executed on 17th July 2007. The Agreement covered forty-six (46) parcels of land, including the current suit properties.
34. He adds that in order to facilitate the transfer of those parcels, the Defendant granted the Plaintiff an irrevocable Special Power of Attorney, empowering him to execute all documents necessary for transfer and registration. The Plaintiff states that in 2010, while processing the transfers, a new management of the Defendant wrote to the Commissioner of Lands, instructing that the transfers of the parcels he had purchased be halted. In response, he filed Nairobi ELC Case No. 503 of 2010 (later transferred and registered as Thika ELC No. 114 of 2017) seeking injunctive reliefs and a declaration that the Defendant held the said parcels in trust for him.
35. He avers that the court, then presided over by Justice Okwengu, issued interim injunctive orders on 27th October 2010, restraining any dealings over the forty-six parcels pending hearing of the

application. He adds that on 2nd June 2011, the injunction was extended pending the hearing and determination of the suit. The Plaintiff emphasizes that these court orders were served upon the Defendant and were also published in the Daily Nation newspaper on 20th June 2013 to notify the general public and any persons claiming interest in the said properties.

36. He asserts that despite those court orders, certain individuals, including the current Applicants and Objectors, proceeded to transact over the properties in disregard of the subsisting injunction. He contends that such actions amount to contempt of court and that any resulting transfers or titles are null and void ab initio. He stresses that no party can claim to be an innocent purchaser, as the publication of the orders amounted to constructive notice to all members of the public.
37. The Plaintiff further deposes that the main suit was heard and determined by Justice L. Gacheru, who entered judgment in his favour. He therefore maintains that the court is *functus officio*, and that any attempt to reopen the matter through joinder applications or objections is legally untenable. He argues that the Applicants have no proprietary or legal interest in the suit property capable of being protected in law, and that they are busy bodies or strangers to the proceedings who have come too late in the day.

38. The Plaintiff further reiterates that none of the Applicants or Objectors have produced credible documents to demonstrate ownership or a legal connection to the suit properties prior to or during the pendency of the suit. He insists that the Defendant's title was valid at the time of sale, and that the transfers to him were done pursuant to lawful resolutions and agreements. He adds that any purported dealings arising after the issuance of the injunctive orders were irregular and incapable of conferring any interest.
39. In conclusion, the Plaintiff urges the court to dismiss all the applications and objections with costs, stating that they are based on falsehoods and are intended to delay the final implementation of the court's judgment. He maintains that the judgment remains valid and enforceable, and that his proprietary rights in the suit property are lawfully acquired, protected, and indefeasible under the law.
40. The applications were canvassed by way of written submissions. The parties filed the following submissions:
- i). *Paulina Wanjiku Mungai, the Proposed 2nd Defendant, filed Written Submissions dated 1st April 2025.*
 - ii). *Peter Mukuna and Irene Wambui, the 1st and 2nd Proposed Interested Parties, filed Written Submissions dated 4th April 2025.*
 - iii). *Andrew Lomosi Budembeshe the 3rd Proposed Interested Party filed Written Submissions dated 10th April 2025.*

- iv). *Oriental Construction Company Ltd, the 4th Proposed Interested Party filed Written Submissions dated 5th March 2025.*
- v). *Joseph Muhia Njoroge, the 1st Objector filed Written Submissions dated 23rd July 2025.*
- vi). *The 2nd to 15th Objectors filed Written Submissions dated 23rd July 2025.*
- vii). *The Plaintiff filed Written Submissions dated 5th August 2025.*

Brief Background of the suit

41. The Plaintiff herein brought a claim against the Defendant and sought the following orders:

- i). *A declaration that the defendant as at 2007 held legal title in respect of the following properties as a trustee for the Plaintiff: Ruiru/Kiu Block 4/1681, Ruiru/Kiu Block 4/1698, Ruiru/Kiu Block 4/168, Ruiru/Kiu Block 4/1700, Ruiru/Kiu Block 4/1690, Ruiru/Kiu Block 4/1704, Ruiru/Kiu Block 4/1692, Ruiru/Kiu Block 4/1705, Ruiru/Kiu Block 4/1693, Ruiru/Kiu Block 4/1707, Ruiru/Kiu Block 4/1694, Ruiru/Kiu Block 4/1710, Ruiru/Kiu Block 4/1695, Ruiru/Kiu Block 4/1712, Ruiru/Kiu Block 4/1696, Ruiru/Kiu Block 4/1713, Ruiru/Kiu Block 4/1697, Ruiru/Kiu Block 4/1715, Ruiru/Kiu Block 4/1730, Ruiru/Kiu Block 4/1828, Ruiru/Kiu Block 4/1713, Ruiru/Kiu Block 4/1891, Ruiru/Kiu Block 4/1715 , Ruiru/Kiu Block 4/1928, Ruiru/Kiu Block 4/1744 Ruiru/Kiu Block 4/1930, Ruiru/Kiu Block 4/1748 , Ruiru/Kiu Block 4/1969,*

Ruiru/Kiu Block 4/1766, Ruiru/Kiu Block 4/1995, Ruiru/Kiu Block 4/1767 , Ruiru/Kiu Block 4/2014, Ruiru/Kiu Block 4/1785, Ruiru/Kiu Block 4/2031, Ruiru/Kiu Block 4/1790, Ruiru/Kiu Block 4/2050, Ruiru/Kiu Block 4/1791, Ruiru/Kiu Block 4/1799, Ruiru/Kiu Block 4/1801, and Ruiru/Kiu Block 4/1802.

- ii). An Order of injunction restraining the Defendant whether by itself, members, servants, employees, agents, assignee or any party claiming under them from trespassing entering, alienating, dealing, charging, transferring, interfering with the Plaintiff quiet possession or otherwise in any manner whatsoever dealing with of the aforesaid parcel of land.*
- iii). An Order directing the Defendant to sign and deliver all documents necessary to transfer the properties enumerated herein above to the Plaintiff.*
- iv). Costs of the suit*
- v). Any other or further relief as this Honourable Court may deem fit to grant.*

42. The Defendant filed its Defence dated 19th August 2011 and denied the Plaintiff's claim and that it sold the suit properties to the Plaintiff.

43. From the record, it emerges that the suit was set down for hearing on 9th November 2017, wherein the Plaintiff called one witness. However, the Defendant did not appear in court for the hearing despite being given numerous opportunities to do so. Consequently, the Plaintiff closed his case, and a judgment was delivered in his

favour on 22nd March 2019. The Plaintiff subsequently filed Notice of Motion Applications dated 18th February 2022 seeking to enforce the judgment of the court through the court ordering the Deputy Registrar to execute the Transfer documents. The application was allowed on 27th October 2022, and an order to that effect was issued. On 5th May 2023, the Hon. Deputy Registrar executed transfer documents in respect to Land Parcel Numbers Ruiru/Kiu/Block 4/1690 and Ruiru/Kiu/Block 4/1692.

Analysis and Determination

44. I have considered the applications, the responses to the applications, the parties' respective submissions and the applicable statutes and principles of law, and I find that the following issues emerge for determination:

- i). Whether the Applicants had constructive notice of the existence of this suit affecting the suit properties.*
- ii). Whether the Applicants have met the threshold for setting aside the judgment and to be joined in the suit.*
- iii). Whether the court is functus officio*

Whether the Applicants had constructive notice of the existence of this suit affecting the suit properties.

45. The Applicants herein seek to set aside a judgment that was entered after full hearing, in which the Defendant participated in but failed to attend the hearing despite the hearing date having

been taken by consent. The record demonstrates that the Plaintiff's counsel caused a *Caveat Emptor* newspaper advertisement in the *Daily Nation* of 20th June 2013, notifying the public of an injunction restraining dealings over the forty-six suit properties. The purpose of such advertisement was to bring the existence of a suit to the attention of all affected persons where personal service was impracticable.

46. Consequently, any person claiming an interest in the affected properties was thereby placed on constructive notice of the proceedings. The principle of constructive notice is well established in land law.
47. In **Charles Kariuki vs Consolidated Bank of Kenya Ltd [2021] eKLR**, the court found that constructive notice may arise from a newspaper advertisement or court order published in the press, and that a purchaser cannot claim to be an innocent buyer if he would, with reasonable diligence, have discovered the ongoing litigation or injunction affecting the property.
48. In **Naftali Ruthi Kinyua vs Patrick Thuita Gachure & Another [2015] eKLR**, the Court of Appeal reiterated that once a property is the subject of litigation or a registered caution, any subsequent purchaser acquires it subject to the outcome of that litigation. The doctrine of *lis pendens* automatically restrains dealings during the pendency of a suit. The 3rd Interested Party and the 1st Objector

claim to have purchased their properties sometime in 2017 and 2021, respectively, contrary to the doctrine of *lis pendens*.

49. In **Arthi Highway Developers Ltd vs West End Butchery Ltd & 6 Others [2015] eKLR**, the court condemned purchasers who relied solely on the title without verifying the root of the vendor's ownership, holding that due diligence extends beyond the register and includes checking for existing suits or orders. From the evidence on record, some of the Applicants herein acquired their titles long after 2013, several years after the advertisement and after injunctive orders had been issued and registered against some of the parcels. They therefore cannot credibly claim ignorance of the litigation. Under Section 28 of the Land Registration Act, overriding interests, such as subsisting court orders, bind the land whether or not they are noted on the title. The Plaintiff's pending claim and injunction therefore, constituted such an overriding interest.
50. In **Macharia Mwangi Maina & 87 Others vs Davidson Mwangi Kagiri [2014] eKLR**, the Court of Appeal affirmed that constructive notice arises where a prudent purchaser, by making due inquiry, would have discovered the existence of a dispute or encumbrance. The court further held that publication in a national newspaper constitutes sufficient notice to the public.

51. This court further finds that the doctrine of *lis pendens*, codified in **Section 52 of the Indian Transfer of Property Act (as applicable in Kenya)**, automatically restrains parties from transferring or dealing with property during the pendency of litigation concerning it.

Whether the Applicants have met the threshold for setting aside the Judgment and whether they should be joined in the suit.

52. The court takes cognizance that the power to set aside a judgment is a discretionary one which must be exercised judiciously and on well-established principles. The guiding provisions are found under **Order 10 Rule 11, Order 12 Rule 7, and Order 45 Rule 1** of the **Civil Procedure Rules, 2010**, which empower a court to set aside or vary a judgment entered either ex parte or by default, and to review its own decision on sufficient cause being shown.

53. The test was set out in **Shah vs Mbogo & Another [1967] EA 116**, where the court stated that:

“the discretion to set aside “is intended to be exercised to avoid injustice or hardship resulting from accident, inadvertence, or excusable mistake or error, but not to assist a person who has deliberately sought, whether by evasion or otherwise, to obstruct or delay the course of justice.”

54. From the record, the Applicants' principal contention is that they were not parties to the suit and were therefore condemned unheard. They argue that they hold valid titles and that the judgment should be set aside to allow them to defend their interests. The Plaintiff, on the other hand, contends that interim injunctive orders in the suit were issued by Justice Okwengu on 27th October 2010, restraining any dealings over the forty-six suit parcels pending hearing of the application. He adds that on 2nd June 2011, the injunction was extended pending the hearing and determination of the suit. The Plaintiff emphasizes that these court orders were served upon the Defendant and were also published in the Daily Nation newspaper on 20th June 2013 to notify the general public and any persons claiming interest in the said properties. He further contends that the court is *functus officio* and that any attempt to reopen the matter through joinder applications or objections is legally untenable.

55. The Court notes that the applications before it invoke **Order 1 Rule 9 and 10** of the Civil Procedure Rules, on joinder of parties. The law allows post-judgment joinder only in exceptional cases where a person's proprietary or legal rights are directly affected by an order, and where the court must set aside or review its earlier decision to avoid injustice. The principle was reaffirmed in ***Merry Beach***

Limited vs Attorney General & 18 Others [2018]eKLR, the Court of Appeal stated as follows:

“However, there are exceptional circumstances that could justify a court to enjoin a party even after judgment has been passed. One such exception is where a matter has been determined and adverse orders have been issued against a party who was neither given notice of the suit nor heard on the issue in dispute. The order enjoining a party would also have to set aside the judgment entered to give him / her an opportunity to be heard.”

56. Therefore, the court retains residual jurisdiction to join a person post-judgment if the orders of the court affect his proprietary rights and if the Applicant was not given an opportunity to be heard. Having established that the Applicants had constructive notice of the suit, they cannot claim that they did not have notice of the suit. Once a party has notice of the existence of a suit that is likely to affect their interest or proprietary rights, then they are at liberty to apply to join the suit at the earliest opportunity. In this case, the notice in the Newspaper was published in 2013, the judgment in the suit was entered in 2019, and partial execution was undertaken thereafter. The present applications were filed from 2023 onwards, more than 10 years after the suit was filed. This court finds that the Applicants have not met the threshold to warrant either the setting aside of the judgment or to join them in the suit.

Whether this court is Functus Officio

57. The record shows that the decree has been partially executed: the Deputy Registrar has executed transfer documents for some parcels, and title transfers have already been effected in favour of the Plaintiff. The question therefore arises whether a judgment that has been partly executed can still be set aside.
58. In **Mwangi S. Kimenyi vs Attorney General & Another [2014] eKLR**, the court held that once execution has been completed or substantially undertaken, setting aside a judgment becomes prejudicial and may be impossible unless the executing party acted in bad faith or in fraud of known rights. Similarly, in **Patel vs East African Cargo Handling Services Ltd [1974] EA 75**, the court cautioned that while the discretion to set aside is wide, it should not be used to upset vested rights lawfully acquired pursuant to valid court orders.
59. The principle of finality of litigation and the doctrine of *functus officio* were elaborated in **Telkom Kenya Limited vs John Ochanda [2014] eKLR**, where the Court of Appeal held that once a court has delivered a final judgment, it becomes functus officio and cannot reopen the matter except under review or appeal. The rationale is to preserve the authority of judicial decisions and the sanctity of decrees.

60. Applying that principle to this case, this court finds that the judgment having partially been executed, and transfers registered pursuant to court orders, the substratum of the case has materially changed. To set aside the judgment at this stage would not only affect rights already vested in the Plaintiff but also disrupt third-party transactions founded on a valid decree. The proper recourse for aggrieved third parties lies in separate suits for declaration of ownership or indemnity, or in applications for review limited to their affected parcels. This court notes that the Proposed 2nd Defendant already filed **ELC Case No. 062 of 2023** seeking to enforce her rights over Land Parcel Number Ruiru Kiu/Block 4/1785 against the Plaintiff.
61. Consequently, this court finds that the Applicants have not met the threshold to warrant setting aside the judgment of this court (Gacheru J) regularly entered on 22nd March 2019. Furthermore, the partial execution of the decree, with some parcels already transferred, renders it inequitable and impracticable to reopen the entire judgment. The Applicants' and Objectors' remedy, if any, lies in filing independent suits to challenge specific transactions on grounds of fraud or illegality, rather than reopening this finalised matter.
62. Accordingly, this court declines to set aside the judgment delivered on 22nd March 2019. All the pending Notices of Motion, Objections

and Chamber Summons applications by the Proposed Defendants, Interested Parties, and Objectors are hereby dismissed with costs to the Plaintiff.

Dated, signed and delivered virtually at Thika this 30th day of October 2025.

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J. M ONYANGO
JUDGE.

In the presence of:

1. Miss Kabaila for the 1st and 2nd Interested Parties
2. Mr Ngala for Mr Ruiru for the proposed 2nd Defendant
3. Mr Wanda for the Objector
4. Mr Kaburu for the Plaintiff

Court Assistant: Hinga