



Omar & another v Kulei & 5 others (Environment and Land Case E033 of 2023) [2025] KEELC 5940 (KLR) (31 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5940 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND CASE E033 OF 2023**

**A OMBWAYO, J
JULY 31, 2025**

BETWEEN

OMAR MOHAMMED OMAR 1ST PLAINTIFF

PATRICK MAINA WAKANDA 2ND PLAINTIFF

AND

JOSHUA KULEI 1ST DEFENDANT

CHIEF LAND REGISTRAR 2ND DEFENDANT

ATTORNEY GENERAL 3RD DEFENDANT

SIAN ENTERPRISES LIMITED 4TH DEFENDANT

AGRICULTURAL DEVELOPMENT CORPORATION 5TH DEFENDANT

AND

GEOFFREY KIPKEMBOI LELEI PROPOSED DEFENDANT

RULING

1. Through application dated 20th March 2025, Geoffrey Kipkemboi Lelei, the proposed 6th defendant has come to this court seeking orders that pending the hearing and determination of this application inter-parte, the court be pleased to- arrest and suspend the delivery of the judgment and/or stay further proceedings and that the court be- pleased to join Geoffrey Kipkemboi Lelei, the Applicant herein as a Defendant in these proceedings. Upon the- joinder of Applicant as a defendant in this suit, leave be granted to him to file and serve his defence and counter-claim as per the attached draft, witness statements as well as list and bundle of documents Within 7 days of the order. Upon joinder of the Applicant as a defendant in this matter, the Court be pleased to re-open this matter and direct that the hearing starts afresh. The costs of this application abide the outcome of the suit.



2. The application is based on grounds that the Agricultural Development Corporation allocated the disputed property, L.R No., 13287/99 to the Applicant vide letters of allocation dated 8th January, 1991 and 22nd August, 1991. The Applicant upon allocation complied with conditions of allocation as to payment of the agreed consideration and was validly issued with a payment receipt by the Agricultural Development Corporation.
3. Upon the purchase of the suit, property, the Applicant took vacant possession of the disputed parcel. The Agricultural Development Corporation, the 5th Defendant herein, is in the process of finalizing the transfer of the disputed parcel of land to the Applicant who is the rightful allottee. The Applicant, being the rightful allottee and owner of the disputed parcel has just learnt that fraudsters, namely the Plaintiffs herein on one hand and the 4th Defendant on the other hand' purport to lay claim over the disputed parcel on the Strength of forged ownership documents. In perpetuation of their fraud, they have instituted these proceedings through a suit and counterclaim while fully aware that none of them was validly allocated the disputed parcel but the applicant who is, the genuine allottee and valid owner.
4. The applicant having been allocated the disputed land by the Agricultural Development Corporation, complied with conditions of allocation and is currently awaiting transfer and registration of the disputed parcel in his name and is therefore a party that deserves to be heard before the Court makes a determination on the competing interest. The Applicant was not aware of the proceedings' herein until on or about 18th March, 2025 when the Agricultural Development Corporation notified him that a transfer of the disputed parcel to him has been halted on account of the ongoing proceedings in this matter by parties that neither hold valid allocation nor title.
5. The Applicant is desirous of filing a defence and counter claim and adduce evidence to show that he is entitled to ownership of the disputed parcel on account of the allocation and by the Agricultural Development Corporation whilst neither the Plaintiffs nor the 4th Defendant are entitled to the reliefs they are seeking as their documents are forgeries and deceptive.
6. The joinder of the Applicant as a defendant is necessary and shall enable the court to effectually and completely adjudicate upon and settle all the questions relating to the ownership of the suit property especially when the holder of the mother title has- made it clear that none of the parties herein hold valid allocation records. The court has the unfettered discretion to order the joinder of the Applicant as a defendant in this matter. The Applicant has an identifiable stake and/or legal interest over the subject matter of these proceedings to warrant his formal joinder as defendant.
7. Unless an order suspending further proceedings and arresting the delivery of the judgment is made, the Applicant who is the lawful allottee of the disputed property risks being deprived of interest on account of the Court's verdict without a hearing and in breach of the rules of natural justice. It is fair, just, and equitable and in the interest of justice that this application is certified urgent an order for stay and other consequential orders including joinder granted.
8. In a further affidavit, Geoffrey Lelei states that the dispute in this suit touches on the ownership of the suit land and as such he will be affected by decision of the court unless enjoined in the suit and his claim on ownership over the suit land is heard on merit. Regarding the assertion by the 1st and 4th Defendants in their Affidavit at paragraphs 6, and 7, that the receipt No. 14164 that he has annexed is a forgery, the same having been produced in Naivasha ELC Petition No.E004 of 2024 John Shiundu Versus Agricultural Development Cooperation and others he states that he was issued with receipts No. 14161 (marked as GKL 3) by the 5th defendant upon payment of the allotment fees with respect to the suit property on the 28th August 1991. He is not aware of any party to Naivasha ELC Petition No. E004 of 2024 and as such not privy as to whether a similar receipt was produced in the said case or not.



9. Therefore, the question as to which between the receipt No. 14164 (marked GKL3) and the allegedly produced in Naivasha Petition No E044 of 2024 is a forgery can only be determined by the court upon hearing of the parties herein. He has therefore, satisfactorily demonstrated in his application why he is entitled to be enjoined in the suit as a party. He is aware through the advice of his advocate on record that an application for joinder is should be allowed to enable the court to adjudicate upon all the questions in dispute in the suit with a finality. No prejudice therefore will be occasioned to the 1st and 4th Defendants and all parties herein if the application is allowed.
10. He states that the instant application has been brought before this court without delay, the same having been filed on the 20th March 2025 two days after he became aware of the suit herein to be precise on the 18th March 2025. Since the question on ownership of the suit land is the heart of the dispute in this suit, it is only fair that he be enjoined in the matter in order to defend my ownership rights over the same.
11. The 5th defendant in reply states that the proposed 6th Defendant allegation to be the legitimate proprietor of Land Reference Number 13287/99, having purportedly acquired the same from the 5th Defendant is not only false and misleading but also entirely unsupported by any factual, legal or documentary basis within the records of the 5th Defendant. The 5th Defendant has no records whatsoever of any transaction-formal, informal or otherwise - with the proposed 6th Defendant in respect of LR 13287/99 or any other parcel of land. That the records held by the 5th Defendant clearly indicate that General Joseph Kasaine Nkaissery (deceased) is the recognized allottee of the subject parcel, and all correspondence, allocation documentation and records of engagement pertain exclusively to the said allottee.
12. That the 5th Defendant's records reveal no evidence of any double allocation or title dispute over LR 13287/99 prior to the proposed 6th Defendant's appearance in these proceedings.
13. That this matter has been active before this Honorable Court since the year 2023 and yet the proposed 6th Defendant has just appeared and fails to explain how he became aware of the proceedings, and why he failed to take immediate steps to assert or defend his alleged proprietary rights if indeed they were legitimate.
14. This Honourable Court ought to consider that delay as both unexplained and inexcusable, particularly given the gravity of the propriety rights the proposed 6th Defendant now claims. That even more alarming and suspicious is the fact that the receipt relied upon by the proposed 6th Defendant to claim interest in the suit property bears a serial number identical to that of a receipt produced in a separate matter, Naivasha ELC Petition No. E004 of 2024-John Shiundu v ADC & 2 Others. That in t Naivasha Petition, the law firm of Keaton and Keaton Advocates is on record representing the Petitioner, as is the case in the present suit where they represent the Plaintiff. What are the odds? This convergence of circumstances raises serious questions of professional and documentary integrity.
15. The 5th Defendant categorically states that the existence of two receipts bearing the same serial number is an anomaly never previously recorded in the institution's operational history and such an occurrence suggests a high likelihood of forgery of public documents.
16. The 5th Defendant has since reported the matter to the appropriate investigative authorities for a comprehensive forensic and procedural audit and the matter is currently under investigation. This Honourable Court is urged to take judicial notice of the fact that forgery of public documents is a criminal offence under the [Penal Code](#) and the 5th Defendant cannot, in good conscience, recognize or accept the legitimacy of the proposed 6th Defendant's claim which is tainted with such serious irregularities.



17. That based on the foregoing, it is the 5th Defendant's respectful submission that the proposed 6th Defendant has no valid legal or proprietary claim to the subject parcel. His application to be enjoined as a Defendant is not made in good faith, and appears designed to frustrate or complicate the ongoing proceedings. The application is mischievous, ill-founded and a potential abuse of court process; and It should be dismissed with costs to the 5th Defendant.
18. 1st And 4th Defendants' Replying Affidavit stating that the application is yet another attempt by another busy body that has no clear stake in the outcome of the proceedings that took place more than a year ago, riddled with misrepresentations, lies and blatant non-disclosure of material facts, all in a bid to delay the delivery of the scheduled judgment. From the onset, it is imperative to note that the Applicant has anchored his claim over LR. No. 13287/99 on an alleged allotment from the 5th Defendant sometime in 1991, and in support of this allegation, the Applicant has annexed Receipt No. 14164 Marked GKL-3 dated 28th August 1991 being proof of payment of the allotment fees. However, it has come to the Defendants' attention that the said Receipt No.14164 (marked GKL-3) dated 28th August 1991, was equally produced in Naivasha Petition No. E004 of 2024 John Shiundu versus Agricultural Development Corporation and Others as evidenced of payment for allotment fees with respect to LR, No. 28068/551.
19. There can only be one conclusion, either that the receipt presented before this Honorable Court is a forgery or the one filed in Petition No. E004 of 2024. The Applicant cannot, on the basis of a manifestly fraudulent receipt and alleged allotment, impose an obligation upon this Honorable Court to arrest the scheduled Judgement. The orders sought by the Applicant are discretionary in nature and it is only upon the Applicant satisfactorily demonstrating that the circumstances appertaining warrant the exercise of such discretion, at the court shall issue such orders.
20. Article 159 (2) of the Constitution as read together with Sections 1A, and 3A of the Civil Procedure Act, require that such a prayer must be considered with a view of expediting the wheels of justice and prevent abuse of the Court process. Article 159 (2) of the Constitution as read together with Sections 1A and 3A of the Civil Procedure Act, require that such a prayer must be considered with a view of expediting the wheels of justice and prevent abuse of the Court Process the Court process. The Applicant alleges that he only became aware of the suit on 18th March 2025 despite having 'taken vacant possession of the suit property sometimes in the 1990s this is a blatant lie that cannot-be allowed to stand. The legality or otherwise of his alleged title notwithstanding, certain facts disqualify him as an innocent bystander that was never aware of the suit. The Applicant alleges that some people, the Plaintiffs and Defendants herein, trespassed on the suit property sometime in 2023, yet he never reported such trespass nor instituted any suit to assert his ownership of the suit property.
21. The Applicant further alleges that he took vacant possession of the suit property and has remained in said possession to date, yet on 22nd February 2024, the Deputy Registrar conducted a site visit in compliance with this Honorable Court's directions, prepared a report dated on even date and noted that there was a semi-permanent 3-roomed mabati structure recently built.
22. Nothing in the report referred to the presence of any other person other than the Plaintiffs and Defendants herein. Furthermore, the Report did not mention the presence of any workers belonging to the Applicant. At the very least, were it true that the Applicant is in possession of the suit property, he would have noted the presence of the Court on his land, and taken steps to find out what was happening. Instead, he seeks to test the courts intelligence, and in deed that of all the parties in stating that he only became aware of the dispute more than a year since hearing was concluded.



23. This court has considered the application and find that the applicant has annexed letters of allocation dated 8th January, 1991 and 22nd August,,1991 which have not been certified by the 5th defendant, and which the 5th defendant has denied and has not explained why he has not sued the 5th defendant for specific performance within the required period of time. The applicant is guilty of laches of more than 23 years after being allegedly issued with an allocation letter. His dispute with ADC is that the said ADC ought to issue him with a title deed and therefore he cannot be enjoined in this dispute which is between two title holders. Having no title to the property, the applicant cannot be joined as a defendant. The application is not allowed. Costs to the plaintiffs and defendants.

RULING DATED SIGNED AND DELIVERED ELECTRONICALLY AT NAKURU THIS 31ST DAY OF JULY 2025.

A.OMBWAYO

JUDGE

