



**Kivure & 7 others (Suing on their behalf and on behalf of 4201 members of Kishamba B Group Ranch) v Mwakina and 2 others (Sued as defunct Chairman, Secretary and Treasurer respectively of the Executive Committee of Kishamba B Group Ranch) & 4 others; County Government of Taita Taveta & 35 others (Interested Parties) (Environment and Land Case 4 of 2024) [2025] KEELC 7728 (KLR) (Environment and Land) (10 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 7728 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT VOI  
ENVIRONMENT AND LAND  
ENVIRONMENT AND LAND CASE 4 OF 2024  
EK WABWOTO, J  
NOVEMBER 10, 2025**

**BETWEEN**

**JOHN KIVURE & 7 OTHERS & 7 OTHERS ..... PLAINTIFF  
SUING ON THEIR BEHALF AND ON BEHALF OF 4201 MEMBERS OF  
KISHAMBA B GROUP RANCH**

**AND**

**BENSON MLAMBO MWAKINA, ANTHONY KISHAGHA MWASI &  
FLORENCE MALANDI (SUED AS DEFUNCT CHAIRMAN, SECRETARY  
AND TREASURER RESPECTIVELY OF THE EXECUTIVE COMMITTEE OF  
KISHAMBA B GROUP RANCH) ..... 1<sup>ST</sup> DEFENDANT  
CABINET SECRETARY MINISTRY OF LANDS, HOUSING AND PHYSICAL  
PLANNING ..... 2<sup>ND</sup> DEFENDANT  
DIRECTOR OF LAND ADJUDICATION/SETTLEMENT ..... 3<sup>RD</sup> DEFENDANT  
COUNTY LAND REGISTRAR - TAITA TAVETA COUNTY ... 4<sup>TH</sup> DEFENDANT  
ATTORNEY GENERAL ..... 5<sup>TH</sup> DEFENDANT**

**AND**

**COUNTY GOVERNMENT OF TAITA TAVETA ..... INTERESTED PARTY  
DUNSTUN KIMBIO & 34 OTHERS & 34 OTHERS ..... INTERESTED PARTY**

*(In respect to the Plaintiffs application dated 4th November 2025)*



## RULING

1. This ruling is in respect to the Plaintiffs application dated 4<sup>th</sup> November 2025. The said application is brought pursuant to the provisions of Section 1A, 1B, 3, 3A, 80 and 99 of the [Civil Procedure Act](#) and Order 45 Rule 1 of the Civil Procedure Amendment Rules and other relevant laws. The said application seeks for orders that the decree dated, issued and published on 9<sup>th</sup> October 2025 be reviewed and amended by expunging and deleting the inclusion of claims for and or reference to the Civil Suit ELC NO. 116 of 2015 and an amended Decree be and is hereby issued by this Court in terms of the judgment delivered by the Court on 25<sup>th</sup> September 2025 without reference or inclusion of Civil Suit No. 116 of 2015. The grounds are set out on the face of the application and in the supporting affidavit of Oscar Litoro, sworn on 4<sup>th</sup> November 2025. The gist of the Applicants case is that the 1<sup>st</sup> Defendant had without prior notice or service of the draft decree to them requested and extracted a decree which was issued and published on 9<sup>th</sup> October 2025 which incorporated a Civil Suit No. 116 of 2015 whose parties, cause of action and advocates are unknown to the Applicants.
2. It was also averred that Civil Suit No. 116 of 2015 was never consolidated nor was part of the suit herein and inclusion of the same on the decree is an error apparent and mistake on record and hence the said application ought to be allowed.
3. The application was opposed by the 1<sup>st</sup> Defendant vide a Replying Affidavit sworn on 6<sup>th</sup> November 2025. It was averred that the application does not meet the threshold for grant of the reliefs sought.
4. According to the 1<sup>st</sup> Defendant, the Court record demonstrates that ELC Suit No. 74 of 2019 and ELC No. 116 of 2015 were joined at the hip and that the orders issued by Justice L. L. Naikuni were that the directions were to be issued on both files before this Court after the transfer of the said matters to Voi ELC. It was also averred that contrary to the Applicants assertions, the parties in 116 of 2015 participated in these proceedings and the same was also evident in their submissions that were filed before this Court.
5. The Court was urged to dismiss the said application with costs.
6. Having considered the application, the rival affidavits filed, the main issue for consideration is whether the Plaintiffs/Applicants application is merited to warrant the grant of the reliefs sought.
7. From the affidavits filed by both parties, it is evident that the underlying issue in respect to the impugned decree issued on 9<sup>th</sup> October 2025 is the inclusion of Civil Suit No. 116 of 2015. According to the Plaintiffs/Applicants the same ought not to have been included while the 1<sup>st</sup> Defendant reiterates that the inclusion of the same was proper since the suits had been consolidated.
8. In addressing itself on the aforementioned issue, the court has painstakingly perused the entire record of the court and it is evident that while MSA ELC No. 116 of 2015 and MSA ELC No 74 of 2019 were transferred to this court, there was no order made and or extracted demonstrating that the said suits had been consolidated. The court has also carefully perused the proceedings that were before Justice Naikuni and has equally confirmed that there was no order on record made or extracted demonstrating that the suits had been consolidated.
9. Consolidation of suits takes effect when a court issues an order mandating that multiple related cases be combined. This occurs after a party files a formal application with the court, or in some cases, the court makes the order on its own initiative. In the instant case, there is no such order on record. None



of the parties has equally availed and or furnished this court with such order for its reference and consideration. Hence therefore the Court cannot make an assumption that there was such an order.

10. In conclusion, it is the finding of this court that the said application is merited and the same is allowed in the following terms:
  - a. An order be and is hereby issued that the Decree, dated, issued and published on 9<sup>th</sup> October 2025 be and is hereby reviewed and amended by expunging and deleting the inclusion for and or reference to Civil Suit No. 116 of 2015 and an amended Decree be and issued in terms of the judgment of this Court delivered on 25<sup>th</sup> September 2025 without reference or inclusion of the said Civil Suit No. 116 of 2015.
  - b. Each part to bear own costs of the application.

**DATED, SIGNED AND DELIVERED ON 10TH NOVEMBER 2025**

**E. K. WABWOTO**

**JUDGE**

