



**Mayieka v Mogaga (Enviromental and Land Originating Summons
E007 of 2025) [2025] KEELC 7896 (KLR) (12 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 7896 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E007 OF 2025**

M SILA, J

NOVEMBER 12, 2025

BETWEEN

JOSIAH ACHIKAH MAYIEKA APPLICANT

AND

ESTHER KEMUMA MOGAGA RESPONDENT

RULING

1. The respondent in this Originating Summons has filed an application dated 12 October 2025 for leave to issue a third party notice to Bank of Africa Limited and Josphat Nyachoti T/A Minmax Auctioneers.
2. I see that in this Originating Summons, dated 27 July 2025, the applicant avers that he purchased the land parcel Kisii Municipality/Block III/359 pursuant to a public auction on 18 July 2022. That public auction was in execution of a decree in Kisii HCCC No. 2 of 2018. He wants an order to vest the property in him.
3. In the draft Third Party Notice, the respondent wishes to join the two named parties, inter alia to account for the proceeds of sale.
4. I decline to allow the issuance of a Third Party notice for reason that the application of proceeds of sale in an execution process are questions that are supposed to be determined in the suit where execution took place. I have in mind Section 34 of the Civil Procedure Rules which provides as follows :
 34. Questions to be determined by court executing decree
 - (1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the court executing the decree and not by a separate suit.



(2) The court may, subject to any objection as to limitation or jurisdiction, treat a proceeding under this section as a suit, or a suit as a proceeding, and may, if necessary, order payment of any additional court fees.

(3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the court.

Explanation.—For the purposes of this section, a plaintiff whose suit has been dismissed, and a defendant against whom a suit has been dismissed, are parties to the suit.

5. From the above, it will be seen that all questions relating to execution shall be determined by the court executing the decree and not by a separate suit. A Third Party notice in this instance, would be akin to a separate suit because it will not be an application filed within the suit where the execution took place. I need not say more.

6. I am not persuaded by this application and it is hereby dismissed but I make no orders as to costs.

7. Having said the foregoing, after delivery of this ruling, I will also seek the applicant in the originating summons to convince the court that the originating summons is properly filed.

8. Orders accordingly.

DATED AND DELIVERED THIS 12 DAY OF NOVEMBER 2025

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

KISII

Delivered in the presence of :

Mr. Onyango for the applicant in the O.S

Mr. Angwenyi for the respondent in the O.S

Court Assistant – Michael Oyuko.

