



REPUBLIC OF KENYA



Mathare Investments and Properties Limited v Mparo & 5 others (Environment and Land Case E010 of 2024) [2025] KEELC 7787 (KLR) (11 November 2025) (Ruling)

Neutral citation: [2025] KEELC 7787 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND CASE E010 OF 2024
MD MWANGI, J
NOVEMBER 11, 2025**

BETWEEN

MATHARE INVESTMENTS AND PROPERTIES LIMITED PLAINTIFF

AND

SAMUEL KIMINTAE MPARO 1ST DEFENDANT

WANGUI KIMINTAE JOSEPH 2ND DEFENDANT

ANNA MBENEK 3RD DEFENDANT

ALBERT LEMPARO 4TH DEFENDANT

RICHARD TURERE MPARO 5TH DEFENDANT

ANDREW SAIBULU KIMINTAE 6TH DEFENDANT

RULING

(In respect of the defendants' application to summon the Registrar of Companies and another as witnesses in the case).

1. After the testimony of the 1st defence witness, the defendants' advocate, Mr. Mururu made an oral application seeking witness summons to the Registrar of Companies and a Mr. Jophece Yogo to testify as defence witnesses. Mr. Yogo was said to have been the Company Secretary of the plaintiff company from the year 2000 to date.
2. The plaintiff's advocate, Mr. Mbutia in response to the oral application termed the application as an ambush. He further questioned the relevance of the evidence of the witnesses intended to be called as the plaintiff company is alive and in existence as a legal entity with the capacity to sue and be sued in its name. He opined that the application by the defence was an attempt to lift the veil of the company and was just but a blatant waste of the court's precious time. He urged the court to disallow the application.



3. In rejoinder, the defendants' advocate informed the court that the defendants' case was that the plaintiff company lacked the locus standi to institute the suit. Further that they were taking issue with the verifying affidavit sworn by one Joseph Njenga Wainaina in support of the suit and the resolution of the company authorizing him to depose the said affidavit and generally prosecute the suit on behalf of the Plaintiff Company. Their case, according to their Advocate was that the company was merely revived for the sake of this case. Denial of the application would therefore prejudice their case.

Determination

4. In making this determination, the court is acutely aware that the plaintiff has already closed its case. The plaintiff's witness will therefore not have an opportunity to respond to any new evidence that may be introduced by the defence at this stage of the trial. The plaintiff's advocate was right to term the application by the defendants' as an ambush.
5. Order 11 of the Civil Procedure Rules was intended to discourage trial by ambush as stated by Odunga J (as he then was) in the case of Interactive Gaming and Lotteries Limited –vs- Flint East Africa Limited and 2 others (2013) eKLR. The learned Judge citing his earlier decision in National Bank of Kenya Limited –vs- John Aswani (Nairobi HCCC 171 of 2016) stated that;

“The rationale of Order 11 is to discourage trial by ambush and ensure that the provisions of Sections 1A and 1B of the *Civil Procedure Act* are meaningfully implemented to create a level playing field for all the parties before the court by ensuring the principle of equality of arms is maintained and as far as practical to place the parties on equal footing. To conceal documents until after the plaintiff's case is closed was the kind of mischief that the rules intended to cure. Trial by ambush is no longer acceptable in civil litigation”.
6. Beginning with the 2nd witness intended to be called by the defendants, the defendants' advocate admitted that he had not filed a witness statement signed by the said witness. Instead, the advocate uploaded on the Court Case Tracking System (CTS) a letter dated 18th September 2025 purportedly written by the said Mr. Yogo whose relevance to the case before the court is doubtful. No witness statement has been filed on his behalf this far.
7. The defendants clearly failed to comply with the provisions of Order 11 of the Civil Procedure Rules and have not provided any explanations or justifications whatsoever in as far as the calling of Mr. Yogo as a witness this late in the day is concerned. For avoidance of any doubts, the letter by Mr. Yogo is not an exhibit and has not been admitted as such.
8. For lack of a reasonable explanation and or justification, the Court declines the application to call Mr. Jophece Yogo as a witness.
9. I find the statement by Kiage JA in the case of Nicholas Kiptoo Arap Korir Salat –vs- independent Electoral & Boundaries Commission & 6 others (2013) eKLR, befitting in this case. The learned judge succinctly stated that,

“...am not in the least persuaded that Article 159 of *the Constitution* and the oxygen principles which both command courts to seek to do substantial justice in an efficient, proportionate and cost- effective manner and to eschew defeatist technicalities were ever meant to aid in the overthrow or destruction of rules and procedure to create a free administration of justice. This court, never provide succor and cover to parties who exhibit scant respect for rules and timelines. These rules and timelines serve to make the process of judicial determination fair, just, certain and even-handed. Courts cannot aid in the bending and circumventing of



rules and a shifting of goal posts for while it may seem to aid one side it unfairly harms the innocent party who strives to abide by the rules. I apprehend that it is in the even-handed and dispassionate application of rules that courts give assurance that there is a clear method in the manner in which things are done so that the outcomes can be anticipated with a measure of confidence, certainty and clarity where issues of rules and their application are concerned”.

10. As regards the application to call the Registrar of Companies as a witness, the court will allow the same on the basis that the Registrar’s office is a public office and the documents under his custody are public documents. The court further notes that the defendants in their list of witnesses had listed the registrar of Companies as one of their witnesses.
11. Consequently, witness summons will issue to the Registrar of Companies to attend as witness for the defendants on a date to be given for further hearing of the defence case.
12. The defendants shall follow up the issuance and service of the witness summons to the Registrar of Companies.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 11TH DAY OF NOVEMBER__ 2025.

M.D. MWANGI

JUDGE

In the virtual presence of:

Mr. Mbuthia for the Plaintiff

Mr. Mururu for the Defendants

Court Assistant: MPoye

M.D. MWANGI

JUDGE

