



REPUBLIC OF KENYA



**KENYA LAW**  
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**Marandu & 243 others v Paul & 7 others (Environmental and Land Originating Summons 1 of 2021) [2025] KEELC 7720 (KLR) (4 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 7720 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ENVIROMENTAL AND LAND ORIGINATING SUMMONS 1 OF 2021**

**EK MAKORI, J**

**NOVEMBER 4, 2025**

**IN THE MATTER OF: ORDER 45 RULE 1, ORDER 1 RULE 10(2),  
AND ORDER 40 RULE 1 OF THE CIVIL PROCEDURE RULES, 2010**

**AND**

**IN THE MATTER OF: ARTICLE 40, ARTICLE 47, AND  
ARTICLE 50(1) OF THE CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF: SECTION 38 OF THE LIMITATION  
OF ACTIONS ACT, CAP 22 LAWS OF KENYA**

**AND**

**IN THE MATTER OF: THE FAIR ADMINISTRATIVE ACTION ACT, NO. 4 OF 2015**

**AND**

**IN THE MATTER OF: ARTICLE 62(1) OF THE  
CONSTITUTION AND THE PUBLIC TRUST DOCTRINE**

**BETWEEN**

**VICTOR KUTO MARANDU & 243 OTHERS & 243 OTHERS ... RESPONDENT**

**AND**

**JACK FRANCIS PAUL ..... DEFENDANT**

**AND**

**THE LAND REGISTRAR, MOMBASA COUNTY 1<sup>ST</sup> INTENDED DEFENDANT**

**THE HON ATTORNEY GENERAL ..... 2<sup>ND</sup> INTENDED DEFENDANT**

**AND**

**M'MBETSA BEJA M'MBETSA ..... 1<sup>ST</sup> INTENDED PLAINTIFF**



NANCY MAWODO ..... 2<sup>ND</sup> INTENDED PLAINTIFF  
SIDI KARISA ..... 3<sup>RD</sup> INTENDED PLAINTIFF  
DAVID MGOMOLO ..... 4<sup>TH</sup> INTENDED PLAINTIFF  
BERNARD CHACHA ..... 5<sup>TH</sup> INTENDED PLAINTIFF

## RULING

1. Notice of motion application dated April 7, 2025 is brought under the provisions of Order 45 Rule 1, Order 1 Rule 10(2), and Order 40 Rule 1 of the Civil Procedure Rules, Sections 1A, 1B, and 3A of the *Civil Procedure Act*, Cap 21 Laws of Kenya, Articles 40, 47, and 50(1) of *the Constitution* of Kenya, 2010, the *Fair Administrative Action Act*, and the Public Trust Doctrine under Article 62(1) of *the Constitution*.
2. This application was canvassed through written submissions. I acknowledge receipt of submissions from both the learned counsels for the applicants/intended plaintiffs and the respondents/the plaintiffs.
3. From the comprehensive review of the affidavits both in support of and opposition to the application, as well as the submissions made by the parties, I delineate the issues for the determination of this application as follows: whether the intended plaintiffs can be joined in this matter, whether the consent order issued by this court can be legally set aside, and who should bear the costs of the application.
4. The respondent filed a preliminary objection (PO) claiming that the application was legally defective, but this court, in its ruling dated October 6, 2025, dismissed the PO, paving the way for the application. However, as will be discussed below, I will still analyze the contents of the PO and its overall impact on the pending application.
5. The applicants seek the court's intervention due to what they see as serious procedural irregularities, apparent fraud, and blatant misrepresentation, collusion, or material nondisclosure in the procurement of a Consent Order dated May 31, 2021, and issued on June 9, 2021, which purported to transfer ownership of the suit land, being parcel number Plot No. MN/III/885 CR. 21309, to only four individuals, excluding hundreds of genuine squatters in possession.
6. The plaintiffs/applicants claim they are among over 500 genuine possessory occupants and long-term residents of the disputed property, having peacefully, openly, and continuously occupied it for more than twelve (12) years.
7. They contend that this occupation is protected under the doctrine of adverse possession as outlined in Section 38 of the *Limitation of Actions Act*, Cap 22. They recently discovered that a Consent Order was recorded and issued regarding the land in favor of four individuals: Victor Kutto Marandu, Simon Alfred Lewa, Alice Musyoka, and Stephen Mwendwa Vindika, as well as 240 others whose names are not provided. This order was obtained without any consultation, representation, or notice to the applicants or the wider squatter community.
8. Additionally, they state that a land search at the Mombasa Land Registry shows that the four individuals are the official owners, with no supporting documents of a proper transfer or adjudication process, aside from the disputed Consent Order. The applicants firmly believe and claim that the Consent Order was obtained fraudulently through collusion, misrepresentation, and significant non-disclosure, making it legally invalid, null, and void from the beginning.



9. In their replies, the plaintiff respondents argue that this is a representative suit filed by the four plaintiffs, representing over 242 squatters. In the replying affidavit, they have attached at paragraph 1 the list and the authority to sue on their behalf. The first intended plaintiff/applicant's wife is one of the people authorized to sue, and he did not dispute that fact, as stated clearly in paragraph 3 (a) of the replying affidavit, along with the plot number.
10. The details of the 2nd interested party/applicant are provided in paragraph 3(b) of the replying affidavit, including her plot number. She did not contest this fact further in any subsequent affidavit.
11. All the other interested parties hold interests in plot numbers 165, 320, and 87, respectively, and they have not filed any additional affidavits to contest this fact. Therefore, paragraphs 6 through 12 of the supposed interested parties' submissions are unfounded; they do not need to be added as plaintiffs, either directly or indirectly, as previously stated.
12. The respondents state that it is common knowledge that a title document cannot contain all 242 names, considering that the plaintiffs have a registered CBO since the suit is a representative suit. A search of the said title document at the Lands Office in Mombasa will show that each party will be granted their own title according to the subdivisions mentioned in paragraph 4 of the replying affidavit.
13. The respondents argue that the attached letters are unsigned and question their relevance, as they seek recognition as plaintiffs without filing their own suit, which goes against court procedures. They should have been added as interested parties, not plaintiffs, since Order 1 rules 1, 6, and 15 of the Civil Procedure Rules specify who can join as parties and how. The intended interested parties are not parties to the suit and cannot be added as plaintiffs according to these rules.
14. Respondents claim that the interested parties want to be joined as plaintiffs and are attempting to overturn court orders, leaving the rights of 242 people in limbo. The deponent in the reply states he has the authority to sign for others, but this was not attached, suggesting he is using others' names without their consent. He comes to court with dirty hands.
15. Furthermore, he states in paragraph 2 that he is representing over 500 people, but he does not provide the list. Additionally, since his wife is a committee member, this clearly shows that his application is unlikely to succeed, to say the least.
16. On the issue of joinder, I agree with the submissions made by the applicants and the cited authorities, and I concur with that view. The Court in *Gladys Nduku Nthuki v Letshego Kenya Limited; Mueni Charles Maingi (Intended Plaintiff)* [2022] KEHC 2227 (KLR) reiterated the longstanding test for joinder, as established in *Kingori v Chege & 3 Others* [2002] 2 KLR 243, outlining the factors to consider in applications for joinder of parties. These factors include whether the party is necessary and proper, and whether their participation would avoid the multiplicity of proceedings. The Court held that when a party is directly affected by a decree, the court should exercise its discretion in favor of including them. Additionally, the Court referenced the decision of the Court of Appeal in Tanzania in *Tang Gas Distributors Ltd v Said & Others* [2014] EA 448, where the Court stated that:

“the power of the court to add a party to proceedings can be exercised at any stage of the proceedings; that a party can be joined even without applying; that the joinder may be done either before, or during the trial; that it can be done even after judgment where damages are yet to be assessed; that it is only when a suit or proceeding has been finally disposed of and there is nothing more to be done that the rule becomes inapplicable; and that a party can even be added at the appellate stage.”



17. I agree with the applicants' submissions and the cited precedent regarding joinder after judgment. The Court of Appeal in *Rose Wakanyi Karanja & 3 others v Geoffrey Chege Kirundi & another; Everton Coal Enterprises Limited (Interested Party)* [2020] KECA 616 (KLR) held:

“However, there are exceptional circumstances that could justify a court to enjoin a party even after judgment has been delivered. One such exception is where a matter has been determined and adverse orders issued against a party who was neither given notice of the suit nor heard on the issue in dispute as was the case in this appeal.”

18. The applicants contend they are in a substantially similar position, having been deliberately excluded from the challenged Consent Order despite their long-standing physical possession and vested equitable interests in the land. Even if the Consent Order is considered final, the fraudulent circumstances surrounding its enforcement—such as material nondisclosure, misrepresentation, and the exclusion of over 500 bona fide possessory occupants—conflict with this Court’s policy of *audi alteram partem*: this justifies reopening the case.
19. To the extent that a case can be reopened at any point, I agree with the applicants. What I discuss next is whether the intended plaintiffs/applicants can be joined in these proceedings with an order for a *de novo* hearing, thereby offsetting the consent on record.
20. In its ruling dated October 6, 2025, this court discussed how a consent order or judgment can be offset. In paragraphs 7 and 8 of its ruling, the court stated:

“I agree with the Applicants that the legal position on the variation of a consent judgment is well established. In *Samuel Mbugua Ikumbu v Barclays Bank of Kenya Limited* [2015] KECA 390 (KLR), the Court of Appeal in that case held that:

“The law on variation of a consent judgment is now settled. The variation of a consent judgment can only be on grounds that would allow for a contract to be vitiated. These grounds include but are not limited to fraud, collusion, illegality, mistake, an agreement being contrary to the policy of the court, absence of sufficient material facts and ignorance of material facts.

Hancox JA (as he then was) in the case of *Flora Wasike v. Destimo Wamboko* (1982 -1988)1 KAR 625, said in his judgment at page 626 -

“It is now settled law that a consent judgement or order has contractual effect and can only be set aside on grounds which would justify setting a contract aside, or if certain conditions remain to be fulfilled, which are not carried out.” See the decision of this Court in *J.M. Mwakio v. Kenya Commercial Bank Ltd Civ. Apps 28 of 1982 and 69 of 1983*,

This Court in the case of *Brooke Bond Liebig v. Mallya* 1975 E.A. 266 held: -

“A consent judgment may only be set aside for fraud collusion, or for any reason which would enable the court to set aside an agreement.”

The Applicants have petitioned the court to rescind the existing consent, citing several vitiating factors. I cannot dismiss the issues raised summarily. They will be addressed substantively in their motion dated May 2, 2025

21. I have already outlined the grounds on which the applicants/intended plaintiffs seek to set aside the consent orders in place, alleging serious procedural irregularities, apparent fraud, and blatant misrepresentation, collusion, or material nondisclosure.



22. I have also elaborately outlined the principles applicable in setting aside a consent order/judgment.
23. Based on the record and the respondents' or original plaintiffs' rebuttal, it appears that the parties in this case form an organized group. They filed a class action, which granted the former plaintiffs the authority to represent them, leading to the creation of a consent agreement.
24. The issue that has arisen is how to enforce the consent and ensure all the alleged occupants of the suit property receive a share of it. The search results show the land is registered in favor of four original applicants and 240 others. It is therefore misleading to say that it is exclusively registered in the names of the four only.
25. The applicant states in paragraph 2 that he is representing over 500 people, but he does not provide a list or the authority to represent them in this suit. Additionally, since his wife is a committee member of the CBO, I do not understand how the applicant intends to proceed further.
26. After reviewing the entire application and the requested orders, I believe the applicants have not received proper legal advice on how to proceed. There is a judgment favoring a large group, ostensibly brought as a representative suit, that needs to be enforced; the applicants appear to be among the beneficiaries of that judgment, either directly or through proxies. If a dispute has arisen regarding its enforcement, the focus should perhaps be on how it is being enforced, rather than invalidating the entire judgment itself. I see this as a new cause of action, as we now have a title that can be challenged regarding its implementation following the consent judgment.
27. As a result of the foregoing, the application dated April 7, 2025, is hereby dismissed with costs.

**DATED, SIGNED, AND ELECTRONICALLY DELIVERED IN MALINDI ON 4<sup>TH</sup> NOVEMBER , 2025.**

**E. K. MAKORI**

**JUDGE**

In the presence of

Mr. Muhoho for the Applicants

Ms. Waswa, for the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents

Mr. Lijoodi and Ambwere for the 4<sup>th</sup> and 5<sup>th</sup> Respondents

Happy: Court Assistant

