



Numa Coffee Growers Cooperatives Society (In Liquidation) v Ngoi & another (Environment and Land Miscellaneous Case E041 of 2025) [2025] KEELC 7847 (KLR) (11 November 2025) (Ruling)

Neutral citation: [2025] KEELC 7847 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND MISCELLANEOUS CASE E041 OF 2025
JM ONYANGO, J
NOVEMBER 11, 2025**

BETWEEN

NUMA COFFEE GROWERS COOPERATIVES SOCIETY (IN LIQUIDATION) APPLICANT

AND

DAVID NJUNGUNA NGOI 1ST RESPONDENT

LAND REGISTRAR, KIAMBU 2ND RESPONDENT

RULING

1. By Notice of Motion dated 4th July, 2025, the 1st Respondent seeks the following orders:
 - a. Spent.
 - b. That this honourable court be pleased to set aside and/or review the ex parte court processing of 17th June 2025, together with all the consequential orders issued therein lifting the restriction registered against Land Parcels known as No. Ting'ang'a/Cianda Block 1/1694 measuring 0.5535Ha and Ting'ang'a/Cianda Block 1/1694 measuring 0.0450Ha, pending the hearing and determination of this application inter partes.
 - c. That pending the hearing and determination of this Application inter partes, the honourable court be pleased to grant an interim order of injunction restraining the Respondents herein either by themselves or through its agents, employees and whomever acting on the instructions of the Applicant/Respondent herein from taking possession of, advertising, selling, transferring, conveying or from interfering with the properties known as Ting'ang'a/Cianda Block 1/1674 measuring 0.5535Ha and Ting'ang'a/Cianda Block 1/1694 measuring 0.0450Ha in any way whatsoever.



- d. That this honourable court be pleased to reinstate the restriction over Land Parcel No. Ting'ang'a/Cianda Block 1/1674 measuring 0.5535Ha and Ting'ang'a/Cianda Block 1/1694 measuring 0.0450Ha pending the hearing and determination of the matter.
 - e. That this honourable court be pleased to strike out the Miscellaneous Application herein in its entirety for being incompetent, fatally defective and an abuse of the court process for failing to comply with the mandatory provisions of Order 3 Rule 1 of the Civil Procedure Rules and Section 75 of the Cooperative Societies Act (CAP 490).
 - f. That the costs of this Application be borne by the Applicant/Respondent herein.
2. The application is based on the 18 grounds set out on the face of the Notice of Motion and on the Supporting Affidavit sworn by David Njuguna Ngoi, on even date.
 3. He states that he is a resident of Nairobi and the lawful purchaser of the suit properties known as Ting'ang'a/Cianda Block 1/1674 and Ting'ang'a/Cianda Block 1/1694, measuring 0.5535 hectares and 0.0450 hectares respectively. He avers that he purchased the said parcels from the Applicant/Respondent, Numa Coffee Growers Cooperative Society (in liquidation), through a sale agreement dated 3rd August 2016, entered into with the then officials of the Society.
 4. He asserts that the agreed purchase price was Kshs. 25,500,000, out of which he has already paid Kshs. 15,700,000 through direct deposits to the Cooperative Society and to its officials, as reflected in statements of account and payment vouchers attached to his affidavit. He maintains that the sale agreement remains valid and has never been rescinded, and that he has therefore acquired a proprietary and equitable interest in the properties.
 5. He contends that after a change in the Society's leadership, the current officials filed a Miscellaneous Application dated 22nd May 2025 under a certificate of urgency, seeking to lift a restriction registered over the two parcels. It is his position that the said application was irregular and incompetent, as it was filed as a standalone miscellaneous cause without being anchored on a substantive suit, contrary to Order 3, Rules 1 and 2 of the Civil Procedure Rules.
 6. The 1st Respondent explains that the matter first came before Hon. Justice J. A. Mogeni on 29th May 2025, who directed the Cooperative Society to file the application within a substantive suit and fixed a mention date for 17th June 2025. He claims that despite this order, no substantive suit was ever filed or served upon him. He adds that, nevertheless, on the mention date, the court proceeded to allow the application and issued substantive orders ex parte, lifting the restriction, even though he had not been served or accorded an opportunity to be heard.
 7. The 1st Respondent argues that these proceedings were procedurally irregular, legally improper, and constitutionally defective, as they contravened his rights under Articles 47, 48, and 50(1) of the Constitution of Kenya, 2010, which guarantee fair administrative action, access to justice, and the right to be heard.
 8. He further avers that the Cooperative Society, being under liquidation, lacks legal capacity to institute proceedings in its own name, in view of Section 75 of the Cooperative Societies Act (Cap 490), which requires that any legal action be brought by or in the name of the liquidator with the sanction of the Commissioner for Cooperative Development. He therefore maintains that the application filed by the Society was fatally defective and void ab initio.
 9. The 1st Respondent expresses concern that the restriction over the suit properties has already been lifted, exposing him to the risk of the land being transferred or sold to unsuspecting third parties,



thereby depriving him of property he lawfully purchased. He argues that unless the impugned orders are set aside, he will suffer irreparable prejudice and be condemned unheard.

10. He thus urges the Court to exercise its inherent jurisdiction under Article 162(2)(b) of *the Constitution*, Section 13 of the *Environment and Land Court Act*, and Section 3A of the *Civil Procedure Act* to prevent abuse of process and to ensure justice is done. The Applicant seeks the reinstatement of the restriction on the suit properties, leave to respond to the impugned application, and the setting aside of the ex parte orders issued on 17th June 2025, so that the matter can be heard inter partes.
11. He concludes that the circumstances of this case justify the exercise of the Court's discretion in his favour, as the orders complained of were obtained in violation of procedural and substantive justice.
12. The application was opposed by the Applicant through a Replying Affidavit sworn by its Liquidator, CPA Michael Obiero Ngolo, on 30th July 2025. He avers that the 1st Respondent's application dated 22nd May 2025, together with the mention notice indicating the hearing date of 17th June 2025, was duly served upon the 1st Respondent, who deliberately failed to attend court despite proper service. He has annexed an Affidavit of Service evidencing such service in his Replying Affidavit.
13. The Liquidator contends that the 1st Respondent bases his alleged ownership of the suit properties Ting'ang'a/Cianda Block 1/1674 and Ting'ang'a/Cianda Block 1/1694 on a purported sale agreement dated 3rd August 2016 for a consideration of Kshs. 25,500,000. He explains that the said agreement was expressly governed by the Law Society Conditions of Sale, which required completion within a fixed period unless extended in writing. He adds that nearly a decade has elapsed without completion or any valid extension of the contract, rendering the agreement unenforceable.
14. It is further asserted that the Applicant only received Kshs. 1,750,000 into its official account, which falls far below the agreed purchase price and constitutes a fundamental breach of contract. The Liquidator disowns any payments allegedly made to former officials or third parties, maintaining that such informal remittances were neither authorized nor sanctioned by the Society and therefore cannot confer any valid interest upon the 1st Respondent.
15. He emphasizes that the sale agreement has since become statutorily time-barred under Section 4(1) of the *Limitation of Actions Act*, as more than six years have elapsed without any action being taken to enforce it. Consequently, he contends that the 1st Respondent's claim to ownership or interest in the suit properties lacks any legal foundation.
16. The Liquidator further deposes that the cautions and restrictions lodged by the 1st Respondent over the Society's properties were unlawful, baseless, and without contractual or statutory backing. He explains that the removal of those restrictions was necessary to protect the Society's assets during the liquidation process and to allow the liquidator to discharge his statutory duties under the *Co-operative Societies Act*.
17. He maintains that the 1st Respondent holds no registrable or equitable interest in the suit properties and is therefore not entitled to any proprietary relief. The Liquidator asserts that his actions are fully authorized under law, aimed at safeguarding the assets of the Applicant for the benefit of its members and creditors.
18. The Applicant's advocate contended that the application lacked merit, was grounded on a void and time-barred sale agreement, and formed part of a pattern of abuse of court process by the 1st Respondent. Counsel identified five issues for determination, namely: (i) whether the 1st Respondent was properly served with the Notice of Motion dated 22nd May 2025 and whether he served his own application; (ii) whether the alleged sale agreement conferred any legal or equitable interest; (iii) whether the cautions registered by the 1st Respondent were legally valid; (iv) whether the Respondent's



- application constituted abuse of the court process; and finally, (v) what orders should be made as to costs.
19. On the first issue, counsel maintained that the 1st Respondent had been duly served with the Applicant's Notice of Motion dated 22nd May 2025, as evidenced by an affidavit of service dated 17th June 2025. In contrast, it was argued that the 1st Respondent never served his own application dated 4th July 2025 upon the Applicant, and that the Liquidator only discovered it by chance while reviewing the Judiciary's electronic filing system.
 20. With regard to the alleged sale agreement, counsel submitted that the contract, purportedly for Kshs. 25,500,000, was governed by the Law Society of Kenya Conditions of Sale (1989) and was to be completed within 42 days unless extended in writing. It was pointed out that no such extension was ever made, and only Kshs. 1,750,000 was paid into the society's official bank account, with no completion or transfer of property taking place. Payments made outside the official account were repudiated as nullities incapable of binding the society. Counsel further relied on section 4(1) of the [Limitation of Actions Act](#) to argue that the claim was time-barred and on section 6(1) of the [Land Control Act](#) to submit that the agreement was void ab initio for lack of Land Control Board consent. The advocate cited National Bank of Kenya Ltd vs Pipeplastic Samkolit (K) Ltd & Another [2001] eKLR, emphasizing that courts cannot rewrite contracts for parties and must uphold their express terms. It was therefore contended that the agreement collapsed under its own terms. Moreover, counsel argued that the 1st Respondent had no locus standi since the funds originated from a third party, Grace Villa Ventures, and the doctrine of privity of contract barred him from enforcing non-existent rights.
 21. On the issue of cautions, counsel argued that section 71(1) of the [Land Registration Act](#) permits registration of cautions only where the cautioner has a legitimate claim to a registrable interest. Reliance was placed on the Supreme Court decision in Samuel Kipkori Ngeno & Another vs Local Authorities Pension Trust [2013] eKLR, where it was held that cautions should not be instruments of harassment or delay. It was submitted that the 1st Respondent's cautions, registered on 12th October 2020, were based on a void and time-barred agreement and therefore unlawful. Reference was also made to Gituma & Another vs Land Registrar, Nairobi Land Registry [2024] eKLR, where the court held that long-standing cautions without a valid basis were unjustifiable. Counsel noted that, though the present caution had existed for fewer years, its lack of legal foundation rendered it equally improper.
 22. The Applicant's advocate added that the Respondent had repeatedly failed to appear before the Land Registrar on 18th February 2025 and before the Court on 17th June 2025, and that he now sought to benefit from an application he never served. Counsel affirmed that the matter fell within the jurisdiction of the Environment and Land Court pursuant to section 13 of the [Environment and Land Court Act](#) and Article 162(2)(b) of [the Constitution](#). The principle in Owners of the Motor Vessel "Lillian S" vs Caltex Oil (Kenya) Ltd [1989] KLR 1 was cited to emphasize that jurisdiction is the foundation of judicial authority.
 23. On whether the Respondent's conduct amounted to abuse of process, counsel submitted that the 1st Respondent's actions, such as his failure to attend proceedings and his repeated filing of suits on similar grounds, showed deliberate misuse of the legal system. Counsel referred to Ngoi vs Kariuki [2024] eKLR, in which a similar claim by the same individual had been dismissed as lacking merit. The Court of Appeal decision in Muchanga Investments Ltd vs Safaris Unlimited (Africa) Ltd & 2 Others [2009] eKLR was also invoked to explain that abuse of process includes frivolous or vexatious proceedings intended to harass or obstruct justice. Counsel contended that the present application fell squarely within this mischief.



24. On the question of costs, counsel reiterated the principle that costs follow the event under section 27(1) of the *Civil Procedure Act* unless special reasons justify departure. Citing *Republic vs Rosemary Wairimu Munene, Ex parte Applicant* [2014] eKLR, it was argued that the Respondent's conduct had occasioned unnecessary litigation by filing baseless claims, failing to serve applications, and registering cautions without legal foundation. Reference was made to *Awino & Another vs Mburu & 10 Others* [2023]eKLR, where the court awarded full indemnity costs to discourage similar conduct. Counsel also cited *Supermarine Handling Services Ltd vs Kenya Revenue Authority* [2010] eKLR, noting that costs are meant to compensate the successful party for expenses incurred in vindicating lawful rights. It was therefore urged that the Court should grant costs on a full indemnity basis as a proportionate response to the Respondent's vexatious conduct.
25. In conclusion, counsel argued that the 1st Respondent's application dated 4th July 2025 was fatally defective, devoid of legal or equitable foundation, and merely an attempt to revive stale and previously adjudicated issues. The Applicant maintained that the 1st Respondent had been properly served with the earlier application, that his own sale agreement was void and time-barred, and that the cautions registered against the Applicant's land were unlawful. It was further stated that under sections 66(1) and 67 of the *Co-operative Societies Act*, the Liquidator had full authority to collect, manage, and sell the assets of the society and to defend legal proceedings. The 1st Respondent's contention that the liquidator lacked such authority was therefore unfounded.
26. Counsel concluded that the Respondent's repetitive litigation, including in *David Njuguna Ngoi vs Charles Maina Mungai & Another* [2024] eKLR, demonstrated a habitual abuse of court process. It was urged that justice required dismissal of the application with costs on a full indemnity basis to protect the statutory liquidator from unnecessary litigation and to deter similar misuse of judicial time.
27. Accordingly, the Applicant prayed that this Court dismiss the 1st Respondent's application dated 4th July 2025 with full indemnity costs and uphold the ex parte orders issued on 17th June 2025. Counsel relied on the case of *David Macharia Kinyuru vs District Land Registrar, Naivasha & 3 Others*.
28. The 1st Respondent had not filed his submissions at the time of writing this ruling, despite being directed by the court to do so by the close of business on 29th October 2025.

Analysis and Determination

29. Having considered the Notice of Motion application, Affidavits, annexures and Submissions on record, the Court finds that the following issues fall for determination:
 - i. Whether the 1st Respondent was properly served with the application dated 22nd May 2025, and whether he served his own application dated 4th July 2025;
 - ii. Whether the Court could issue substantive orders on 17th June 2025; and
 - iii. Whether the suit was properly before Court.
 - iv) Whether the 1st Respondent was properly served with the Application dated 22nd May 2025, and whether he served his own Application dated 4th July 2025.
 - v) Whether the orders issues on 17.6.25 should be set aside.
30. The record shows that the Applicant's advocate, Ivy Wangari Kinuthia, swore an affidavit of service on 12th June 2025, stating that she had served the 1st Respondent via WhatsApp on 3rd June 2025 through his mobile phone number. The affidavit was filed in court on 17th June 2025; however, the 1st



Respondent has not denied or challenged service. His grievance is instead that the application of 22nd May 2025 was procedurally incompetent for having been filed as a stand-alone miscellaneous cause.

31. In view of the 1st Respondent's silence on service, the Court is satisfied that the 1st Respondent was duly served with the application. However, it is undisputed that the 1st Respondent failed to serve his own application dated 4th July 2025 (the present application) upon the Applicant. The Liquidator deposed that he only discovered its existence upon reviewing the Judiciary's electronic filing system. That omission contravenes Order 5 Rule 8 of the Civil Procedure Rules. However, given that the Applicant has responded and submitted on the application, I shall proceed to consider it.

Whether the Court Could Issue Substantive Orders on 17th June 2025

32. The proceedings reveal that on 29th May 2025, Hon. Justice J. A. Mogeni directed the matter to be mentioned on 17th June 2025 for further directions. Nevertheless, on that date, the Court proceeded to grant substantive orders lifting the restriction on the suit properties.
33. A mention or directions date is intended purely for case management to give procedural guidance or fix timelines. Substantive orders determining parties' rights should only issue on a hearing date after service and notice to all parties. Order 51 Rule 8 of the Civil Procedure Rules requires that a Notice of Motion be heard inter partes after service on the opposing party. Unless a mention is expressly converted into a hearing date with notice to the parties, the court has no authority to make final determinations.
34. In *Patel vs E.A. Cargo Handling Services Ltd* [1974] EA 75 and *Kenya Trypanosomiasis Research Institute vs Anthony Kabimba Gusinjilu* [2019] eKLR, the courts held that orders made on a mention or directions date, without proper notice to the adverse party, are irregular and may be set aside ex debito justitiae.
35. From the record, there is nothing to show that the mention of 17th June 2025 was converted into a hearing with notice to all parties. The court therefore granted substantive orders under the mistaken belief that the matter was coming up for hearing thus the said orders were irregular.

Whether the Suit Was Properly Before Court

36. The 1st Respondent's principal complaint is that the Applicant's motion dated 22nd May 2025, which sought to lift restrictions over the suit properties, was filed as a Miscellaneous cause rather than within a substantive suit. He argues that this contravened Order 3 Rule 1 of the Civil Procedure Rules and the express directions given by the Court on 29th May 2025.

Filing through a Miscellaneous Cause

37. Order 3 Rule 1 requires that every suit be instituted by plaint, petition, originating summons, or notice of motion as prescribed. A miscellaneous cause is reserved for non-contentious or administrative matters. In *David Macharia Kinyuru vs District Land Registrar, Naivasha & 3 Others* [2017] eKLR, the Court held that the removal of cautions or restrictions touching on ownership or proprietary rights cannot be done through a miscellaneous application because such reliefs determine substantive interests in land and require pleadings, evidence, and full hearing.
38. In the present case, the Applicant's motion sought final orders affecting ownership and interests in registered land. These were not interlocutory or administrative prayers but substantive remedies. The Court therefore finds that the application of 22nd May 2025 was procedurally incompetent, having been filed as a miscellaneous cause instead of through a substantive suit.



Capacity of a Co-operative Society under Liquidation

39. The Applicant describes itself as “Numa Coffee Growers Co-operative Society (in liquidation)”. Under Section 66 of the Co-operative Societies Act (Cap 490), once a society is placed under liquidation, no legal proceedings shall be commenced or continued in its name except by or against the liquidator, and with the sanction of the Commissioner for Co-operative Development. The effect of liquidation is that the society loses its legal capacity to sue in its own name.
40. In *Nzoia Sugar Company Staff Sacco Society Ltd (in Liquidation) vs Josephat Okumu & Another* [2016] eKLR and *Co-operative Bank of Kenya Ltd v Co-operative Savings & Credit Society (in Liquidation)* [2017] eKLR, the courts affirmed that any proceedings instituted in the name of a society under liquidation, and without the Commissioner’s sanction, are null and void ab initio.
41. There is no evidence before this Court that the Liquidator obtained the Commissioner’s written sanction before instituting the application of 22nd May 2025. The proceedings were therefore irregularly commenced and incompetent in law.
42. From the foregoing analysis, the Court finds that the substantive orders issued on 17th June 2025 were irregular, as the date had been fixed for directions only. The court further finds that the application dated 22nd May 2025 was not properly before Court, having been filed as a miscellaneous cause by a society under liquidation contrary to the provisions of Section 66 of the Cooperative Societies Act. The combined effect is that the proceedings culminating in the ex parte orders of 17th June 2025 were procedurally defective and a nullity ab initio.
43. Accordingly, I grant the application and make the following orders:
 - a. The orders issued on 17th June 2025 are hereby set aside with the result that that the restriction over land parcel number Ting’ang’a Cianda Block 1/1674 measuring 0.5535Ha and Ting’ang’a Cianda Block 1/1694 measuring 0.0450Ha is reinstated.
 - b. The Miscellaneous application is hereby struck out for being incompetent and fatally defective.
 - c. Any future proceedings shall be brought through a substantive suit filed by or in the name of the duly appointed Liquidator with the requisite sanction of the Commissioner for Co-operative Development.
 - d. Each party shall bear its own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 11TH DAY OF NOVEMBER 2025.

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J. M ONYANGO

JUDGE.

In the presence of :

Ms Kinuthia for the Respondent

No appearance for the Applicant

Court Assistant: Hinga

