



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MALINDI**

**ELC SUIT NO. E082 OF 2024**

**GHOTMAN COTOVA & GENERAL**

**COMMISSION**

**AGENTS**

**.....PLAINTIFFS**

**-VERSUS-**

**1. ERICH GERALD**

**2. BEATRICE WANJIKU .....**

**DEFENDANTS**

**AND**

**MIRKO BLATTERMAN (Through his Attorney**

**SHABIR HATIM ALI TAHER) .....INTERESTED**

**PARTY**

**RULING**

**1.** The interested party’s application, dated July 1, 2025, seeks the following key orders for determination:

- a) **The plaintiff's suit should be struck out for being frivolous, vexatious, and an abuse of the court process.**
- b) **The Land Registrar is instructed to delete or cancel entries No. 17, 18, 19, and 20 in the register for Plot No. 622 (Original No. M. 17G) Malindi and to restore the ownership of Plot No. 622 (Original No. M.17G) Malindi to Mirko Blatterman, Karl-Heinz Borner, and Helmut Koster as decreed in Malindi ELC No. 27 of 2012.**
- c) **David Mwangi Muiruri, trading as the plaintiff, should be declared a vexatious litigant regarding any claims related to Plot No. 622 (Original No. M. 17G), Malindi.**
- d) **Consequently, David Mwangi Muiruri, trading as the plaintiff, or his privies, agents, servants, business names, or companies he is involved with, is permanently barred from suing in Kenya for ownership or rights over Plot No. 622 (Original No. M 17G) Malindi without first obtaining leave from the ELC at Malindi.**
- e) **The costs of this application and the suit shall be awarded to the interested party against David Mwangi Muiruri, trading as the plaintiff.**

**2.** The application, based on the grounds listed therein, is supported by an affidavit sworn by Shabir Hatim Ali Taher.

- 3.** The deponent stated that David Muiruri Mwangi fraudulently caused himself to be registered as the owner of Plot No. 622 (Original No. M.17G), Malindi (the suit property), replacing the interested parties, Karl Heinz Borner and Helmut Koster. This registration was canceled by this court on March 17, 2022, in ELC 27 of 2012 (SH-2 is a copy of the judgment). His appeal against that decision was also dismissed on September 20, 2024 (SH-3 is a copy of the judgment). Meanwhile, David, acting through the defendants in this case, initiated Malindi CMELC No. E042 of 2022 against the interested parties, Karl and Helmut, claiming they sold the suit property to him through an agreement dated September 4, 2002 (SH-4 is a copy of the plaint).
- 4.** Subsequently, David fraudulently caused a consent judgment to be entered on May 16, 2022, transferring the suit property to the defendants (SH-5 is a copy of that consent). That consent was later overturned by a September 9th, 2022, ruling (SH-6), which led to the filing of ELC Appeal 35 of 2022.

5. Again, the deponent stated that David fraudulently caused a consent judgment to be entered in that appeal on March 9, 2023 (SH-7), transferring the suit property to the defendants.
6. The deponent stated that on May 4, 2022, the defendants allegedly signed an acknowledgment purportedly handing over possession of the suit property to David as security for a debt (SH-8). This acknowledgment prompted David to file this suit to enforce it. Additionally, a consent judgment dated September 20, 2024, was entered here, transferring the suit property to David (SH-9).
7. The deponent stated that the actions above are an abuse of the court process, all aimed at collaterally circumventing the findings by the ELC in Malindi ELC 27 of 2012 and the appeal thereto being Appeal E023 of 2022.
8. The plaintiff opposed the application through a replying affidavit dated July 10, 2025. He stated that the deponent of the supporting affidavit lacked the capacity to litigate over the suit property, as ruled on January 17, 2024, in ELC 27 of 2012. He asserted that, along with the directors of a company called Laguna Blue Tours Travel Ltd, he was in occupation of the suit

property when ELC 27 of 2012 and Appeal E023 of 2022 were finalized. Therefore, for the sake of peace, he signed the acknowledgment with the defendants. He filed this suit to ensure compliance with that acknowledgment.

**9.** The defendant also opposed the application through a replying affidavit jointly sworn on July 8, 2025. They challenged the deponent's power of attorney, stating that it was canceled with respect to all issues related to the suit property, as per a ruling delivered by Odeny J on January 17, 2024 (EB-1).

**10.** The defendants averred that they were not parties in ELC 27 of 2012 and Appeal E023 of 2022. They later learned of the judgment in ELC 27 of 2012, which prompted them to file CMELC E042 of 2022, in which the respondents agreed to compromise the suit. The defendants asserted that they only came to know David when they raised interest in the suit property alongside David and Laguna Blue Tours & Travels Ltd., and in an attempt to take over the suit property, they managed to compensate the said company but could not do the same to David, who, in turn, sued them in the present suit.

**11.** The application was reviewed through written submissions, which I have carefully examined. The main issue, as I see it, for the court's decision, is whether the current suit should be dismissed as frivolous, vexatious, or an abuse of the court process with the attendant costs.

**12.** It is well known that striking out pleadings is a serious action that should only be taken in evident situations. The Court of Appeal addressed this in the case of **The Co-Operative Merchant Bank Ltd. v George Fredrick Wekesa (Civil Appeal No. 54 of 1999)**, stating:

*“ Striking out a pleading is a draconian act, which may only be resorted to, in plain cases...Whether or not a case is plain is a matter of fact...Since oral evidence would be necessary to disprove what either of the parties says, the appellant’s defence cannot be said to present a plain case of a frivolous, scandalous, vexatious defence, or one likely to prejudice, embarrass or delay the expeditious disposal of the respondent’s action, or which is otherwise an abuse of the process of the court.”*

**13.** The basis of the plaintiff's claim was a document christened "acknowledgment dated 4th May 2022." The contents of this acknowledgment were as follows:

***"REPUBLIC OF KENYA ACKNOWLEDGEMENT***

***(Subject To Contact On Plot /Parcel No. 622- Malindi)***

***Acknowledgement is reached this 4th day of May 2022.***

***BETWEEN ERICH GERALD & BEATRICE WANJIKU AND  
GHOTMAN COTOVA & GENERAL COMMISSION AGENT AND  
LAGUNA BLU TOURS & TAVEL LTD.***

***THAT UPON DUE CONSIDERATION on issues pertaining to  
Plot / parcel of land known as Plot No. 622 (ORIG  
NO.M.17G)-Malindi, it is hereby agreed that: -***

***1. The original owners of the said land namely: Mirko  
Blattermann, Karl Heinz Borner, and Helmut Koster do  
resolve all issues with Beatrice Wanjiku and Erich Gerald  
by judgement consent in court case CHIEF MAGISTRATE'S  
COURT LAND CASE NO E42 OF 2022 AT MALINDI once and  
for all.***

***2. Upon reconciliation and execution of judgment  
consent, all issues pertaining to the subject land be  
marked as settled amicable and extract a court order in  
respect to that.***

**3. Upon extracting of the court order, Beatrice Wanjiku and Erich Gerald to compensate Laguna Blu Tours & Travel at a tune of Kshs. 5,000,000 (Kenya Shillings Five Million) and Ghotman Cotova & general Commission Agent be compensated at a tune of Kshs. 28,000,000 (Kenya shillings twenty-eight million) within 30 days from the date of judgement consent and orders thereof and for the meantime Ghotman Cotova & General Commission agents shall continue taking possession of the suit premise until fully compensated.**

**4. Upon compliance all issues, be marked as settled amicably.”**

**14.** A review of the plaint confirms that the above acknowledgment was part of a settlement regarding issues about the disputed property. As presented, the plaintiff's claim lacks essential facts explaining why the plaintiff is entitled to substantial compensation. 28,000,000/-, the nature of his claimed interest in the property, or the legal foundation for such interest. In my view, the case is essentially baseless and vexatious and cannot support any legitimate claim.

**15.** Additionally, this court, in another ruling related to the current case, ELC Appeal 35 of 2022, nullified the consent

judgment that formed the basis of the acknowledgment and the subject of this suit. Therefore, once the consent judgments in CMELC No. E042 of 2022 and the subsequent consent in appeal No. 35 of 2022 were nullified, the foundation on which the acknowledgment of May 4, 2022, was based was completely undermined.

**16.** The plaintiff cannot enforce rights (sic) claimed to arise from a document whose valid basis has been judicially invalidated. Allowing such enforcement would essentially revive, through indirect means, the very consents that this court has already declared illegal, irregular, and an abuse of the court process.

**17.** It is imperative to reckon that this court (Olola J.) definitively established the ownership of the suit property in Malindi ELC No. 27 of 2012, a decision later upheld by the Court of Appeal in Civil Appeal No. E023 of 2022 (the Superior Court). These decisions remain authoritative and binding and cannot be nullified through fragmented suits, behind-the-scenes, ad hoc agreements, or hastily recorded consent judgments.

**18.** Therefore, the plaintiff's suit, which relies entirely on an acknowledgment that has lost its validity, shows no valid or

justiciable cause of action for this court to rule on. Given the circumstances, it is my considered view that the suit is frivolous, vexatious, and an abuse of the court process, clearly justifying the striking out of the plaint.

**19.** The Notice of Motion dated July 1, 2025, is hereby granted with costs.

**Dated, signed, and delivered electronically in Malindi on 20<sup>th</sup> November , 2025.**

**E. K. MAKORI**

**JUDGE**

**In the presence of:**

**Plaintiff (in person)**

**Mr. Kongere for the Interested Party**

**Happy: Court Assistant**

**In the absence of:**

**Mr. Obaga for the Defendants**