



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ELC LAND CIVIL SUIT NO. 463 OF 2017

BETWEEN

JENNIFER MUTHONI
MORIGI.....1ST PLAINTIFF
JANE WANJIKU
HIRAM2ND PLAINTIFF
JULIA WAMBUI GAKUNGI (*Suing as trustees and*
officials of **WOMEN TRUST HOUSING**
WELFARE
ORGANIZATION)3RD
PLAINTIFF

VERSUS

HOMELANDS DEVELOPMENT INVESTORS
LTD.....DEFENDANT

AND

CHIEF LAND REGISTRAR.....1ST
CONTEMNOR

ANNE NDUNG'U EMILY KITUR.....2ND

CONTEMNOR

EMILY KITUR.....3RD

CONTEMNOR

PRISCILLA WANJIRU WAINAINA.....4TH

CONTEMNOR

AND

WANDEGEYA COMPANY LIMITED.....INTENDED

INTERESTED PARTY

RULING

1. This ruling considers two notices of motion: one dated 17/07/2024 by the defendant and the second one dated 13/12/2024 by the intended interested party (**“intended IP”**). We will shortly review a summary of these applications along with their respective responses.

Motion dated 17/07/2024 by the defendant

2. In this one, the defendant seeks the following reliefs from this court: -

a. Spent.

b. Spent.

c. Spent.

d. The honorable court be and is hereby pleased to issue an order, summoning the 1st, 2nd, 3rd and, 4th respondents/contemnors to personally appear before the hon court on a date and time prescribed by the hon court, for purposes of showing cause why they should not jointly and severally be cited for contempt of the hon court's order made on 27/09/2018 by Hon. O. Angote,

e. Save for showing cause as prayed for under prayer number d, the 1st, 2nd, 3rd and 4th respondents/contemnors be and are hereby barred and/or otherwise denied audience before the hon court, in respect of any other proceedings herein unless and until they purge the ongoing contempt, and comply with subsisting orders.

f. The honorable court be and is hereby pleased to issue an order of injunction restraining the respondents/contemnors, acting jointly and/or severally, whether by themselves directly, or through their agents, officers, assigns, servants, representatives or anyone howsoever claiming on their behalf, under their title or through their

authority from in anyway whatsoever dealing with, transacting on, entering, trespassing, taking-over, damaging, constructing on, developing, marketing, offering for sale, selling, transferring, charging, alienating or in any other manner with the property known as Land Reference Number 20523 contained in Grant No. IR 126163 Mavoko Municipality, either on the premise of the supposedly cancelled certificate of title, or the impugned supposed provisional certificate of title pending the hearing and determination of this suit.

g. That the honourable court be pleased to issue an order vacating/striking-off and/or otherwise setting-aside entries number 12 and 13 noted as registered on 11/09/2023 under presentation number 786 and 786B, in the certificate of title over L.R No, 20523 Mavoko Municipality (IR 126163), from the suit land register; and consequently, the supposed cancellation of certificate of title as well as issue an order cancelling the impugned supposed provisional certificate of title over Land Reference No. 20523 Mavoko Municipality held by the 2nd to 4th respondent/contemnors.

h. The 1st and 4th respondent/contemnors be ordered to pay the costs of this application on a full indemnity basis.

i. The honourable court be pleased to make any other orders deemed fit in the circumstances for the end of justice.

j. The costs of the motion be in the cause.

3. The motion is supported by the grounds outlined in the main motion and the supporting affidavit of Zeyun Yang. In essence, the following averments were made: a) the defendant is the lawfully registered owner of property **L.R No. 20523 Mavoko Municipality (IR 126163) (“defendant’s land”)**; however, using a purportedly cancelled certificate of title and an impugned provisional certificate of title (“PCT”) over the defendant’s land, the 1st and 4th contemnors, on or about 11/09/2023, unlawfully schemed by making entries numbered 12 and 13 on the certificate of title, which were registered under presentation numbers 786 and 786B; and
4. B) There is absolutely no legal, factual, or equitable basis whatsoever for the unlawful and fraudulent entries made by the 4th contemnor, as she was evidently aware of the two court orders registered as entry numbers 10 and 11, under presentation numbers 3293 and 912, respectively.

Nevertheless, new entries were recorded against a non-existent court order issued on 31/08/2023. Furthermore, c) the two orders registered under presentation numbers 3293 and 912 were issued by this court on 31/07/2018 and 27/09/2018, respectively, with the former granting a stay of execution and the latter setting aside the judgment of 02/03/2018. This motion is unopposed.

Motion dated 13/12/2024 by the intended IP

5. As for this motion, the intended IP seeks the following reliefs from this court: -

a. Spent.

b. This honourable court be pleased to order/direct that the intended interested party herein be joined as an interested party in this suit/proceeding and consequently file their respective pleadings.

c. Spent.

d. The costs of the motion be in the cause.

6. The motion is supported by the grounds set out on its face and the supporting affidavit of Elizabeth Gitiri Gacanja, sworn on 14/12/2024. In a nutshell, it was stated: a) the intended IP is the original allottee of the suit property, having been allocated it on 17/11/1994 via allotment letter Ref. No. 33745/XXI; b) the

intended IP paid all relevant dues upon receipt of the allotment letter and currently holds a valid title over the property; the intended IP has always been in possession of the suit property to date, and no one has ever claimed to evict the intended IP from the property; and c) any decision or determination concerning the ownership of the suit land will affect the intended IP, particularly regarding its rights and entitlement to its lawful parcel of land.

7. The defendant strenuously challenges this motion through its notice of preliminary objection and grounds of opposition, both dated 20/02/2025. It appears the preliminary objection was abandoned as similar grounds were raised in the grounds of opposition. In this latter document, the following grounds are raised: -

a. As a preliminary, the motion is fatally and irreparably defective as it fails to properly invoke the court's jurisdiction and more particularly insofar as it violates Section 5, Oaths and Statutory Interpretations, as read with Rule 7, the Oaths and Statutory Declarations Rules.

b. Without prejudice to the preceding, the instant motion has been brought with utmost inordinate delay, the suit herein having been lodged in 2017; and the matter having been significantly

prosecuted, awaiting part heard evidence, - as evinced from the court record, the plaintiff long closed its case, the defendant has adduced part of its evidence to enable the determination of the matter.

- c. The plaintiff and defendant will be gravely prejudiced, as the case, which is now almost eight (8) years old, will be further delayed on account of the intended IP's joinder.***
- d. The intended IP will itself be gravely prejudiced as the matter has already been significantly heard and only awaits, conclusion of the defendant's case.***
- e. The intended IP in the year 2019, lodged Machakos ELC No 56 of 2019, urging its very entitlement to property described as LR 20523 (IR 206349) under certificate of title registered on 26/06/2018: which property is alien to the defendant. The defendant has no interest whatsoever as its lawful property is described as LR 20523 (IR 126163), effective 1/10/1998: different and distinct properties. In any event, the intended interested party can adequately pursue its interests, and/or claim in Machakos ELC No. 56 of 2019.***

f. The intended interested party's suit in Machakos ELC No. 56 of 2019 was filed two years after the plaintiffs had already initiated this subject suit, and the motion for joinder has belatedly been filed 6 years after Machakos ELC NO. 56 of 2019 was filed, and the intended IP was aware of the subject suit, as evinced by the court record.

g. In Machakos ELC NO. 56 of 2019, the court on 19/03/2024, ordered that the said suit be heard alongside this subject suit, thus the intended IP will suffer no prejudice.

h. The suit property is not at an imminent risk of disposal.

i. There is no merit, and or legal premise in the instant motion, and it should be dismissed with costs on a full indemnity basis.

8. In response to hearing the parties, the court ordered that the case be argued through written submissions. Unfortunately, only the defendant's submissions from **Ms. CM Advocates LLP**, dated 11/05/2025, were submitted to the court. Therefore, after identifying and reviewing the issues for resolution, this ruling will later examine the arguments in the submissions related to the specific matter, while also considering relevant laws and judicial precedents. Accordingly,

having reviewed the motions, their grounds, affidavits, annexures, and the submissions, the following issues, which shall be addressed separately in the analysis and determination, have emerged for resolution: -

a) Whether the decree issued on 31/08/2023 is null and void and was unenforceable.

b) Whether the intended IP should be joined as a party to these proceedings.

c) Whether the defendant has met the legal threshold to warrant the grant of injunctive relief.

a) Whether the decree issued on 31/08/2023 is null and void and was unenforceable.

9. About this issue, the defendant has called on this court to hold the contemnors in contempt. On this and after reviewing the record, it is correct, as submitted by the defendant, that the judgment in this case was set aside by this court on 27/09/2018, and an order was registered against the certificate of title to reflect this.

10. In the case at hand, the 1st plaintiff, fully aware that the judgment in the plaintiffs' favour had been set aside, in clear abuse of the court process and with the intent to short-change the defendant, was determined to ensure that the alleged

defendant's land was registered in the plaintiffs' name. The 1st plaintiff misled the court with ill intent in her application for a decree on 28/08/2023. However, the court's duty was to verify, ascertain, and confirm that a judgment existed before issuing the impugned decree. In fact, the 4th contemnor wrote a letter to the court on 24/10/2023 to verify the authenticity of the decree.

11. Nonetheless, the responsibility lies with the court in issuing decrees and orders, as it is a court of record and custodian of such documents. With all due respect, the court had no authority to issue the impugned decree since there was no judgment at the time it was executed. Accordingly, this court urges deputy registrars to carefully examine the entire court records before executing any document. Therefore, in the absence of a valid judgment, this court finds that the decree issued on 31/08/2023 contravenes **Order 21, Rule 8 (1)** of the **Civil Procedure Rules (CPR)**. It also considers the decree null, void, and unenforceable.
12. Furthermore, this court finds the plaintiffs should not be permitted to retain what they have unlawfully obtained through illegal registration over the defendant's alleged land and obtaining an illegal provisional certificate of title. Thus, it would be equitable for the parties to revert to the *status quo ante* that was in place prior to the 1st plaintiff's illicit and

contemptuous actions. On this, this court adopts the position held in **Thomson Smith Aikman, Alan Malloy & others v Muchoki & others [1982] KECA 5 (KLR)**, thus:-

“I will not subscribe to the theory that a wrongdoer can keep what he has taken because he can pay for it. The real injury arose from the unlawful seizure of the estates by the defendants in defiance of the law. As in the circumstances the plaintiffs could not fail to succeed the status quo first had to be restored.”

b) Whether the intended IP should be joined as a party to these proceedings.

13. Respecting the law on this issue, guidance is drawn from **Order 1 Rule 10(2)** of the **Civil Procedure Rules (CPR)** which has mainly been interpreted to mean that the party who should be joined or added to civil proceedings-whether as a defendant, plaintiff, or interested party, whose presence in the proceedings is essential to assist the court in determining the matter effectively and comprehensively-should be included in the proceedings. This proviso states as follows:

“The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party

improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.”

14. **The Black’s Law Dictionary, 11th Edn, page 1351,** defines an interested party in the following terms:

“A party who has a recognizable stake (and therefore standing) in a matter.”

15. The meaning of this definition was reiterated in the Supreme Court of Kenya's decision in **Trusted Society of Human Rights Alliance v Matemo & 5 others [2014] KESC 32 (KLR)**, as follows:

“3. An interested party was one who had a stake in the proceedings, though they were not initially a party to the cause. Such a person felt that their interest would not be well articulated unless they personally appeared in the proceedings, and championed their cause.”

16. When considering a motion for joinder, the court exercises prudent discretion rooted in law and reason. Therefore, this court adopts the guiding principles established in **Muruatetu & another v Republic; Kenya National Commission on Human Rights & 2 others (Interested Parties); Death Penalty Project (Intended Amicus Curiae) [2016] KESC 12 (KLR)**, thus: -

“37. From the foregoing legal provisions, and from the case law, the following elements emerge as applicable where a party seeks to be enjoined in proceedings as an interested party: One must move the Court by way of a formal application. Enjoinment is not as of right, but is at the discretion of the Court; hence, sufficient grounds must be laid before the Court, on the basis of the following elements: The personal interest or stake that the party has in the matter must be set out in the application. The interest must be clearly identifiable and must be proximate enough, to stand apart from anything that is merely peripheral. The prejudice to be suffered by the intended interested party in case of non-joinder, must also be demonstrated to the satisfaction of the Court. It must also be clearly outlined and not something remote. Lastly, a

party must, in its application, set out the case and/or submissions it intends to make before the Court, and demonstrate the relevance of those submissions. It should also demonstrate that these submissions are not merely a replication of what the other parties will be making before the Court.”

17. Accordingly, and in applying these principles and having considered the opposing arguments, records in the instant file and **Machakos ELC No. 56 of 2019**, along with documents presented in both files, this court finds that although the intended IP has a stake in the matter and is a necessary party, given that its land and that of the defendant share an LR No. and that there may be a case of double registration; this court concurs with the defendant’s assertion that the intended IP has been aware of this matter for a considerable time.
18. Moreover, instead of seeking joinder at an earlier, suitable opportunity, the intended IP filed **Machakos ELC No. 56 of 2019**. Besides, the plaintiff and defendant in this case would be prejudiced, as this is an old matter that is at an advanced stage of hearing. Lastly, the intended IP will not be prejudiced because the court directed that this case and **Machakos ELC NO. 56 of 2019** be heard alongside each other. Thus, in

conclusion, this court finds the application for joinder is not merited.

c) Whether the defendant has met the legal threshold to warrant the grant of injunctive relief.

19. On matters of law, the defendant's motion is filed in accordance with **Order 40, Rule 1** of the **Civil Procedure Rules (CPR)**, which governs this court's handling of applications of this nature. This statutory provision states: -

“Where in any suit it is proved by affidavit or otherwise—

(a) that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or

(b) that the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit,

the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.”

20. As for jurisprudence, the principles guiding this court’s exercise of discretion in granting a temporary or permanent injunction are now well established through authoritative pronouncements. The three key requirements are that the applicant, in this case the plaintiff, must: (a) establish a prima facie case; (b) prove that irreparable harm will occur if the injunction is not granted; and (c) resolve any doubts by showing that the balance of convenience favours it. **See *Giella v. Cassman Brown & Co. Ltd* [1973] EA 358**, reaffirmed in the Court of Appeal decision ***Nguruman Limited v Jan Bonde Nielsen & 2 others* [2014] KECA 606 (KLR)**. In this case, the court stated:

“In an interlocutory injunction application, the applicant has to satisfy the triple requirements to; (a) establish his case only at a prima facie level, (b) demonstrate irreparable injury if a temporary injunction is not granted, and (c) ally

any doubts as to (b) by showing that the balance of convenience is in his favour. These are the three pillars on which rests the foundation of any order of injunction, interlocutory or permanent. It is established that all the above three conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially.”

21. Now, having considered the defendant’s supporting affidavit and submissions, these settled principles have not been advanced, and though this court finds that the legal threshold of temporary relief has not been met and having in mind the contemptuous conduct of the 1st plaintiff, it is necessary to preserve the *status quo* of the suit property pending the conclusion of the hearing of this matter and final determination on merits. As to costs, this court finds that, for the reasons that the 1st plaintiff abused the court process, she shall personally bear the costs of the motion. In the end, and for the above reasons and findings, this court hereby issues the following disposal orders: -

a) The chief land registrar is directed to forthwith cancel entries number 12 and 13 registered on 11/09/2023 under presentation numbers 786 and

786B, in the certificate of title over L.R. No. 20523 Mavoko Municipality (IR 126163).

- b) The chief land registrar is directed to forthwith cancel the provisional certificate of title over L.R. No. 20523 Mavoko Municipality (IR 126163) (if any) held by the plaintiffs.**
- c) Pending the hearing and determination of this suit, an order of status quo that is prevailing on L.R. No. 20523 Mavoko Municipality (IR 126163) shall be maintained.**
- d) Status quo means that from the date of issuance of this ruling, and save for compliance with orders (a) and (b) above by the chief land registrar, there shall be no further dealings with, transacting on, entering, trespassing, taking-over, damaging, constructing on, developing, marketing, offering for sale, selling, transferring, charging, alienating or in any other manner dealing with the L.R. No. 20523 Mavoko Municipality (IR 126163) by either of the parties, their proxies, agents, servants, employees and/or any other person acting on their behalf.**
- e) That, from now henceforth, no other or further applications shall be entertained by the court.**
- f) That a mention date shall be given for purposes of issuing a further hearing date.**

g)The costs of this motion, which are assessed at kshs. 40,000/- shall be personally borne by the 1st plaintiff, Jennifer Muthoni Morigi, and payable within 30 days hereof.

h)The notice of motion dated 13/12/2024 is dismissed with no orders as to costs.

Orders accordingly.

Delivered and Dated at Machakos this 18th day of November, 2025.

**HON. A. Y. KOROSS
JUDGE
18.11.2025**

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform

In the presence of;

Ms. Kanja Court Assistant.

Miss. Kamene for Plaintiff.

Mr. Lusi for defendant.

Mr. Wamudi holding brief for Mr. B. T. Atancha for Interested Party.

Mr. Thuo holding brief for Mr. Ileri for Interested Party.

ORIGINAL