



Karanja v Kinuthia; Keter & 5 others (Interested Parties) (Environment and Land Case 113 of 2016) [2025] KEELC 8435 (KLR) (3 December 2025) (Ruling)

Neutral citation: [2025] KEELC 8435 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT AND LAND CASE 113 OF 2016**

**CK NZILI, J
DECEMBER 3, 2025**

BETWEEN

PATRICK MBANYA KARANJA PLAINTIFF

AND

JAMES KINUTHIA DEFENDANT

AND

JOSEPH KIPTO ARAP KETER INTERESTED PARTY

JONATHAN AYODI INTERESTED PARTY

GORDON OTIENO OPIDI INTERESTED PARTY

DIRECTOR OF SURVEY INTERESTED PARTY

COUNTY SURVEYOR- TRANS NZOIA COUNTY INTERESTED PARTY

ATTORNEY GENERAL INTERESTED PARTY

RULING

1. Through an application dated 13/10/2025, the plaintiff seeks a temporary injunction barring and restraining the 2nd interested party, his agents, and or employees from constructing, taking possession, or in any manner interfering with his title, occupation, or possession of title No. Kitale Municipality Block 7/363, pending hearing and determination of this suit. The reasons are contained on the face of the application and in a supporting affidavit of Patrick Mbanya Karanja, sworn on 9/10/2025.
2. It is deposed that the plaintiff is the registered owner of parcel No. Kitale Municipality Block 7/363, situated in Kitale Town. The plaintiff deposes that when the matter came up on 1/10/2025, it was reluctantly adjourned at the request of the 2nd interested party. The plaintiff deposes that, in the company of his advocate on record, after the court session, passed by the locus in quo, only to find a



fresh perimeter wall and two small stone structures that had been built on the suit land as per annexed photos marked PMK-(1).

3. The plaintiff deposes that upon enquiring from the person whom he had given authority to operate a garage on the plot, he was informed that the 2nd interested party was the one doing the construction, whom he called, and indeed he confirmed the same.
4. Further, the plaintiff deposes that he was surprised since the structure was freshly erected and was hardly two weeks old and incomplete. The plaintiff deposes that it is evident that the 2nd interested party had intentionally sought an adjournment on 1/10/2025, to enable him to complete the construction and forcefully take possession of the disputed land.
5. The plaintiff deposes that the 2nd interested party only joined the suit in 2023 and had never possessed or claimed the suit land as belonging to him.
6. The plaintiff deposes that the acts of the 2nd interested party are not only unlawful, but also done in bad faith to defeat the court process, hence the reliefs sought.
7. The 2nd interested party opposes the application through a replying affidavit sworn by Jonathan Ayodi on 1/11/2025. He denies having at any time trespassed or encroached on land title No. Kitale Municipality Block 7/363, hence the reason he was not sued in the primary suit, since he has been occupying his own portion of land since 2012, where the alleged perimeter wall encloses the said plot.
8. The 2nd interested party deposes that his plot has been leased out to Jua Kali mechanics since 2013 to date, without any interference and or complaint from either the plaintiff nor any other person or neighbours.
9. The 2nd interested party deposes that the alleged wall and structures on the photos exhibited by the plaintiff are within plot No. Kitale Municipality Block 7/363; otherwise, apart from the photos, the plaintiff has not exhibited any cogent or credible evidence that the said developments are actually on the disputed land, by way of a surveyor's report or findings.
10. Equally, the 2nd interested party terms the allegation that he intentionally sought an adjournment on 1/10/2023 to complete the perimeter wall as far-fetched reasoning, scandalous, malicious, and was made in bad faith.
11. The 2nd interested party deposes that part of the perimeter fence was erected before the filing of this suit in 2016; otherwise, the plaintiff has no claim whatsoever against the portion of land that he has been occupying and or working on since 2012.
12. The 2nd interested party, by way of written submissions dated 3/11/2025, urges the court to find the purported photographs exhibited by the plaintiff as not in compliance with Section 106B of the *Evidence Act*, or accompanied by a surveyor's report to be taken as conclusive evidence of encroachment.
13. Further, the 2nd interested party claim in this matter is captured in the statement of defence and counterclaim dated 22/5/2023. He claims legal ownership of plot No. 22, vide an initial Part Development Plan that accompanied the allotment letter, which was never owned or allocated to the plaintiff as Kitale Municipality Block 7/363, initially plot No. 19.
14. The 2nd interested party avers that in 2012, he bought the surveyed commercial plot No. 22 on valuable consideration from Francis K. Lupisia, the initial allottee, pursuant to an allotment letter dated 28/9/1992, vide PDP attached to the same, as part of 7 unsurveyed plot Nos. 18-24, from which he took vacant possession and has continued to use the portion while processing a title deed.



15. The 2nd interested party, by way of a counterclaim, prays that the survey that was done and generated title No. Kitale Municipality Block 7/363, be declared as unlawfully and arbitrarily erroneous, done without considering all the unsurveyed plots that belonged and formed part of the initial original Part Development Plan comprised of 7 plots, effectively overlapping plot No. 22, which is yet to be titled, in total disregard of the original Part Development Plan.
16. The 2nd interested party averred and prayed that an order be issued for the resurvey of Kitale Municipality Block 7/58, 99, 100, 363, and 475, and one unnumbered plot as was intended in the original Part Development Plan. In support of the defence and counterclaim, the 2nd interested party relies on an allotment letter dated 28/9/1992, accompanied by a Part Development Plan, a sale agreement dated 21/12/2013, a demand notice, property rates, notes, and rates clearance certificates for plot No. 22.
17. On the other hand, the plaintiff's claim is captured in the plaint dated 21/7/2016. He avers that he owns title No. Kitale Municipality Block 7/363 was initially allocated to Peter Liatu Olol Tekan as plot No. 21, which he took possession of in 1998. The plaintiff sued the defendant for eviction and a permanent injunction after establishing encroachment and erecting a perimeter fence on it in January 2016.
18. The alleged part of encroachment is captured in a letter dated 14/6/2016 by the County Surveyor, Trans Nzoia.
19. The record shows that by a ruling dated 19/1/2023, the court directed that Joseph Kiptoo Arap Keter, Jonathan Ayodi, Manasseh Njenga, Gordon Otieno Opidi, the Director of Survey, the County Surveyor, and the Hon. Attorney General be joined as defendants and not interested parties.
20. Pleadings were to be amended to reflect the new parties, starting with the plaint, issuance of summons to enter appearance, within 10 days of the ruling date. Upon service of the amended plaint, the new defendants had 10 days to file their statement of defence and counterclaim; otherwise, the leave shall lapse.
21. Parties were also to file their paginated trial bundles. A mention to confirm compliance was issued for 3/4/2023. From the many mentions of 27/3/2023, 24/5/2023, 26/7/2023, 2/10/2023, 6/11/2023, 22/11/2023, 18/12/2023, 29/1/2024, 22/2/2024, 8/4/2024, 14/5/2024, 15/7/2024, 28/10/2024, 29/10/2024, 31/10/2024, 6/11/2024, and 10/12/2024, before my predecessor and later on 5/2/2025, 8/4/2025, 11/6/2025, and 1/10/2025, there is no evidence that the orders and directives of the ruling dated 19/1/2023 were varied, set aside, reviewed, or vacated through an appeal.
22. The court has not come across any amended plaint that was filed accompanied by a fresh summons to enter appearance duly extracted, issued by the Deputy Registrar, and served upon the defendants within the ten days as directed by the court or at all.
23. Order 8 Rule 6 of the Civil Procedure Rules is clear that failure to amend after an order as directed or within the statutory timelines makes the order lapse. See *Maranga -vs- Mwangi & Others ELC Case No. 38 of 2014 [2025] KLR*.
24. The law is that unless summons to enter appearance are filed, extracted, and served upon a party, such a party cannot purport to file any pleadings. It is through summons to enter appearance that a party is invited to a suit as a defendant. Without summons to enter appearance, there cannot be any proper pleadings filed by a defendant or a third party by whatever description.



25. In this suit, the court on 19/1/2023 was clear on the capacity that the named parties were going to join the matter as defendants and not in any other description. A party cannot choose to disobey a court order, especially in the capacity it should join the suit. There were clear directions and timelines within which the intended defendants were to be invited to join the suit.
26. The failure to file, extract, and serve summons to enter appearance as ordered by the court within 10 days rendered the suit by the plaintiff defective. See Kenya National Highway Authority -vs- Kariuki & 8 others (Civil Appeal. 130 of 2020) [2023] KEHC 17352 (KLR) (Civ) (11 May 2023) (Judgment). The obligation was on the plaintiff to follow court orders and to comply with them as per the ruling of 19/1/2023. For close to 2 years, the plaintiff has been aware of this, and so have been the other parties. No one can blame the court for not complying with its orders. Without any pleadings specifically directed against the 2nd interested party by the plaintiff, there cannot be any basis for making the application dated 13/10/2025.
27. The inevitable consequence is that the plaintiff's suit, per the plaint dated 21/7/2016, stands struck out and so are the subsequent pleadings allegedly filed by the third parties, contrary to the orders issued on 19/1/2023, with no order as to costs.
28. Orders accordingly.

RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 3RD DAY OF DECEMBER 2025.

In the presence of:

Court Assistant - Dennis

Kiarie for 3rd interested party present

Onyancha for the 2nd interested party present

Maina Kamau for the plaintiff absent

Imainata for Nyamu for the defendant present

HON. C.K. NZILI

JUDGE, ELC KITALE.

