

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC SUIT NO. 198 OF 2012

CONSOLIDATED WITH ELC SUIT NO. 206 OF 2012

VERONICA WANJIRU NGIBUINI 1ST

PLAINTIFF

IRENE N.KAGENI 2ND

PLAINTIFF

AMY KUMICINSKI 3RD

PLAINTIFF

JOHN KUMICINSKI 4TH

PLAINTIFF

VERSUS

REAH MARIE GITHAIGA 1ST

DEFENDANT

JOHN MWENJA NGUMBA 2ND

DEFENDANT

FRANCIS NDERITU NDIRANGU 3RD

DEFENDANT

SILAS ANGUICHE OTIATO 4TH

DEFENDANT

DOUGLAS MUCHOMBA 5TH

DEFENDANT

ELC SUIT NO. 198 OF 2012

Ruling

SHADRACK KIMANI 6TH
DEFENDANT

DUNCAN MWANGI 7TH
DEFENDANT

RONALD MUTISO MUBUA T/A
R.M MUTISO & CO.ADVOCATES 8TH
DEFENDANT

JOSEPH MUREITHI 9TH
DEFENDANT

JOSEPH MAINGI 10TH
DEFENDANT

STEPHEN NDAMBUKI.....11TH
DEFENDANT

PETER KANYI 12TH
DEFENDANT

JOHN KARIUKI 13TH
DEFENDANT

SAMUEL MWANGI 14TH
DEFENDANT

SAMUEL KARIUKI 15TH
DEFENDANT

GEORGE KIOKO 16TH
DEFENDANT

DANIEL MURATHA 17TH
DEFENDANT

RULING

1. What is before the Court for determination is the 1st, 3rd and 4th Defendant's Notice of Motion application dated the 14th January 2025 where they seek the following Orders:

a) Spent.

b) That this Honourable court be please to order that the original title deed for Land Reference Number 209/15460 (IR 57288), the original transfer documents and all other documents deposited by the law firm of R.M Mutiso & Co. Advocates in Court on the 23rd of January 2018 be released to the 1st, 3rd and 4th Defendants/Applicants' Advocates Messrs, Wachira Maina & Company Advocates.

c) That the costs of this application be provided for.

2. The application is premised on grounds on its face and on the 1st Defendant's supporting affidavit. She avers that judgment

was entered in this matter on 25th July 2024 where the Court ordered eviction of the Plaintiffs and the registration of the suit property in the names of trustees of Stars for Jesus Ministries and a Decree has already been extracted to that effect. Further, that the Plaintiffs were granted forty five (45) days stay of execution which lapsed on 9th September 2024 and no Appeal has been filed thus the documents sought, ought to be issued.

3. The application is opposed by the Plaintiffs vide the 3rd Plaintiff's replying affidavit. She avers that the Plaintiffs' advocates filed a Notice of Appeal against the judgement and orders issued herein and that they are yet to receive certified copies of judgement and proceedings for purposes of filling the Appeal. She annexed a Notice of Appeal dated 26th July 2024, letters requesting for certified proceedings and judgement of even date and receipts. She contends that this Court's judgement of 25th July 2024 did not give an explicit order for the transfer of the suit property to the 1st, 3rd and

4th Defendants as they did not file a Counterclaim for transfer of the suit property.

4. She asserts that the 1st, 3rd and 4th Defendants cannot hold the suit property in their personal capacity nor in their capacity as trustees of Stars for Jesus Ministries as provided for in clause 8 (b) (ii) of the said Society's Constitution as the issue of the Society's valid trustees is in contestation and a ground of appeal, thus granting them the documents sought will render the Plaintiffs' appeal nugatory.
5. The application was canvassed by way of written submissions.

Submissions

6. The Plaintiffs submit that the prayers sought do not align with this Court's judgement of 25th July 2024, thus the application is an attempt to amend the judgement. Further, that parties are bound by their pleadings and since the 1st, 3rd and 4th Defendants did not raise the issue as to whether the

title to the suit property would be transferred to them and in what capacity, the issue cannot be raised post judgement. To this end, the case of **Kinyanjui Kamau v George Kamau Njoroge, Civil Appeal No. 132 of 2003** was relied upon. It is also their submission that the suit property belongs to Stars for Jesus Ministries, a society and if the Defendants were to hold it as trustees, they have to present evidence that they are officials of the Society as its Constitution provides for the periodic change of officials at the Society's Annual General meeting.

7. The 1st, 3rd and 4th Defendants did not file submissions.

Analysis and Determination

8. Upon consideration of the instant Notice of Motion application including the respective affidavits as well as the Plaintiffs' submissions, the only issue for determination is whether the 1st, 3rd and 4th Defendants are entitled to the ownership documents sought.

9. Judgement was entered in this matter on 25th July 2024, in which the Court found that Stars for Jesus Ministries is entitled to the suit property.
10. The 1st, 3rd and 4th Defendants have sought for the Court to order that original title deed for Land Reference Number 209/15460 (IR 57288), the original transfer documents and all other documents deposited by the law firm of R.M Mutiso & Co. Advocates in Court on the 23rd of January 2018 be released to their Advocates Messrs, Wachira Maina & Company Advocates. They contend that the forty five (45) days stay of execution granted to the Plaintiffs has lapsed and they have not filed an Appeal.
11. The Plaintiffs have opposed the application insisting that the prayers sought do not align with this Court's Judgement of 25th July 2024, thus the application is an attempt to amend the said judgement. They argue that the issue of transfer of the suit property cannot be raised post-judgment and that the Defendants cannot hold the suit property in their

personal capacity or as trustees of Stars for Jesus Ministries, as the society's Constitution provides for periodic changes in officials, and the Defendants have not provided evidence of their status as officials.

12. On the Plaintiffs' contention that the issue of transfer was not raised in the suit and that it is being raised post judgement. On perusal of the impugned Judgement, I note at Paragraph 98, Judge Lucy Mbugua held that the 1st, 3rd and 4th Defendants are entitled to the suit land on behalf of the Society. I note the Plaintiffs have admitted that they are yet to lodge a substantive Appeal. Further, that the stay of execution Orders lapsed. The Plaintiffs insist that there is no indication if the 1st, 3rd and 4th Defendants are trustees of Stars of Jesus Ministries, however, since they have not furnished Court with the names of the new trustees noting that in the aforementioned Judgement, it is the said 1st, 3rd and 4th Defendants who the Court expressly stated were entitled to the suit property, I have no recourse but to allow

them access documents to the said suit property on behalf of the aforementioned Ministry.

- 13.** In the circumstances, I find the Notice of Motion application dated the 14th January 2025 merited and will allow it, but make no Order as to costs.

DATED SIGNED AND DELIVERED AT NAIROBI THIS 2ND DAY OF DECEMBER, 2025

CHRISTINE OCHIENG
JUDGE

In the presence of:

Karwanda holding brief for Wachira for 1st, 3rd and 4th
Defendant Applicants

Court assistant: Joan