

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT BUSIA

ELC LC NO E021 OF 2024

**COUNTY GOVERNMENT OF BUSIA
PLAINTIFF**

= VERSUS =

**TABITHA WANJIRU WAHOME (sued as the legal Representative
of the Estate of JAMES NDIRANGU NG'ANG'A (Deceased) 1ST
DEFENDANT**

**JAMES NDIRANGU NG'ANG'A (sued as the Legal Representative
of the Estate of BENSON NG'ANG'A NDIRANGU (Deceased) ... 2ND
DEFENDANT**

**PRAMUKH CASH AND CARRY LIMITED 3RD
DEFENDANT**

= AND =

**LAND REGISTRAR, BUSIA COUNTY INTERESTED
PARTY**

**BUSIA DAIRY CO-OPERATIVE SOCIETY LTD
APPLICANT**

R U L I N G

1. **THE COUNTY GOVERNMENT OF BUSIA** (herein the Plaintiff) filed this suit on 11th September 2024 in which it impleaded **TABITHA WANJIRU WAHOME** sued as the legal Representative of the Estate of **JAMES NDIRANGU NG'ANG'A, JAMES NDIRANGU NG'ANG'A** sued as the legal

Representative of the Estate of **BENSON NG'ANG'A NDIRANGU** and **PRAMUKH CASH AND CARRY LIMITED** (the 1st, 2nd and 3rd Defendants respectively) and **THE LAND REGISTRAR BUSIA COUNTY** (the Interested Party). The Plaintiff sought judgment against the Defendants in the following terms with respect to the land parcel **NO BUSIA MUNICIPALITY/20** (the suit property):

a) **A declaration that the process of transfer, registration and issuance of certificate of lease from JAMES NDIRANGU NG'ANG'A (deceased) to BENSON NG'ANG'A NDIRANGU (deceased) over the suit property NO BUSIA MUNICIPALITY/20 was irregular, unprocedural and illegal and thus all subsequent transfers, registrations and certificates of lease obtained thereafter are null and void ab initio.**

b) **Upon grant of prayer (2) above, an order of rectification of the register by way of cancellation of the entries relating to the**

transfer of lease and certificate of lease registered and issued to BENSON NGENGA NDIRANGU (deceased) on 3rd June 2016 and subsequently to the 3rd Defendant on 29th January 2019 over land parcel NO BUSIA MUNICIPALITY/20 by the Land Registrar Busia be hereby issued.

c) A declaration that JAMES NDIRANGU NG'ANG'A (deceased) was already in gross and/or violation of the terms and special conditions of the existing lease issued on 1st December 2016 and the law at the time of transferring the lease to BENSON NG'ANG'A NDIRANGU (deceased) on 9th May 2016 thus warranting the forfeiture of the lease back to the Plaintiff.

d) Upon grant of prayer (b) and (c) above, an order be hereby issued forfeiting the lease issued to JAMES NDIRANGU NG'ANG'A (deceased) on 1st December 2006 to the

Plaintiff and that the same to revert back to the Plaintiff.

- e) An order for vacant possession of land parcel NO BUSIA MUNICIPALITY/20 be hereby issued against the Defendants.**
- f) An order of permanent injunction restraining the Defendants either by themselves or servants, employees and/or agents from alienating, transferring, charging, leasing, entering, taking possession or in the manner howsoever described from dealing with land parcel NO BUSIA MUNICIPALITY/20 other than by way of surrender to the Plaintiff.**
- g) An order be hereby issued compelling the 1st Defendant to pay the Plaintiff all the accumulated rates and/or tax arrears imposed upon land parcel NO BUSIA/MUNICIPALITY/20 and owed to the Plaintiff for the period between 18th December 2012 and 3rd June 2016.**

- h) Cost of the suit.**
- i) Interest of (g) and (h) above of Court rates.**
- j) Any other relief the Court deems fit and just to grant.**

2. The basis of the Plaintiff's claim is that it has a statutory and constitutional duty to plan, sub-divide and allocate leasehold lands within its jurisdiction including but not limited to the suit property. That in 2006, the suit property was allocated to **JAMES NDIRANGU NG'ANG'A** (deceased) by the then defunct **COUNTY COUNCIL OF BUSIA** and a certificate of lease was issued on 18th January 2006. That the deceased **JAMES NDIRANGU NG'ANG'A** was not to sell, transfer, sub-let charge or part with the possession of the land without the prior written consent of the then **COUNTY COUNCIL OF BUSIA** now **THE COUNTY GOVERNMENT OF BUSIA**. That the said **JAMES NDIRANGU NG'ANG'A** was also to obtain approval of developments plans of the Plaintiff within a period of six (6) months of registration of the lease and develop the land within twenty-four (24) months of actual registration of the lease. However, in 2016, **JAMES NDIRANGU NG'ANG'A**

illegally and un-procedurally transferred the suit property to **BENSON NG'ANG'A NDIRANGU** who had not even obtained any development plans approval. **BENSON NG'ANG'A NDIRANGU** was then issued with a Certificate of lease without the approval of the Plaintiff or the National Land Commission. The said **BENSON NG'ANG'A NDIRANGU** then irregularly transferred the lease to the 3rd Defendant who was then issued with a certificate of lease.

3. It is the Plaintiff's case that the transfer of the suit property from **JAMES NDIRANGU NG'ANG'A** to **BENSON NG'ANG'A NDIRANGU** (both deceased) and subsequently to the 3rd Defendant was irregular, un-procedural and illegal particulars of which have been pleaded in paragraphs 15 and 16 of the plaint and which I need not delve into for purposes of this ruling. It is the Plaintiffs case therefore that it has incurred losses in terms of rates and/or taxes which have never been remitted by the 1st Defendant for the period between 18th December 2006 and 3rd June 2016 when the 1st Defendant was the legal holder of the lease.

4. Only the 3rd Defendant and the Interested Party filed defences to the Plaintiffs case.
5. The Interested Party filed a statement of defence dated 30th September 2024 in which it pleaded, inter alia, that the 1st Defendant was never the owner of the suit property. The Interested Party pleaded further that it is a stranger to the averments that it participated in any fraud and put the Plaintiff to strict proof thereof. That there are infact other previous cases with respect to the suit property and there is no cause of action against it.
6. The 3rd Defendant on its part filed a defence dated 27th September 2024 in which it denied any knowledge of the terms and conditions of the lease as pleaded in paragraph 8 of the plaint. It pleaded further that if the approval of any development plans was not sought by **JAMES NDIRANGU NG'ANG'A**, which is denied, the same was justified and was due to a Court case filed by the parties to whom the Plaintiff has brought this suit as proxy to and which cases were well within the knowledge, acceptance and understanding of the then **MUNCIIPAL COUNCIL OF BUSIA** officials the

predecessor of the Plaintiff. The 3rd Defendant pleads estoppel by record on the part of the Plaintiff and denied the allegation of any illegalities or breach on its part. It pleaded further that any rates were duly settled by the 1st Defendant's estate to the defunct **MUNICIPAL COUNCIL OF BUSIA** through Court deposits as ordered and of which the Plaintiff's current proxies were party to.

7. The 3rd Defendant added that there is pending in **BUSIA HIGH COURT** a **JUDICIAL REVIEW APPLICATION NO E003** of **2023 R -V- COUNTY GOVERNMENT OF BUSIA & PRAMUKH CASH AND CARRY LTD** which concerns the same subject matter hence this suit is subjudice.
8. The 3rd Defendant further pleads that this suit is res-judicata on account of previous concluded suits between the Plaintiff and the 1st Defendant and another between the Plaintiff and the 2nd and 3rd Defendants which suits were concluded. This suit is therefore incompetent and un-maintainable in law for the above reasons. Further this suit is statute barred and should be struck out.

9. The 1st and 2nd Defendants did not file any defence or other pleadings in response to the Plaintiff's suit.
10. However, the **BUSIA DAIRY CO-OPERATIVE SOCIETY LTD** (hereinafter the Applicant) and the 3rd Defendant filed a Chamber Summons dated 12th February 2025 and a Notice of Motion dated 25th August 2025 respectively and which are the subject of this ruling.
11. Vide its Chamber Summons dated 12th February 2025, the Applicant seeks the following orders:
- 1) The Applicant be jointed into this suit as a co-Defendant and counter claimant.**
 - 2) That costs of the application be provided for.**

The Applicant's Chamber Summons is premised on **Sections 1A, 1B and 3A** of the **Civil Procedure Act** as well as **Order 1 Rule 10 and 14** of the **Civil Procedure Rules**. It is anchored on the grounds set out therein and also supported by the affidavit of **TITUS WANZALA** its chairman.

12. It is the Applicant's case that the suit property belongs to it and it is surprised that the parties herein are litigating over it. That it was allocated the suit property on 1st April 1974 by the

then **MUNICIPAL COUNCIL OF BUSIA**. However, the Applicant ran into rates arrears and the then **BUSIA MUNICIPAL COUNCIL** sued it for recovery of the same vide **BUSIA SRM CC NO 232** of **2004** in which the Court ruled that it should pay rate arrears of Kshs.146,333.50 or the **BUSIA MUNICIPAL COUNCIL** would auction the suit property. However, the Applicant paid the debt on 5th April 2025 and the suit property was not auctioned. That later, **JAMES NDIRANGU NG'ANG'A** purported to have been allocated the suit property by the **MUNICIPAL COUNCIL OF BUSIA** through the same auction which had been averted. The lease was later issued to the Applicant and it is surprised that the Plaintiff is now turning around to sanitize the illegal lease issued to **JAMES NDIRANGU NG'ANG'A**. It is therefore in the interest of justice that the Applicant be joined in this case to protect it's interest in the suit property because all the transfers upon the 3rd Defendant are illegal and it will suffer irreparable loss if the orders sought are not granted.

13. The following documents are annexed to the Chamber Summons application.

- 1) Copies of beacon certificate and letter of allotment issued to the Applicant for **BUSIA TOWNSHIP/20**.
- 2) Certificate of Registration for the Applicant.
- 3) Copies of pleadings and order issued in **BUSIA SENIOR RESIDENT MAGISTRATE COURT CIVIL CASE NO 232 of 2004 BUSIA MUNICIPAL COUNCIL -V- BUSIA DAIRY FARMERS CO-OPERATIVE SOCIETY**.
- 4) Copy of letter dated 15th April 2009 from the **MUNICIPAL COUNCIL OF BUSIA** addressed to the **COMMISSIONER OF LANDS**.
- 5) Copy of letter dated 26th September 2012 addressed to the **A.G.** from the **MINISTRY OF LANDS**.
- 6) Copy of letter dated 6th October 2023 from the **COUNTY GOVERNMENT OF BUSIA** indicating that property **NO BUSAI/MUNICIPALITY/20** has arrears of Kshs.638,281 in rates.
- 7) Copy of letter dated 15th April 2009 from the clerk **BUSIA MUNICIPAL COUNCIL** addressed to the **COMMISSIONER OF LANDS**.

- 8) Copy of letter dated 7th April 2011 addressed to the **DISTRICT LAND REGISTRAR BUSIA** from the **CHIEF LAND REGISTRAR.**
- 9) Copy of letter dated 18th April 2011 addressed to **JAMES NDIRANGU NG'ANG'A** from the **DISTRICT LAND REGISTRAR BUSIA.**

The Interested Party filed grounds of opposition to the Applicant's Chamber Summons and raised the following issues:

- 1) The Applicant has not fulfilled the conditions set out in **Order 1 Rule 1** of the **Civil Procedure Rules** on joinder of parties.
- 2) The Applicant has no legal capacity to institute this application as it is a non-existent body.
- 3) The application is an abuse of the Court process as the Applicant is using this application to institute a fresh suit against the Defendants yet the same has been heard and determined vide **BUSIA PMCC NO 229** of **2017 JAMES NDIRANGU NG'ANG'A -V- BUSIA DAIRY CO-OPERATIVE.**

The Applicant's Chamber Summons should therefore be struck out with costs.

14. On its part the Plaintiff filed grounds of opposition dated 20th March 2025 against the Applicant's Chamber summon. It stated that the Applicant has not met the threshold of **Order 1 Rule 1** of the **Civil Procedure Rules**. In any case, the Applicant is a non-existent entity and lacks the locus standi to join this suit and has not established any interest in the suit property. The Plaintiff stated that the Chamber Summons by the Applicant be dismissed or struck out with costs.
15. The 3rd Defendant, through its Director, **MAHESKUMAR CORDHANBHAI SHANABHAI PATEL**, filed a replying affidavit dated 12th March 2025 in response to the Applicant's Chamber Summons and deposed, inter alia, that the Applicant is a fictitious person that cannot be enjoined as a party to any suit without the permission of the Court. That the Applicant has not been in existence for the last ten (10) years as per copy of the Gazette Notice and the said **TITUS WANZALA** who signed the supporting affidavit is an imposter being used by third Parties, particularly the Plaintiff. That the dispute over

the suit property involving the Applicant and the 1st and 2nd Defendants was concluded after which the 3rd Defendant purchased the suit property and when the Applicant was informed to pay the taxed costs of Kshs. 300,000, it was found to be a non-existent entity. The Applicant should only be allowed to participate in these proceedings upon executing security for costs and indemnity to all litigants to the tune of Kshs.75,000,000 which the 3rd Defendant has so far invested in developing the suit property. This Court should also order the said **TITUS WANZALA** to appear in Court and disclose the officials of the Applicant, its head office account number and all the returns made for the last three (3) years and/or the documents reviving it after it was declared extinct.

16. The following documents are annexed to the replying affidavit:

- 1) Copy of an order issued on 3rd November 2008 in **BUSIA PMCC NO 229 of 2007 JAMES NDIRANGU NG'ANG'A -V- BUSIA DAIRY FARMERS CO-OPERATIVE SOCIETY.**
- 2) Copy of a letter dated 30th October 2017 addressed to the members of **BUSIA DAIRY FARMERS** from the **COMMISSIONER OF CO-OPERATIVES** on it's cancellation.
- 3) Copy of plaint filed in **BUSIA ELC CASE NO 31 of 2012 A.G. -V- JAMES NDIRANGU.**
- 4) Copy of order issued in **BUSIA ELC CASE NO 31 of 2012** on 29th March 2017.
- 5) Bundle of receipts issued to **JAMES NDIRANGU NG'ANG'A** by the **BUSIA MUNICIPAL COUNCIL** on account of rates.
- 6) Copy of certificate of lease issued to **JAMES NDIRANGU NG'ANG'A** on 18th December 2005 in

respect to the land parcel **NO BUSIA MUNICIPALITY/20.**

On its part, the 3rd Defendant filed a Notice of Motion dated 25th August 2025 premised under the provisions of **Sections 1A, 1B, 3 and 7** of the **Civil Procedure Act** and **Order 40 Rule 1, 2, and 3** of the **Civil Procedure Rules**. It seeks the following orders:

- 1) Spent**
- 2) That the Honourable Court do strike out this suit for being res-judicata as between the 1st, the 2nd Defendant and those claiming under them and through them being the 3rd Defendant.**
- 3) That costs of the application and the suit be paid by the Plaintiff.**
- 4) That this Honourable Court do issue such orders as to deems fit to grant in the circumstance of this case.**

The Motion is based on the grounds set out therein and is supported by the 3rd Defendant's supporting affidavit of even

date sworn by **MAHESKUMAR CORDHANBAI SHANABHAI PATEL** the Co-Director.

17. It is the 3rd Defendant's case that it purchased the suit property from the 1st and 2nd Defendants who were the previous owners and was duly issued with the lease by the Land Registrar. That the 3rd Defendant has comprehensively developed the suit property and upon approval of the building plans, some officers from the Plaintiff's Government intended to frustrate them by trying to disown the approval plans given to it by the Plaintiff. The 3rd Defendant moved to Court vide **BUSIA JUDICIAL REVIEW APPLICATION NO E003 of 2023** and obtained an order of Mandamus restraining the Plaintiff from interfering with the construction on the suit property and which was nearing completion. Upon realizing that their efforts had been thwarted, the Plaintiff filed this suit to frustrate the 3rd Defendant over issues which the Court had previously determined in previous suits. That the issues being canvassed in this suit were the subject matter between the **MUNICIPAL COUNCIL OF BUSIA** which is the predecessor of the Plaintiff and **JAMES NDIRANGU NG'ANG'A** and **BENSON**

NG'ANG'A NDIRANGU and were conclusively determined in 2007 and no appeal was filed. This suit is therefore res judicata and should be struck out.

ORIGINAL

18. Annexed to the supporting affidavit are the following documents:

- 1) Copy of order issued by **W. MUSYOKA J** on 19th October 2023 in **BUSIA JUDICIAL REVIEW APPLICATION NO E003 of 2023.**
- 2) Order issued in **BUSIA PMCC NO 229 of 2007 - JAMES NDIRANGU NG'ANG'A -V- BUSIA DAIRY FARMERS CO-OPERATIVE SOCIETY.**
- 3) Copy of eviction order issued on 9th February 2009 in **BUSIA PMCC on 229 of 2007 - JAMES NDIRANGU NG'ANG'A -V- BUSIA DAIRY FARMERS CO-OPERATIVE SOCIETY.**

19. **TITUS WANZALA** filed a supplementary affidavit dated 29th July 2025 in which he deponed, inter alia that the Motion has fulfilled the conditions of **Order 1 Rule 1** of the **Civil Procedure Rules** and the Applicant has the capacity to file the Motion and he is not a fictitious person that the letter annexed to the 3rd Defendant's replying affidavit only has a letter from the Commissioner of Co-operative and is only a warning letter and is not a cancellation of the Applicant's

registration, that there is no evidence to demonstrate that he is an imposter that the averment calling upon the Applicant to deposit the sum of Kshs.75,000 smirks in the face of the Applicant's constitutional right to access justice. In any event it is **MAHESKUMAR CORDHANBHAI SHANABAHAI PATEL** who is an imposter and has not produced any document to show that he is a director of the 3rd Defendant.

20. **INNOCENT MBOKO** the Plaintiff's County Attorney filed a replying affidavit dated 3rd November 2025 in response to the 3rd Defendant's Motion. He has deposed therein, inter alia, that the Motion is a sham since the judicial review order was only for leave to file the judicial review application but the substantive Motion was not filed. That the documents filed by the 3rd Defendant do not indicate that either the Plaintiff or 3rd Defendant were parties in those cases. The **BUSIA DAIRY FARMERS COOPERATIVE SOCIETY** does not in any way represent the **COUNTY GOVERNMENT OF BUSIA** or the defunct **BUSIA MUNICIPAL COUNCIL**. That it is evident that there has never existed any suit between the Plaintiff or its predecessor against any of the parties herein over the subject

matter. The 3rd Defendant's Motion should therefore be dismissed and this suit heard on merit.

21. The Court directed on 7th October 2025 and with the consent of the parties, that both the Applicants Chamber Summons dated 12th February 2025 and the 3rd Defendant's Notice of Motion dated 25th August 2025 be canvassed simultaneously by way of written submissions. However, only **MR ONSONGO** instructed by the firm of **OBWOGÉ ONSONGO & COMPANY ADVOCATES** for the Applicant and **MR OKUTTA** instructed by the firm of **OUMA-OKUTTA & ASSOCIATES ADVOCATES** for the 3rd Defendant filed their submissions. **MR WEKESA** counsel for the Plaintiff informed the Court that he would not be filing any submissions on the two applications. The other parties did not participate in the two applications.
22. I have considered the two applications the rival affidavits and annextures as well as the submissions by counsel. I shall consider the two applications sequentially

1. APPLICANT'S CHAMBER SUMMONS DATED 12TH

FEBRUARY 2025.

23. By this application, the Applicant being **BUSIA DAIRY CO-OPERATIVE SOCIETY LTD** seeks the main order that it be enjoined in this suit as a co-Defendant. It has premised the application under **Order 1 Rule 10** of the **Civil Procedure Rules. Sub-rule (2)** of the said **Rules** provides that:

(2) "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."

The Applicant's case is that it is the owner of the suit property which was allocated to it on 1st April 1974 by the then **MUNICIPAL COUNCIL OF BUSIA**. It is therefore surprised that the parties herein are litigating over the suit property without involving it. That there was litigation being **BUSIA SENIOR RESIDENT MAGISTRATE'S COURT CIVIL CASE NO 232** of **2004** where the Applicant was ordered to pay rates arrears of Kshs.146,337.50 to stop the auction of the suit property. The same was paid and the lease issued to **JAMES NDIRANGU NG'ANGA** in respect to the suit land was cancelled and the Applicant was issued with the certificate of lease. However, other than copies of various letters including one dated 15th March 2010 addressed to the **COMMISSIONER OF LANDS** by the then **MUNICIPAL COUNCIL BUSIA** requesting that the certificate of lease for the suit property be issued to the Applicant, and also the copy of letter of allotment dated 23rd June 2010 and issued to the Applicant in respect to the suit property, the Applicant has not availed any copy of certificate of lease for the suit property. A letter of allotment, it is now well settled, is not evidence of

ownership of land - **JOSEPH N. K. ARAP NGOK -V- MOIJO OLE KEIWUA & OTHERS - C.A. CIVIL APPLICATION NO 60 of 1997 [1997 KECA 1 KLR]**. On the other hand, the 3rd Defendant in support of his Motion dated 25th August 2025 has annexed a copy of the **JUDICIAL REVIEW APPLICATION NO E003 of 2023** in which it has filed a copy of the certificate of lease for the suit property issued in its name on 29th January 2019. It cannot be correct therefore for **TITUS WANZALA** the Applicant's chairman to depone, as he has done in paragraph (two) 2 of his supporting affidavit dated 12th February 2025;

2: "That the true owner of land parcel NO BUSIA/MUNCIPALITY/20 is the Applicant and the Applicant is surprised that the parties herein are litigating on its parcel of land without involving it."

For as long as the 3rd Defendant remains the registered proprietor of the suit property as is clear from the certificate of lease issued on 29th January 2019, and unless and until the certificate of lease is cancelled by a Court, the 3rd Defendant

retains **“the absolute ownership”** of the suit property as provided in **Section 24(a)** of the **Land Registration Act**. Given those undisputed facts, it is difficult to understand why the Applicant would wish to be joined in these proceedings as a Co-Defendant. In the case of **PRAVIN BOWRY -V- JOHN WARD AND ANOTHER 2015 eKLR**, the Court of Appeal considered the principles to be considered in an application for joinder of parties to a suit. The Court referred to the Uganda case of **DEPORTED ASIANS CUSTODIAN BOARD - V- JAFFER BROTHERS LTD 1999 1 E.A 55 (SCU)** where the Court stated:

“For a party to be joined on ground that his presence in the suit is necessary for effectual and complete settlement of all questions in the suit, one of two things has to be shown. Either it has to be shown that the orders which the Plaintiff seeks in the suit would legally affect the interest of that person, and that it is desirable, for avoidance of multiplicity of suits, to have such person joined so that he is bound by the decision of the Court in

that suit. Alternatively, a person qualifies (on application of a defendant) to be joined as a co-defender, where it is shown that the defendant cannot effectually set a defence he desires to set up unless the person is joined in it, or unless the order to be made is to bind that person.” Emphasis mine.

That is the route which the Court also took in the case of **CIVICON LIMITED -V- KIVUWATT LTD & 2 OTHERS, 2015 eKLR**. Generally, the Court has the power and discretion to add a party to a suit and the main question is whether the presence of that person is necessary for the Court to completely and effectively decide the dispute at hand. Also, the Court will consider what prejudice the party seeking to be enjoined is likely to suffer if the application to be joined is declined. Therefore, the Applicant herein was required to show and demonstrate sufficient interest in the suit property. As already stated above, the Applicant describes itself as the **“true owner of the land, parcel number BUSIA/MUNICIPALITY/20”**. It has not, however, explained to

this Court in what manner it can be described as the “**true owner**” of the suit property when the 3rd Defendant has been holding the certificate of lease thereto since 2019 and there is nothing to suggest that the Applicant is in occupation or possession thereof. It is not clear therefore what interest, equitable or otherwise, the Applicant seeks to pursue in this suit to enable this Court order that it be joined as a co-Defendant.

24. It must also be remembered, as was stated in the case of **CENTRAL KENYA LTD -V- TRUST BANK LTD AND OTHERS C.A CIVIL APPEAL NO. 222 of 1998 [2000 KECA 367 KLR]** that the decision as to who to sue is essentially that of the Plaintiff and the Court’s duty is essentially to consider the allegation made against the named Defendants and if it considers that there are other parties who should have been joined or were improperly joined, to make appropriate directions. The Plaintiff as is commonly said is the “**dominus litis**” - **CIVICON LIMITED -V- KIVUWATT LTD & 2 OTHERS** (Supra). The term dominus litis is defined in **BLACK’S LAW DICTIONARY 10TH EDITION** as:

“The party who makes the decisions in a lawsuit.”

In this case, the Plaintiff being the **“dominus litis”** has made a decision not to implead the Applicant among the Defendants. Indeed, the Applicant has filed grounds of opposition to the Applicant’s Chamber Summons describing it as a non-existent entity lacking the necessary **“locus”** to join the suit and having not established **“any interest”** in the suit property to merit being joined. Further, that the Applicant **“has not met the threshold of Order 1, Rule 1 of the Civil Procedure Rule 2010.”** In his submissions in support of the Applicant’s Chamber Summons, it’s counsel **MR. ONSONGO** states at page 3 that the Applicant’s quest of justice is pegged by inter alia, **“that it is the legal proprietor of the land in issue, namely BUSIA/MUNICIPALITY/20 to the exclusion of anybody else excluding all the parties herein.”** Counsel then goes on to cite the letters herein as suggesting that the Applicant having been **“allotted”** the suit property **“in 1974”** is the **“true owner”** of the suit property. But as I have already stated above, without the certificate of lease, the letters

produced by the Applicant alone do not clothe it with any interest in the suit property.

25. The upshot of all the above is that the Applicant's Chamber Summons dated 12th February 2015 is devoid of any merit. It is dismissed with costs to the Plaintiff and the 3rd Defendant.

2. THE 3RD DEFENDANT'S NOTICE OF MOTION DATED 25TH AUGUST 2025:

26. The 3rd Defendant seeks the striking out of the Plaintiff's suit for being res-judicata as the subject matter herein has already been determined in previous suits involving the 1st and 2nd Defendants from whom the 3rd Defendant purchased the suit property. The doctrine of res-judicata is captured in **Section 7** of the **Civil Procedure Act** as follows:

7: "No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in

a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.”

In paragraph 10 of his supporting affidavit, **MAHESHKUMAR CORDHANBHAI SHANABHAI PATEL** has deposed as follows:

10: “That we swiftly moved to Court and obtain (sic) order of mandamus restraining them from so doing and construction is nearing completion (see copy of restrained order in Judicial Review NO E003 of 2023 as MC SP-1)”.

I have perused the file in **BUSIA HIGH COURT JUDICIAL REVIEW CASE NO E003** of **2023**. The proceedings show that on 18th October 2023 **MUSYOKA J** granted the 3rd Defendant leave to file the substantive Motion for an order to remove to the High Court and quash a decision by the Plaintiff herein (the Respondent in that case) cancelling the approval plan issued to the 3rd Defendant (the Applicant in that case) on 15th September 2023, authorizing them to develop the suit

property. **MUSYOKA J** also directed that the leave do operate a stay of the decision by the Plaintiff (the Respondent therein) which had purported to cancel the said approval plans issued to the 3rd Defendant (the Applicant therein). However, the record in **BUSIA HIGH COURT JUDICIAL REVIEW CASE NO E003** of **2023** does not show if the substantive Judicial Review Motion has been heard to date and with what results. All there is, is the grant of leave. However, the substantive Motion is yet to be heard and determined. Clearly, therefore, the plea of res-judicata cannot apply in the circumstance. What can apply is the plea of sub-judice and which is provided for in **Section 6** of the **Civil Procedure Act** as follows:

6: “No Court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such

suit or proceeding is pending in the same or any other Court having jurisdiction in Kenya to grant the relief claimed.”

While the pendency of **BUSIA HIGH COURT JUDICIAL REVIEW APPLICATION NO E003** of **2023** does not support the 3rd Defendant’s plea of res judicata, it certainly supports the fact that this suit is in fact sub judice and which must therefore be struck out.

27. The 3rd Defendant’s counsel has also submitted that among the other suits involving the suit property is **BUSIA CHIEF MAGISTRATE’S COURT CIVIL CASE NO 229** of **2007**, **JAMES NDIRANGU NG’ANG’A -V- BUSIA DAIRY FARMERS COOPERATIVE SOCIETY** in which a conclusive determination was made and the **BUSIA DAIRY FARMERS COOPERATIVE SOCIETY** who were the Defendant in that suit and who are the Applicants herein were evicted from the suit property which was then vested in the 1st and 2nd Defendants who then sold it to the 3rd Defendant. I have looked at the Order issued in **BUSIA CHIEF MAGISTRATE CIVIL CASE NO 229** of **2007** on 3rd November 2008 in which judgment was entered in

favour of **JAMES NDIRANGU NG'ANG'A** and the Defendant therein who is the Applicant herein was indeed ordered to be evicted from the suit property. It is not clear if any appeal was filed against that judgment by **HON E. H. KEAGO (RESIDENT MAGISTRATE)**.

28. The plea that this suit is res judicata **BUSIA CHIEF MAGISTRATE'S COURT CIVIL CASE NO 229** of **2007** appears to me to be well founded. It is clear from the pleadings herein that the 3rd Defendant purchased the suit property from the 1st and 2nd Defendants. In paragraphs 5 and 6 of his supporting affidavit **MAHESHKUMAR CORDHANBHAI SHANABHAI PATEL** the 3rd Defendant's director has deposed as follows:

5: "That I know our company has been sued as 3rd Defendant in relation to land parcel NO BUSIA/MUNICIPALITY/20."

6: "That the said parcel of land and interest on it was sold to us by 1st and 2nd Defendants who were the previous owners."

29. The Applicant annexed to his Chamber Summons application the proceedings in **BUSIA SENIOR RESIDENT MAGISTRATE'S COURT CIVIL CASE NUMBER 232 of 2004** between **BUSIA MUNICIPAL COUNCIL** (the predecessor of the Plaintiff herein) **-V- BUSIA DAIRY FARMERS CO-OPERATIVE SOCIETY** wherein a consent order was recorded on 9th September 2004 granting **BUSIA DAIRY FARMERS COOPERATIVE SOCIETY** who were the Defendant time to settle the decretal sum or in default the suit property would be sold by the public auction. That is a Court order and shows that the suit property was the subject of a case between the Applicant and then **BUSIA MUNICIPAL COUNCIL** whose interest in the suit property is now represented by the Plaintiff.

30. Explanation **NO 6** under Res judicata reads as follows:

6: "Where persons litigate *bona fide* in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the

purposes of this section, be deemed to claim under the persons so litigating.”

31. Arising out of the judgment in favour of the 1st Defendant against the Applicant herein over the suit property, it is clear that what the Plaintiff herein is claiming is in common with what the then **BUSIA MUNICIPAL COUNCIL** was claiming in **BUSIA CHIEF MAGISTRATE’S COURT, CIVIL CASE NO. 229 of 2007**, and which was determined by a competent Court. It is, of course, also clear that the Plaintiff herein as well as the 2nd and 3rd Defendants including the Applicant were not parties in **BUSIA CHIEF MAGISTRATE’S COURT, CIVIL CASE NO. 229 of 2007**. However, it must be obvious now that the Plaintiff is pursuing the same interest which was the subject of litigation in **BUSIA CHIEF MAGISTRATE’S COURT, CIVIL CASE NO. 229 of 2007**. It is also obvious that the interest which the 1st and 2nd Defendants are protecting in this suit is the common interest which the 3rd Defendant who purchased the suit property from the 1st and 2nd Defendants is protecting. That is what Explanation **NO. 6** of **Section 7** of the **Civil Procedure Act** is all about.

Therefore, even though the Plaintiff and the 2nd and 3rd Defendants were not parties in **BUSIA CHIEF MAGISTRATE'S COURT, CIVIL CASE NO. 229 of 2007**, it is well settled that the principle of res judicata is not defeated by simply adding new parties to a case and re-opening issues which have already been determined. Parties cannot litigate in instalments, and the doctrine of res judicata is meant to bring litigation to an end, afford parties closure and respite from the spectre of being vexed by issues which have already been determined by another competent Court.

The doctrine of res judicata is based on the principle of finality and is aimed at preventing a multiplicity of suits which not only clog the Courts but also occasion unnecessary costs to the parties - **JOHN FLORENCE MARITIME SERVICES LTD & ANOTHER -V- CABINET SECRETARY TRANSPORT & INFRASTRUCTURE & OTHERS SUPREME COURT PETITION NO 17 of 2015 [2021, KESC 39 KLR]**. This suit is clearly res judicata, **BUSIA CHIEF MAGISTRATE'S COURT, CIVIL CASE NO. 229 of 2007**, and must be struck out.

32. Finally, this suit is also clearly statute barred under **Section 7** of the **Limitation of Actions Act**, which reads:

7: “An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action occurred to him or, if it first occurred to some person through whom he claims to that person.”

In his replying affidavit dated 22nd December 2023 and filed in **BUSIA HIGH COURT JUDICIAL REVIEW APPLICATION NO. E003 of 2023** in response to the 3rd Defendant’s application, **PETER K. ODIMA**, the Plaintiff’s Chief Executive Member for Lands, Housing and Urban Development, deposed at paragraphs 4 and 5 as follows:

4: “That the plot BUSIA/MUNICIPALITY/20 was originally procedurally allotted to BUSIA DAIRY OPERATIVE SOCIETY by the Commissioner of Lands on 27th of March 1974, with the prior consent of the Respondent’s predecessor, the MUNICIPAL OF BUSIA, and a

duly certified Beacon Certificate defining the boundaries thereof prepared on 12th July 1995 as per F/R NO. 105/6 Annexed and marked PKO-1 is a copy of the letter of Allotment and Beacon”.

5: “That I am advised by my counsel on record which advice I verily believe to be true that interestingly, the plot number BUSIA/MUNICIPALITY/20 however appears to have allegedly been allocated to one JAMES NDIRANGU NG’ANG’A vide alleged letter of allotment dated 14th June 1999 and a lease allegedly issued on 1st December 2006 under mysterious circumstances, 16 years after the plot had been allotted to BUSIA DAIRY FARMERS COOPERATIVE SOCIETY and without prior consent of the Respondent’s predecessor, the MUNICIPAL COUNCIL OF BUSIA as required under Section 48 of the Registered Land Act (cap 300 repealed).

Annexed and marked PKO-2 is a copy of the alleged letter of Allotment, lease and the recorded statement of the former Busia Municipal Council Town Clerk, Mr Jonathan Kerio, dated 16th October 2014.”

The copy of lease issued by **JAMES NDIRANGU NG'ANG'A**, the 1st Defendant herein on 1st December 2006, is annexed to that affidavit. The said **COUNTY GOVERNMENT OF BUSIA** which was the Respondent in **BUSIA HIGH COURT JUDICIAL REVIEW APPLICATION** is of course now the Plaintiff in this case. It is therefore also clear that the Plaintiff must have known as far back as 1st December 2006 that the lease to the suit property had been issued to the 1st Defendant. The Plaintiff have pleaded herein that the 1st Defendant obtained the said lease to the suit property through a series of irregularities and illegalities and so too was the subsequent transfer to the 2nd and 3rd Defendants. Indeed in paragraph 7 of its plaint, the Plaintiff has pleaded thus.

7: “The Plaintiff aver that in the year 2006, the land parcel number BUSIA/MUNICIPALITY/20

measuring 0.09 Hectares was allocated to JAMES NDIRANGU NG'ANG'A (deceased) by the then defunct County Council of Busia, now COUNTY GOVERNMENT OF BUSIA, the Plaintiff, and a Certificate of lease issued to that effect on 18.12.2006."

This suit was filed on 11th September 2024 some 18 years after the 1st Defendant had obtained the title to the suit land. There is nothing to suggest that the Plaintiff only became aware about the lease issued in favour of the 1st Defendant subsequent to 18th December 2006 and if so, when that discovery was made. If anything, it is clear from the above averments that all along, the Plaintiff has been aware that the 1st Defendant was registered as the proprietor of the lease to the suit property 18 years before this suit was filed. The lease issued to the 1st Defendant over the suit property cannot be impeached due to the law of Limitations and it follows, therefore, that neither can the lease issued to the 2nd Defendant and, subsequently, to the 3rd Defendant. And although the issue of limitation has not been raised in the 3rd

Defendant's Motion, that is a matter of law which this Court can raise suo moto as it goes to the jurisdiction of this Court and therefore the competency of the Plaintiff's suit – see for instance **GEETA BHARAT SHAH & 4 OTHERS -V- OMAR SAID MWATAYARI & ANOTHER C.A. CIVIL APPEAL NO 46 of 2008 (MOMBASA) [2009 KECA 126 KLR]**. The Plaintiff's suit was statute barred from inception. Indeed the 3rd Defendant pleaded in paragraph 18 of its defence as follows:

18: “The 3rd Defendant further state that the suit herein is bad in law for being statute barred and shall raise an application on notice to have it struck out with costs to the 3rd Defendant.”

And although the 3rd Defendant's Notice of Motion makes no reference to the statute of limitation, it must be now obvious from what I have stated above that the issue of limitation can be raised suo moto by the Court and in the circumstances of this case, it is well taken by the 3rd Defendant. The only option left for this Court is to also strike out the Plaintiff's suit

for being statute barred by **Section 7** of the **Limitation of Actions Act**. The Plaintiff's claim cannot be pursued against any of the Defendants herein by virtue of being statute barred.

33. Ultimately therefore and having considered the Applicant's Chamber Summons dated 12th February 2025 and the 3rd Defendant's Notice of Motion dated 25th August 2025, this Court issues the following disposal orders:

- 1) The Applicant's Chamber Summons application dated 12th February 2025 is dismissed with costs to the Plaintiff and the 3rd Defendant.**
- 2) The 3rd Defendant's Notice of Motion dated 25th August 2025 is allowed as prayed.**
- 3) The Plaintiff's suit is both res-judicata BUSIA CHIEF MAGISTRATE'S COURT CIVIL CASE NO 229 of 2007 and sub-judice BUSIA HIGH COURT JUDICIAL REVIEW APPLICATION NO E003 of 2023.**
- 4) The Plaintiff's suit is also statute barred.**

5) The Plaintiff's suit is struck out with costs to the 3rd Defendant only.

BOAZ N. OLAO

JUDGE

11TH DECEMBER 2025

Ruling dated, signed and delivered by way of electronic mail on this 11th day of December 2025.

BOAZ N. OLAO

JUDGE

11TH DECEMBER 2025