



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC NO. 79 OF 2017

SAFE

HAVEN

LIMITED

.....**PLAINTIFF**

-VERSUS-

**ORNELLA BONTEMPI LUIGI (suing as the legal
representative**

of the Estate of BONTEMPI LUIGI- deceased)

.....**DEFENDANT**

AND

**KHADIJA SHARIFF MOHAMED INTENDED INTERESTED
PARTY**

RULING

1. There are two applications for determination. The first, dated 3 June 2025, was filed by the Plaintiff seeking the following orders: -

a) Spent.

b) That this honourable court be pleased to grant an order directing the deputy registrar to execute transfer instruments in respect of the suit property being known as Subdivision No. 5650 Malindi (Vol No. LT 21, Folio B 20A, File 7031) in favor of the Plaintiff as decreed in the judgment delivered on the 22/9/2022.

c) That costs of this suit be provided for.

2. That application is supported by an affidavit sworn by Mr. Samuel Wahome Kimani, counsel for the Plaintiff. It is based on the ground that judgment was entered in this suit on 22nd September 2022, in which the court ordered specific performance against the Defendant with respect to the suit property known as Subdivision No. 5650 Malindi (Vol No. LT 21, Folio B 20A, File 7031) (the suit property). The court declared the Plaintiff a bona fide purchaser of the suit property.

3. In furtherance of the enforcement of the judgment, the Plaintiff caused an indenture for the transfer of the suit property to be prepared and executed by the parties. However, the Lands Registry declined to register the transfer on the grounds that it ought to have been executed by the registered proprietor,

Bontempi Luigi (deceased), or by a duly authorized legal representative with a full grant of representation, the grant held by his representative being limited solely to the defense of this suit.

4. The second application, dated July 9, 2025, was filed by the intended interested party in response to the aforementioned application, seeking the following orders: -

a) Spent.

b) Spent.

c) Spent.

d) That this honourable court be pleased to grant orders for stay of execution of the judgment delivered by Justice J.O. Olola on 22nd September 2022, together with the decree issued on 31st October 2022, and any other consequential orders therein, indefinitely as against the interested party (Khadija Shariff Mohamed) and the successors entitled.

e) That the costs be provided for.

5. The application is supported by an affidavit, sworn on the same date by the interested party, who stated that she was the registered, legal, and beneficial owner of the suit property,

having inherited it from Shariff Mohamed and Bougainvillea Cottages Limited. The property had previously been acquired through a Court Judgment in **ELC No. 82 of 2014** in favor of Shariff Mohamed and Bougainvillea Cottages Limited, and the Plaintiff, who had been a party in that suit, abandoned the proceedings.

- 6.** She added that the Plaintiff's attempts to set aside the judgment (**Miscellaneous No. 53 of 2022**) were dismissed with costs. The deponent contended that the Plaintiff's present application to transfer the property lacked legal basis, disregarded the existing judgment and property transfer, and sought to unlawfully dispossess her. She sought the Court's protection of her rights and an order for costs in her favor.
- 7.** In response, the Plaintiff filed a reply affidavit, sworn on 22 July 2025 by Radhika Muralee Thayyil, a Director of the Plaintiff, who stated that the Applicant's application was an abuse of the court's process, brought by a party with no legal standing and not part of the original suit. She averred that the Applicant failed to disclose her affiliation as the daughter of Shariff

Mohamed and that a similar prior application dated 9 February 2023 had been withdrawn.

8. The deponent denied that the Plaintiff had abandoned proceedings in **ELC No. 82 of 2014**, clarifying that it filed the present suit because its claim was directed solely against Bontempi Luigi. She further stated that the prior Miscellaneous Application No. 53 of 2022 was dismissed on procedural grounds, not on the merits, and that the existence of **ELC No. 82 of 2014** was known to the court when it delivered judgment in the present case.
9. She stated that the Applicant and her affiliates never sought to be joined during the litigation and were therefore estopped from filing post-judgment applications. She added that the Court was *functus officio* after delivering judgment, that the Applicant had no *locus standi*, and that the temporary joinder sought was legally untenable. The deponent described the application as frivolous, vexatious, and scandalous, seeking to embarrass the administration of justice, and urged that it be struck out with costs.

10. Alongside the replying affidavit, the Plaintiff filed a notice of preliminary objection dated 16th July 2025 premised on similar grounds of objection raised in the replying affidavit, that is:

- 1) *THAT this suit was heard and determined, crystallizing in a Judgment dated 22nd September 2022, therefore rendering the court functus officio and devoid of any jurisdiction to entertain such an application for joinder post-judgment.*
- 2) *THAT the continued pendency of this application is a clear abuse of the court process as a similar application dated 9th February 2023 was filed and later withdrawn before delivery of the Ruling.*
- 3) *THAT the Applicant has no locus standi to bring this application as the substantive orders sought can only be sought by someone who was a party to the suit before Judgment was rendered.*
- 4) *THAT the order sought for temporary joinder for a limited purpose is an absurdity and unknown in law as joinder is permanent in nature.*

11. The applications were canvassed through written submissions, which I have considered. I frame the following issues for determination:

i) Whether the court has jurisdiction to entertain the application dated July 9, 2025.

ii) Whether an indefinite stay of execution of the judgment delivered on 22 September 2022 should be granted.

iii) Whether the application dated 3 June 2025 is meritorious.

12. The Plaintiff challenged the jurisdiction of the Court on two grounds: first, that the Court was *functus officio* after delivering judgment; and second, that the intended interested party lacked *locus standi* to seek the substantive orders post-judgment, having not been a party to the original suit. In my view, to determine these issues, it is necessary first to address whether joinder of the intended interested party is permissible at this stage.

13. Order 1, Rule 10(2) of the Civil Procedure Rules, 2020, provides that 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. In my view, the above rule contemplates a situation in which the suit has not been heard and determined, which is why it provides for the joinder of a party, either as Plaintiff or Defendant, or of a party whose presence before the Court may be necessary to enable the Court to effectually and completely adjudicate upon and settle all questions involved in the suit. Where a judgment has been entered, it is my considered opinion that a party cannot be joined to the proceedings unless the judgment is either reviewed and/or set aside in a manner that accommodates the participation of the joined party.

15. That is not the case here. The Court rendered judgment on September 22, 2022. The intended interested party was not a party to the original suit, and no application has been made to set aside or review the judgment to accommodate her participation. Any attempt to join her at this stage would be

futile. Consequently, the prayer for a stay of execution cannot be sustained.

16. On the merits of the application dated 3 June 2025, it is evident that both the Plaintiff and the intended interested party rely on valid judgments of a superior court. The successful parties in ELC No. 82 of 2014 (Shariff Mohamed and Bougainvillea Cottages) executed their judgments before the Plaintiff herein. In the circumstances, this Court cannot direct the Deputy Registrar to sign the transfer documents in respect of the suit property, as doing so would be futile. The records show that the suit property has since been transferred to a third party (the intended interested party) and is no longer in the name of the Defendant.

17. In light of the foregoing, the Plaintiff's application for the execution of the transfer instruments dated 3 June 2025 is without merit.

18. The outcome is that both applications, dated 3 June 2025 and 9 July 2025, are hereby dismissed. Each party shall bear its own costs.

**Dated, signed, and delivered electronically in Malindi on
December 17, 2025.**

E. K. MAKORI

JUDGE

In the presence of:

Mr. George for the Plaintiff

Mr. Matheka for the Intended Interested party

Happy: Court Assistant