

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERICHO
ELC CASE NO. E001 OF 2020 (OS)

ANDREW KIPKOSKEI TOO.....
PLAINTIFF

VERSUS

FRANCIS ARAP TERER
(Legal Administrator to the estate of the late SARAH KEBOR KIGEN
alias KIGENY CHEBOR (deceased).....
.....DEFENDANT

AND

JOHNSTONE TENGECHA.....1ST INTERESTED
PARTY

JOHN LANGAT.....2ND INTERESTED
PARTY

JOHN KIMUTAI TERER.....3RD INTERESTED
PARTY

AND

LUCIA CHELANGAT.....4TH INTENDED INTERESTED
PARTY

GRACE CHELANGAT.....5TH INTENDED INTERESTED
PARTY

GILBERT KIPRONO KEMBOI.....6TH INTENDED INTERESTED
PARTY

RULING.

Introduction.

1. This ruling is in respect of the Plaintiff/Applicant's Notice of Motion application dated 10th November, 2025. The application is expressed to be brought under **Order 40 Rules 1 & 2, Order 51 Rule 1, Order 1 Rule 10 (2)** of the **Civil Procedure Rules**

and **Sections 1A, 1B & 3A** of the **Civil Procedure Act**.

2. The application seeks the following orders;

a. *Spent*

b. *That this Honourable Court be pleased to enjoin Lucia Chelangat, Grace Chelangat and Gilbert Kiprono Kemboi as the 4th, 5th and 6th Interested Parties in this matter.*

c. *Spent*

d. *That this Honourable Court be pleased to issue an order of injunction to restrain the Defendant, 1st, 2nd, 3rd Interested Parties and the Intended Interested Parties, their agents, employees, relatives or any body acting on his (sic) behalf from burying and/or interfering (sic) the remains of*

Samson Kiprono Terer alias Richard Terer (deceased) on the suit properties known as Title Number Kericho/Keбенeti/2201, Title Number Kericho/Keбенeti/2202 and Title Number Kericho/Keбенeti/2204 and Title Number Kericho/Keбенeti/2198 (subdivided into title numbers Kericho/Keбенeti/3254, Kericho/Keбенeti/3255 and Kericho/Keбенeti/3256) pending the hearing and determination of the suit herein. (sic)

e. That the OCS Sondu Police Station and area Chief Sigowet Location to enforce this order.

f. That costs of this application be provided for.

- 3.** The application is based on the grounds on its face and the supporting affidavit of **Andrew Kipkoskei Too** sworn on 10th November, 2025.

Factual Background.

4. The Plaintiff/Applicant commenced the present proceedings vide the Originating Summons dated 16th September, 2020 where he seeks the determination of the following questions;

a. Whether the Applicant herein is entitled under Section 38 of Limitation of Actions Act to be registered as the absolute proprietor of the portions of land comprised in LR Kericho/Kebeneti/2198, 2201, 2202 & 2204.

b. Whether the parcels LR Kericho/Kebeneti/2198, 2201, 2202 & 2204 were derived from the original LR Kericho/Kebeneti/945 owned by the deceased.

c. Whether the Respondent was registered as owner in transmission for himself (sic) and in trust for the Applicant.

d. Whether the Respondent has acted equitably and with equity in allocating benefit from the deceased's land as trustee. (sic)

e. Whether the Applicant is entitled to equitably share (sic) and benefit of the suit portions of land.

- f. Whether the trust created herein should be determined and the properties stated shared equitably taking into account past benefits derived by the Applicant.**
- g. Whether the Respondent should transfer the said portions of parcels of land to the Applicant.**
- h. Whether in default of the Respondent to transfer the said land above, the Deputy Registrar of the Court should execute all such documents as may be necessary for the registration of the Applicant as proprietor of the above parcels of land.**
- i. Whether the Respondent should pay the costs of this Originating Summons.**

- 5.** The Defendant/Respondent filed a Replying Affidavit sworn on 16th October, 2020 in response to the Originating Summons.
- 6.** The 1st, 2nd and 3rd Interested Parties/Respondents filed a Replying Affidavit sworn by **Johnstone Tengecha** (the 1st

Interested Party/Respondent) on 19th May, 2022 in response to the Originating Summons.

- 7.** The application under consideration first came up for hearing on 10th November, 2025 when the Court certified it urgent and issued orders of *status quo*. The Court also issued directions that the application be served upon the Respondents.
- 8.** The application came up for hearing on 17th November, 2025 when the Plaintiff/Applicant was granted more time to serve the Defendant/Respondent with the application.
- 9.** On 24th November, 2025 the Court issued directions that the application be canvassed by way of written submissions. On 4th December, 2025 the matter was mentioned to confirm filing of submissions and then reserved for ruling.
- 10.** In response to the application, the Defendant/Respondent filed a Replying Affidavit sworn on 18th November, 2025. The

1st, 2nd & 3rd Interested Parties/Respondents and the 6th Intended Interested Party/Respondent filed a Replying Affidavit sworn by **John Kimutai Terer** the 3rd Interested Party/Respondent on 14th November, 2025. The 4th and 5th Intended Interested Parties/Respondents filed a Replying Affidavit sworn by **Lucia Chelangat** the 4th Intended Interested Party/Respondent on 14th November, 2025.

The Plaintiff/Applicant's Contention.

- 11.** The Plaintiff/Applicant contends that between the years 1994 and 2013, he purchased a portion of land parcel No. **Kericho/Kebeneti/2198 measuring 2.80 acres**, a portion of land parcel No. **Kericho/Kebeneti/2201 measuring 0.7 acres**, a portion of land parcel No. **Kericho/Kebeneti/2202 measuring 2.35 acres**, a portion of land parcel No. **Kericho/Kebeneti/2204 measuring 0.45 acres** from the beneficiaries of the estate of the late **Sarah Kebor Yegon** alias **Kigeny Chebor** (deceased).

- 12.** He also contends that he took possession of the said portions of land and has been in exclusive possession for a continuous period of over twenty-seven years.
- 13.** He further contends that he has made various developments on the said portions of land.
- 14.** It is his contention that neither the Defendant/Respondent nor the 1st, 2nd and 3rd Interested Parties/Respondents have been in occupation of the said portions of land since March, 1994.
- 15.** It is further his contention that the Intended Interested Parties/Respondents have also never been in occupation of the said portions of land.
- 16.** He contends that the Defendant/Respondent, the 1st, 2nd & 3rd Interested Parties/Respondents and the Intended

Interested Parties/Respondents have not made any developments on the said portions of land.

- 17.** He also contends that the said portions of land were vacant when he took possession which period was between the year 1994 and 2013.
- 18.** He further contends that he filed the present proceedings seeking orders of adverse possession with regard to the various portions of land that he had purchased.
- 19.** It is his contention that several witnesses have testified and that currently the matter is pending the hearing and determination of his application dated 20th February, 2025. He goes on to state that the pending application seeks for leave to file additional witness statements and/or adduce further evidence.

- 20.** It is also his contention that **Samson Kiprono Terer** alias **Richard Terer** (deceased), one of the beneficiaries of the estate of the late **Sarah Kebor Kigen** alias **Kigeny Chebor** (deceased) died on 3rd November, 2025 at Sigowet Sub-County Hospital where he was receiving treatment.
- 21.** It is further his contention that the remains of **Samson Kiprono Terer** alias **Richard Terer** (deceased) were removed from the hospital on 9th November, 2025 for burial on 10th November, 2025.
- 22.** He contends that the Defendant/Respondent, the 1st, 2nd & 3rd Interested Parties/Respondents and the Intended Interested Parties/Respondents intend to bury **Samson Kiprono Terer** alias **Richard Terer** (deceased) in either one of the suit parcels of land.

- 23.** He also contends that the parcels of land that the deceased is likely to be buried on are **Kericho/Kebeneti/2198** (subdivided into land parcel No's **Kericho/Kebeneti/3254, 3255 & 3256**), **Kericho/Kebeneti/2201, Kericho/Kebeneti/2202 or Kericho/Kebeneti/2204.**
- 24.** He further contends that the burial of the deceased on either of the said parcels of land would be a deliberate act to frustrate the ongoing proceedings.
- 25.** It is his contention that unless the Court intervenes, the Respondents in this application will proceed with the intended burial of **Samson Kiprono Terer** alias **Richard Terer** (deceased).
- 26.** It is also his contention that **Samson Kiprono Terer** alias **Richard Terer** (deceased) should not be interred on any of the suit parcels of land until the issue of ownership is heard and determined.

27. It is further his contention that it is in the interest of justice that the intended Interested Parties/Respondents be joined to the suit and all the Respondents in the application be restrained from burying the remains of **Samson Kiprono Terer** alias **Richard Terer** (deceased) on any of the suit properties.

28. He ends his deposition by stating that he stands to suffer irreparable loss and damage unless the orders sought are granted.

The Defendant/Respondent's Response.

29. In response to the application, the Defendant/Respondent filed a Replying Affidavit sworn on 18th November, 2025.

30. He deposes that the Plaintiff/Applicant's application has been overtaken by events, is an abuse of the Court process and it ought to be dismissed with costs.

- 31.** He also deposes that he has been advised by his advocates on record that temporary injunctions are futuristic in nature and are intended to restrain an activity that is yet to occur or which is in the process of occurring.
- 32.** He further deposes that the prayers sought by the Plaintiff/Applicant in the application under consideration have been overtaken by events as the burial took place on 10th November, 2025.
- 33.** It is his deposition that he has been advised by his advocates on record that the Plaintiff/Applicant's application has not met the principles set out in **Giella vs Cassman Brown and Co. Ltd [1973] EA 358.**
- 34.** It is his deposition that the Plaintiff/Applicant has not established a *prima facie* case and neither has he

demonstrated irreparable injury to warrant the issuance of the orders sought.

35. It is also his deposition that the onus is on the Plaintiff/Applicant to demonstrate that the inconvenience caused to him (Plaintiff/Applicant) would be greater than the inconvenience that will be caused to him (Defendant/Respondent) if an injunction is granted but the suit is ultimately dismissed.

36. It is further his deposition that the Plaintiff/Applicant resides on land parcel No. **Kericho/Kebeneti/2700** and cultivates land parcel No. **Kericho/Kebeneti/2200**. He goes on to state that the Plaintiff/Applicant has nothing to do with land parcel No. **Kericho/Kebeneti/2202** where the deceased was buried.

37. He deposes that the Plaintiff/Applicant contends that he purchased various portions of land from the beneficiaries of

the estate of **Sarah Kebor Kigen** alias **Kigeny Chebor** (deceased). In support of his contention he has attached an alleged agreement for sale which is not in the official language of the Court.

- 38.** He also deposes that the Plaintiff/Applicant ought to have translated the said agreement into the official language of the Court which translation could have been done by a certified translator. He goes on to state that the translated agreement ought to have been filed with an affidavit attesting to its accuracy for it to be admissible in Court.
- 39.** He further deposes that the alleged sale agreement was forged.
- 40.** He deposes that the Plaintiff/Applicant secretly initiated succession proceedings without the consent of the beneficiaries of the estate of the deceased.

41. He also deposes that the Plaintiff/Applicant was given a certificate of confirmation of grant which was issued on 18th June, 2020. He goes on to state that the Plaintiff/Applicant used the said Certificate of confirmation of grant to acquire the title deed for land parcel No. **Kericho/Kebeneti/2202** thereby disinheriting his deceased brother.

42. He further deposes that after he (Defendant/Respondent) discovered the existence of the Certificate of confirmation of grant, he moved the Court together with his brother, the 3rd Interested Party/Respondent and sought for revocation of the grant. He goes on to state that the Certificate of Confirmation of Grant issued to the Plaintiff/Applicant was revoked and a new certificate issued to him (Defendant/Respondent).

43. It is his deposition that after he got the Certificate of Confirmation of Grant, he took it to the Lands Registry. Upon the Land Registrar learning that the Plaintiff/Applicant

acquired title to land parcel No. **Kericho/Kebeneti/2202** illegally, the Land Registrar asked the Plaintiff/Applicant to return the said title deed for cancellation.

44. It is also his deposition that the Plaintiff/Applicant refused to return the said title deed and therefore the Land Registrar issued a thirty days' notice of cancellation vide gazette notice No. 490 that was dated 22nd January, 2021.

45. It is further his deposition that upon the lapse of thirty days, the Certificate of Title issued to the Plaintiff/Applicant was cancelled and it is therefore of no effect.

46. He deposes that the Plaintiff/Applicant has attached a fake title in order to mislead the Court. He goes on to state that the Plaintiff/Applicant has been using the said title to harass the persons in occupation of land parcel No. **Kericho/Kebeneti/2202.**

- 47.** He also deposes that the Plaintiff/Applicant should surrender the said title deed.
- 48.** It is his deposition that he has been advised by his advocates on record that a Certificate of Title that has been cancelled cannot be taken by the Court as *prima facie* evidence of ownership of land.
- 49.** It is also his deposition that land parcel No. **Kericho/Kebeneti/2202** belongs to his brother **Samson Kiprono Terer** (deceased). The land was allocated to his deceased brother in Kericho CM Succession Cause No. 49 of 2019.
- 50.** It is further his deposition that he has been advised by his advocates on record that producing a document that is obtained illegally in Court is a serious offence and it is punishable by imprisonment.

- 51.** He deposes that a Court cannot perpetuate an illegality.
- 52.** He also deposes that the suit property has already been distributed and registered in the names of the respective beneficiaries.
- 53.** He further deposes that they legally obtained the title to the suit property and therefore the Plaintiff/Applicant's allegations are baseless.
- 54.** It is his deposition that the Plaintiff/Applicant has forged documents in order to inflict pain on the *bonafide* land owners.
- 55.** It is also his deposition that he has established a *prima facie* case against the Plaintiff/Applicant.
- 56.** It is further his deposition that he has demonstrated that the inconvenience caused to him will be greater than the

inconvenience caused to the Plaintiff/Applicant if the orders sought are granted.

57. He ends his deposition by stating that the Plaintiff/Applicant's application should be dismissed with costs.

The 1st, 2nd & 3rd Interested Parties/Respondents and the 6th Intended Interested Party/Respondent's Response.

58. The 1st, 2nd & 3rd Interested Parties/Respondents and the 6th Intended Interested Party/Respondent filed a Replying Affidavit sworn by **John Kimutai Terer** the 3rd Interested Party/Respondent on 14th November, 2025.

59. He deposes that he has the authority of the 1st & 2nd Interested Parties/Respondents and the 6th Intended Interested Party/Respondent to swear the affidavit.

- 60.** He also deposes that the application under consideration has been overtaken by events because **Samson Kiprono Terer** alias **Richard Terer** (deceased) was buried on 10th November, 2025.
- 61.** He further deposes that the 1st, 2nd & 3rd Interested Parties/Respondents and the 6th Intended Interested Party/Respondent do not live and neither do they have any interest on land parcel No. **Kericho/Kebeneti/2202** where **Samson Kiprono Terer** alias **Richard Terer** (deceased) was buried.
- 62.** It is his deposition that he together with the Respondent (sic) herein were issued with a Certificate of Confirmation of Grant on 9th September, 2020 for the estate of **Kigeny Chebor** alias **Sarah Kibor Kigeny** (deceased). He goes on to state that they administered the said estate in a fair manner.

63. It is also his deposition that after the Certificate of Confirmation of Grant was issued, he was given a portion of land parcel No. **Kericho/Kebeneti/2198** which measured 1.48 Ha. He goes on to state that he subdivided the said portion of land into land parcel No's **Kericho/Kebeneti/3254, 3255** and **3256** to accommodate the 1st Interested Party/Respondent and the 6th Intended Interested Party/Respondent as they purchased portions of the said land.

64. It is further his deposition that the 2nd Interested Party/Respondent sold land parcel No. **Kericho/Kebeneti/3255** that had been registered in his name and relocated to Sondu.

65. He deposes that the 2nd Interested Party/Respondent has been sued maliciously as he discharged his interest in the said parcel of land.

66. He also deposes that **Samson Kiprono Terer** alias **Richard Terer** (deceased) was given a portion of land parcel No. **Kericho/Kebeneti/2202** measuring **0.953** Ha where he has now been interred.

67. He further deposes that the 1st & 2nd Interested Parties/Respondents and the 6th Intended Interested Party/Respondent reside on land parcel No. **Kericho/Kebeneti/3255**. He goes on to state that they purchased the said parcel of land and have been in occupation for the past seven years.

68. It is his deposition that the Plaintiff/Applicant has sued the 1st & 2nd Interested Parties/Respondents and the 6th Intended Interested Party/Respondent in bad faith.

69. It is also his deposition that the 5th Interested Party/Respondent was given a portion of land parcel No.

Kericho/Kebeneti/2201 measuring 1.43 Ha. He goes on to state that the 5th Interested Party/Respondent does not therefore have any claim over land parcel No. **Kericho/Kebeneti/2202.**

70. It is further his deposition that the Defendant/Respondent was allocated land parcel No. **Kericho/Kebeneti/2204** and has no claim over land parcel No. **Kericho/Kebeneti/2202.**

71. He deposes that on 18th June, 2020, the Plaintiff/Applicant obtained a Certificate of Confirmation of Grant for the estate of **Kigeny Chebor** alias **Sarah Kebor Kigeny** (deceased) and yet he was not a beneficiary of the said estate. He goes on to state that the said Certificate of Confirmation of Grant was issued in Succession Cause No. 49 of 2019.

72. He also deposes that the Plaintiff/Applicant apportioned for himself land parcel No. **Kericho/Kebeneti/2202.** He goes on to state that the Plaintiff/Applicant allegedly forged

signatures, appeared in Court during the Covid pandemic alone and was issued with a Certificate of Confirmation of Grant.

- 73.** It is his deposition that the Plaintiff/Applicant used the said Certificate of confirmation of Grant to get the title deed for land parcel No. **Kericho/Kebeneti/2202** and adds that the title deed was issued on 28th August, 2020.
- 74.** He further deposes that on 9th September, 2020 the said Certificate of Confirmation of Grant was revoked and land parcel No. **Kericho/Kebeneti/2202** given to his late brother **Samson Kiprono Terer** alias **Richard Terer** (deceased).
- 75.** It is his deposition that the order issued on 10th September, 2020 revoking the Certificate of Confirmation of Grant was served upon the Land Registrar, Kericho. He goes on to state that thereafter, the Land Registrar wrote the letter dated 16th July, 2020 (sic) to the Plaintiff/Applicant asking him to

surrender the title deed for land parcel No. **Kericho/Kebeneti/2202.**

- 76.** It is also his deposition that the Land Registrar degazetted the issuance of the said title deed (sic) and the title reverted back to his deceased brother.
- 77.** It is further his deposition that on 2nd January, 2021 a notice was issued in Gazette Notice No. 490 and **Samson Kiprono Terer** alias **Richard Terer** (deceased) was issued with the title deed for land parcel No. **Kericho/Kebeneti/2202.**
- 78.** He deposes that the Certificate of Confirmation of Grant issued on 9th September, 2020 still stands and its issuance has never been challenged.
- 79.** He also deposes that therefore, the Plaintiff/Applicant does not own the said parcel of land as alleged.

- 80.** He further deposes that the Plaintiff/Applicant is laying a *fake* claim over land parcel No. **Kericho/Kebeneti/2202.**
- 81.** It is his deposition that the Plaintiff/Applicant has never used land parcel no. **Kericho/Kebeneti/2198** which has now been subdivided into land parcel No's **Kericho/Kebeneti/3254, 3255 and 3256.**
- 82.** It is also his deposition that the Plaintiff/Applicant has also never used land parcel No's **Kericho/Kebeneti/2201, 2202 and 2204** as alleged.
- 83.** It is further his deposition that the alleged agreement for sale of land attached to the Plaintiff/Applicant's affidavit in support of the application does not state the purchase price and neither does it show when the last instalment was paid.

- 84.** He deposes that neither **Samson Kiprono Terer** alias **Richard Terer** (deceased) nor his wife were aware of said land sale agreement.
- 85.** He also deposes that he has been advised by his advocates on record that the application under consideration is an academic exercise.
- 86.** He further deposes that the Plaintiff/Applicant commenced the present proceedings which are pending hearing and determination.
- 87.** It is his deposition that this suit was initially filed against his late husband (sic) who was the 2nd Defendant but vide a ruling delivered on 24th February, 2022, the application dated 16th February, 2021 was dismissed. (sic)

- 88.** It is also his deposition that the Plaintiff/Applicant intends to claim land that does not belong to him by lying to Court and presenting a fake title.
- 89.** It is further his deposition that the Plaintiff/Applicant resides on land parcel No. **Kericho/Kebeneti/2700** and owns land parcel No. **Kericho/Kebeneti/2200** which is adjacent to land parcel No. **Kericho/Kebeneti/2202** where **Samson Kiprono Terer** alias **Richard Terer** (deceased) was buried.
- 90.** He deposes that it is not true that the Plaintiff/Applicant has been using land parcel No. **Kericho/Kebeneti/2202** as alleged.
- 91.** He ends his deposition by stating that the Court should dismiss the application under consideration and issue the following orders;

a. That it is and is hereby ordered that one Andrew Kipkoech Too do surrender to this

Court the degazetted title LR No. Kericho/Kebeneti/2202 to be returned to the Land Registrar Kericho County to be destroyed forthwith. (sic)

b. That the Plaintiff desist from dragging the 1st, 2nd 6th Interested parties over LR No. Kericho/Kebeneti/2202. (sic)

c. That the Plaintiff do pay costs to the 1st, 2nd 6th Interested Parties for being maliciously sued in bad faith over parcel number being LR No. Kericho/Kebeneti/2202. (sic)

d. That the permanent injunction be and is hereby issued restraining the Plaintiff, their agents, servants or any other person related to the Plaintiff from mention the names of the 1st, 2nd 6th Interested parties and linking them to parcel numbers LR No. Kericho/Kebeneti/2202, LR No. Kericho/Kebeneti/2201, LR No. Kericho/Kebeneti/2204, LR No. Kericho/Kebeneti/3254 and LR No. Kericho/Kebeneti/3256. (sic)

e. That the Plaintiff do issue unreserved apology in a paper of wide circulation within the Republic of Kenya by linking the

1st, 2nd 6th Interested Parties over LR No. Kericho/Kebeneti/2202 in the instant malafide suit. (sic)

The 4th and 5th Intended Interested Parties/Respondents Response.

- 92.** The 4th and 5th Intended Interested Parties/Respondents filed a Replying Affidavit sworn on 14th November, 2025 by **Lucia Chelangat** the 4th Intended Interested Party/Respondent. She deposes that she has the authority of the 5th Intended Interested Party/Respondent to swear the affidavit.
- 93.** She deposes that the application under consideration has been overtaken by events as **Samson Kiprono Terer** alias **Richard Terer** (deceased) who was her deceased husband, was buried on 10th November, 2025.
- 94.** She also deposes that she became aware of the application under consideration on 11th November, 2025 during a family meeting.

- 95.** She further deposes that sometime in the year 2020, the Plaintiff/Applicant filed succession cause No. 49 of 2019 and obtained a Certificate of Confirmation of Grant dated 18th June, 2020 and yet he was not a beneficiary of the estate of the deceased.
- 96.** It is her deposition that in the said grant, the Plaintiff/Applicant allocated himself a portion of land parcel No. **Kericho/Kebeneti/2201 measuring 1.154 Ha** leaving a portion of 0.283 Ha for the other beneficiaries.
- 97.** It is also her deposition that the 5th Intended Interested Party/Respondent was given a portion of land measuring 1.437 Ha.
- 98.** It is further her deposition that the Certificate of Confirmation of Grant was on 9th September, 2020 revoked because it was obtained by misrepresentation of facts. She

goes on to state that the Plaintiff/Applicant had also awarded himself land parcel No. **Kericho/Kebeneti/2202**.

99. She deposes that after the grant issued to the Plaintiff/Applicant was revoked, land parcel No. **Kericho/Kebeneti/2202** was given to her deceased husband.

100. She also deposes that she has lived on the said parcel of land openly together with her husband until his death.

101. She further deposes that the said parcel of land has four graves. She goes on to state that her deceased parents in law, her deceased son and now her deceased husband are buried on the said parcel of land.

102. It is her deposition that the said parcel of land is the place where she calls home and the right place to inter the

remains of the dead within their lineage as they do not have any other land.

103. It is also her deposition that her late husband's brothers were given portions of parcels of land that belonged to the estate of **Chebor** alias **Sarah Kesor Kiley** (sic).

104. It is further her deposition that **John Terer** was given land parcel No. **Kericho/Kebeneti/2198** which he subdivided into land parcel No's **Kericho/Kebeneti/3254, 3255** and **3256** to accommodate the 1st Interested Party/Respondent and the 6th Intended Interested Party/Respondent who had purchased portions of the said parcel of land.

105. She deposes that **Francis Terer**, the Defendant/Respondent was given land parcel no. **Kericho/Kebeneti/2204** which measures 0.704 Ha.

106. She also deposes that the deceased was buried on land parcel No. **Kericho/Kebeneti/2202** which does not have any relationship (sic) with the other parcels of land.

107. She further deposes that the Plaintiff/Applicant resides on land parcel No. **Kericho/Kebeneti/2700** and owns land parcel No. **Kericho/Kebeneti/2200** which is adjacent to land parcel No. **Kericho/Kebeneti/2202** where her deceased husband was buried.

108. She reiterates that the Plaintiff/Applicant obtained a title deed for land parcel No. **Kericho/Kebeneti/2202** on 28th August, 2020. She goes on to state that the Land Registrar requested that the said title deed be surrendered vide the letter dated 16th July, 2020 (sic).

109. She deposes that the Plaintiff/Applicant did not surrender the said title and therefore the Land Registrar issued a gazette notice seeking to degazette it. (sic)

110. She also deposes that the gazette notice was issued on 2nd August, 2021 and it had the effect of reverting the land back to her deceased husband.

111. She further deposes that the gazette notice has never been varied (sic) and neither has an appeal been filed from the orders of the Court that cancelled the Certificate of Confirmation of Grant that had been issued to the Plaintiff/Applicant.

112. It is her deposition that one **Betty Chebet**, who is her co-wife has not been joined to the present proceedings. She goes on to state that her rights as a widow should be protected.

113. It is also her deposition that the Plaintiff/Applicant filed ELC Case No. E001 of 2020 and sued her deceased husband as the 2nd Defendant. She goes on to state that the Court

delivered a ruling on 24th February, 2021 which dismissed the application dated 16th February, 2021 with costs. (sic)

114. It is further her deposition that before the demise of her husband, the Plaintiff/Applicant filed the present suit which is still pending.

115. She deposes that the Plaintiff/Applicant filed an application seeking to re-open his case after the Defence case was closed.

116. She also deposes that the Plaintiff/Applicant has been issued with eighty-seven OB's at Sondu Police Station after making reports about land parcel No. **Kericho/Kebeneti/2202** while using the title deed that was revoked.

117. She further deposes that the Plaintiff/Applicant has vowed to deal with the beneficiaries of the estate of **Kigeny Chebor** alias **Sarah Kebor Kigeny** (deceased) and teach them a

lesson they will never forget. She goes on to state that it has become the norm that if one brother is not in a cell at Sondu Police Station, then he is defending a matter filed in Kericho Law Courts (sic).

118. It is her deposition that the Plaintiff/Applicant caused **John Terer** the 3rd Interested Party/Respondent to be charged with the offence of threatening to kill. She goes on to state that the Plaintiff/Applicant intended to jail him and all the other beneficiaries so that he can get the said parcel of land.

119. It is also her deposition that she conducted a search on 30th September, 2021 which showed that her deceased husband was the registered owner.

120. It is further her deposition that the alleged sale agreement attached by the Plaintiff/Applicant is a forgery.

121. She deposes that the Plaintiff/Applicant forged the signatures of the beneficiaries of the estate of the deceased so that he can get the grant for her estate.

122. She also deposes that neither she nor her co-wife signed the alleged sale agreement and neither were they aware that their deceased husband was selling land.

123. She ends her deposition by seeking that the Plaintiff/Applicant's application be dismissed with costs.

The Plaintiff/Applicant's Response to the Defendant/Respondent's Replying Affidavit.

124. In response to the Defendant/Respondent's Replying Affidavit, the Plaintiff/Applicant filed a Supplementary Affidavit sworn on 27th November, 2025.

125. He deposes that he filed the present suit to protect the portions of land that he purchased from **Samson Kiprono Terer** alias **Richard Kiprono Terer** (deceased). He goes on to state that he purchased the said portions of land between the years 1992 to 2006.

126. He also deposes that the Defendant/Respondent and the Interested Parties/Respondents have persistently interfered with his quiet possession by encroaching on the land and raising issues of forgery.

127. He further deposes that the Defendant/Respondent's habit of changing advocates is not normal as it shows a deliberate plan to avoid accountability and conceal material facts.

128. It is his deposition that the frequent changes have delayed proceedings, hampered case management and it shows deliberate intention to frustrate the Court process.

129. It is also his deposition that the Court issued orders of *status quo* which prohibited any activities on the suit parcel of land including conducting a burial.

130. It is further his deposition that despite being served, the Defendant/Respondent and the Interested Parties/Respondents proceeded to bury **Samson Kiprono Terer** alias **Richard Terer** (deceased) on land parcel No. **Kericho/Kebeneti/2202.**

131. He deposes that their actions were deliberate and contemptuous hence his prayer for the exhumation of the body and for burial elsewhere at their cost.

132. He also deposes that the 6th Intended Interested Party/Respondent who is an advocate of the High Court of Kenya, has used his influence, legal knowledge and manipulation to mislead and incite the other beneficiaries against him.

133. He further deposes that as a result, the beneficiaries of the estate of **Sarah Kebor Kigen** alias **Kigeny Chebor** (deceased) including the Defendant/Respondent, the 3rd Interested Party/Respondent and the 4th and 5th Intended Interested Parties/Respondents, have assaulted him, stopped him from accessing the said parcel of land and intimidated him by threatening to kill him.

134. It is his deposition that the 6th Intended Interested Party/Respondent has convinced them that he (Plaintiff/Applicant) is not entitled to the land despite all the signed agreements and historical evidence showing a legitimate sale.

135. It is also his deposition that this incitement has caused extreme hostility and violence which has been reported to the police.

136. It is further his deposition that on 8th December, 1992 he purchased a portion of land measuring 0.4 acres from the late **Samson Kiprono Terer**. He goes on to state that **Samson Kiprono Terer** (deceased) subdivided his land in the year 1993 and a 0.2-acre portion of the land he (Plaintiff/Applicant) purchased was wrongly placed (sic) in the Defendant/Respondent's share.

137. He deposes that **Samson Kiprono Terer** (deceased) confirmed that he had sold the 0.2-acre portion of his land to him (Plaintiff/Applicant).

138. He also deposes that several people witnessed the transaction and the boundary demarcation. The said people include **Joshua Kemei** (deceased) who dug the boundary holes, **Samuel Bett** who chaired the meeting and several other community leaders.

139. He further deposes that as at 2nd January, 1997, he had purchased a portion of land parcel No's **Kericho/Kebeneti/2200** measuring 1.375 acres and a portion of land parcel No. **Kericho/Kebeneti/2204** measuring 0.2 acres.

140. It is his deposition that over the years, the Defendant/Respondent and other several beneficiaries sold portions of land parcel No's **Kericho/Kebeneti/2198, 2201, 2204** and **2205** to him through various land sale agreements.

141. It is also his deposition that they appended their signatures on the said agreements freely and willingly. He goes on to state that the Defendant/Respondent is being dishonest by claiming that the said signatures were forged.

142. It is further his deposition that **Samson Kiprono Terer** (deceased) had sold to him land parcel No. **Kericho/Kebeneti/2202.**

143. He deposes that the Defendant/Respondent, the 3rd Interested Party/Respondent and the 4th Intended Interested Party/Respondent have leased out his land, sold portions of it and erected semi-permanent structures despite knowing that the land belongs to him.

144. He also deposes that the Defendant/Respondent, the 3rd Interested Party/Respondent and the 4th Intended Interested Party/Respondent have invaded land parcel No's. **Kericho/Kebeneti/2198** (now subdivided into land parcel No. **Kericho/Kebeneti/3254, 3255 & 3256**), **Kericho/Kebeneti/2201, 2202** and **2204.**

145. He further deposes that the 4th Intended Interested Party/Respondent with the assistance of her son in law one

John Ngeno trespassed onto land parcel No. **Kericho/Kebeneti/2200**. This was the finding of the Court in Criminal Case No. 914 of 2018.

146. It is his deposition that the said actions have severely interfered with his quiet possession and have caused him immense financial losses.

147. It is also his deposition that he objected to the de-gazettement of his title deed for land parcel No. **Kericho/Kebeneti/2202** on 25th February, 2021 at the Land Registrar's office.

148. It is further his deposition that on the same day the 6th Intended Interested Party/Respondent caused him to be assaulted. He goes on to state that he was subsequently arrested and this was meant to frustrate his participation in the hearing.

149. He deposes that the Land Registrar heard his objection and confirmed that he was the rightful owner of the land. He goes on to state that his title deed therefore remains valid and lawful.

150. He also deposes that the Defendant/Respondent should explain to the Court why for a period of twenty-five years, that is from the year 1993 to 2019, he has failed to transfer the land to himself and/or initiate succession proceedings for the estate of his deceased mother.

151. He further deposes that the Defendant/Respondent's silence proves that he had already sold the said land and he therefore has no claim over it.

152. It is his deposition that the Defendant/Respondent only rushed to commence succession proceedings with regard to the estate of **Sarah Kebor Kigen** alias **Kigeny Chebor**

(deceased) after he realized that he (Plaintiff/Applicant) was asserting his ownership rights.

153. It is also his deposition that the deceased repeatedly told him that he had sold all his land to him. He goes on to state that whenever the deceased said so, the 4th Intended Interested Party/Respondent would allegedly assault him by cutting his head and fingers. She would also allegedly deny him food and threaten his life.

154. It is further his deposition that due to this living conditions, the deceased often sought financial assistance from him in order to buy basic necessities.

155. He deposes that the Court should issue an order directing the County Surveyor to establish and fix the boundaries of land parcel No's **Kericho/Kebeneti/2100, 2198 and 2200.**

156. He also deposes that the OCS Sondu Police Station should provide security during the survey exercise to prevent violence.

157. He ends his deposition by stating that the Defendant/Respondent and the Interested Parties/Respondents are misleading the Court through falsehoods, forgery allegations and fabricated narratives.

The Plaintiff/Applicant's Response to the 4th and 5th Intended Interested Parties/Respondents Replying Affidavit.

158. In response to the 4th and 5th Intended Interested Parties/Respondents Replying Affidavit, the Plaintiff/Applicant filed a Supplementary Affidavit sworn on 20th November, 2025.

159. He deposes that the application under consideration has not been overtaken by events as it was served upon the relevant Counsel before **Samson Kiprono Terer** (deceased) was buried. He goes on to state that the service was done at around 6 pm.

160. He also deposes that in Succession Cause No. 49 of 2019, he was included as a liability to the estate.

161. He further deposes that the 6th Intended Interested Party/Respondent has continuously interfered with the administration of the estate of the deceased. He goes on to state that it was the 6th Intended Interested Party/Respondent who caused the revocation of the confirmed grant with the intention of allocating himself 0.3 acres of his (Plaintiff/Applicant) land.

162. It is his deposition that the 4th Intended Interested Party/Respondent ended her first marriage around the year

1986 after allegedly burning a maize store.

163. It is also his deposition that the 4th Intended Interested Party/Respondent later married his (Plaintiff/Applicant) late nephew one **Rono**. He goes on to state that upon the said marriage, the 4th Intended Interested Party/Respondent sought for and was issued with a new Identity Card No. 1307725 under the name **Lucia Chelangat Rono**. After the death of **Rono**, the 4th Intended Interested Party/Respondent returned to her paternal home where she was inherited by the step brother of the deceased until the year 2016.

164. It is further his deposition that it was in the year 2016 that the 4th Intended Interested Party/Respondent forcibly erected structures on his land. He goes on to state that a report was made at Sondu Police Station under OB No. 19/24/9/2016.

165. He deposes that the parcels of land that are in dispute are **Kericho/Kebeneti/2700, 2200 and 2198** and therefore the

3rd Interested Party/Respondent and the 4th & 6th Intended Interested Parties/Respondents should be ordered to pay him mesne profits from the year 2016 to date.

166. He also deposes that he objected to the de-gazettement of his title deed for land parcel No. **Kericho/Kebeneti/2202**. He adds that the intended de-gazettement was initiated by the 6th Intended Interested Party/Respondent.

167. He further deposes that the Land Registrar scheduled a hearing for 25th February, 2021 during which hearing the 6th Intended Interested Party/Respondent allegedly assaulted him and led to his (Plaintiff/Applicant) eventual arrest.

168. It is his deposition that several paragraphs of the 4th and 5th Intended Interested Parties/Respondents Replying Affidavit are misleading and they intend to conceal the involvement of the 6th Intended Interested Party/Respondent.

169. It is also his deposition that the 4th Intended Interested Party/Respondent executed several land sale agreements together with **Francis Arap Terer, John Kimutai Terer** and **William Terer** (deceased) who are her brothers-in-law. He goes on to state that the 4th Intended Interested Party/Respondent appended her thumbprint on the land sale agreements dated 11th December, 2001, 30th March, 2006 and 14th June, 2009.

170. It is further his deposition that the 4th Intended Interested Party/Respondent's sons, that is **Ezekiel Rono** and **Benard Rono** (deceased), also appended their thumbprints on the said agreements.

171. He deposes that he consolidated the 1.375 acres that he had purchased on 2nd January, 1997. The said consolidation was witnessed by **Mariko Too** (deceased), **Thomas Too** (deceased), **Peter Kesyo** (deceased), **William Terer** (deceased) and **John Kilel**.

172. He also deposes that on 5th November, 2006 they entered into a land sale agreement which was executed by **Ezekiel Rono, Joshua K. Terer, Richard Kiprono Terer** and **Lucia Chelangat.**

173. He further deposes that the 4th Intended Interested Party/Respondent's thumbprint should be subjected to forensic examination to confirm her participation in the said transactions.

174. It is his deposition that the 4th Intended Interested Party/Respondent has continuously destroyed his fence and crops that he had planted on the suit parcels of land. He goes on to state that the destroyed crops include *wimbi*, tomatoes, maize, butternut and Sukuma Wiki.

175. It is also his deposition that the Defendant/Respondent together with the 3rd Interested Party/Respondent and the 4th

Intended Interested Party/Respondent, instructed **Ronald Kibet Rono** to erect structures on land parcel No. Kericho/Kebeneti/2204. He goes on to state that the said parcel of land forms part of his (Plaintiff/Applicant) land and that **Rael Bett** is cultivating it.

176. It is further his deposition that Criminal Case No. E492 of 2021 was determined on the basis of a title deed that had been irregularly re-issued to the accused. (sic) He goes on to state that the said matter was a criminal case and did not conclusively deal with the issues of ownership.

177. He deposes that **John Terer** is cultivating land parcel No. **Kericho/Kebeneti/2700** and not land parcel No. **2198** as alleged.

178. He also deposes that on 15th June, 2020, they had a dispute resolution meeting chaired by a village elder where the 3rd

Interested Party/Respondent admitted that he sold 1.65 acres of land to him.

179. He ends his deposition by stating that on 17th February, 2021, this Court issued orders of *status quo* which orders the Respondent (sic) and the Interested Parties/Respondents have not complied with.

Issues for Determination.

180. The Plaintiff/Applicant filed his submissions on 4th December, 2025, the Defendant/Respondent filed his submissions on 3rd December, 2025, the 1st, 2nd & 3rd Interested Parties/Respondents and the 6th Intended Interested Party/Respondent filed their submissions on 4th December, 2025 while the 4th and 5th Intended Interested Parties/Respondents filed their submissions on 2nd December, 2025.

The Plaintiff/Applicant's Submissions.

181. The Plaintiff/Applicant submits on the following issues;

- a. *Whether the suit land is the subject of an active dispute before this Court (sic).***
- b. *Whether the Defendant/Respondent, the Interested Parties/Respondents and the Intended Interested Parties/Respondents violated the status quo orders issued on 10th November, 2025.***
- c. *Whether the Plaintiff/Applicant meets the threshold for the grant of the orders sought.***

182. On the first issue, the Plaintiff/Applicant reiterates his averments in his affidavit in support of the application and submits that he is the registered owner of land parcel No. **Kericho/Kebeneti/2202.**

183. The Plaintiff/Applicant also submits that he has attached to his affidavit in support of the application a copy of the title deed for the said parcel of land which shows that he is the sole registered owner.

184.The Plaintiff/applicant relies on the judicial decisions of **Giella vs Cassman Brown [1973] EA 358, Mrao vs First American**

Bank of Kenya & 2 Others [2003] KLR 125 and submits that he is seeking for an order of injunction to stop the burial of **Samson Kiprono Terer** (deceased) on the suit parcels of land.

185.He further submits that the Defendant/Respondent and the Interested Parties/Respondents admit that **Samson Kiprono Terer** (deceased) was buried on one of the suit parcels of land.

186.It is his submissions that the allegations of forgery are unsubstantiated.

187.On the second issue, the Plaintiff/Applicant submits that on 10th November, 2025 the Court issued orders of *status quo* which orders the Defendant/Respondent and the Interested

Parties/Respondents violated by burying **Samson Kiprono Terer** alias **Richard Kiprono Terer** (deceased) on land parcel No. **Kericho/Kebeneti/2202** which is one of the suit parcels of land.

188. On the third issue, the Plaintiff/Applicant submits that the actions of the Defendant/Respondent and the Interested Parties/Respondents of burying the deceased on the suit parcel of land is in breach of the orders of the Court.

189. The Plaintiff/Applicant relies on **Sections 1A, 1B, 3A and 63 (e)** of the Civil Procedure Act, the judicial decision of **Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya & another [2005] eKLR** and submits that the Court should not allow the judicial process to be rendered ineffective by deliberate disobedience of its orders.

190. It is also the Plaintiff/Applicant's submissions that burial of a deceased person on a parcel of land is by its nature a

permanent act which alters the property and creates strong cultural, emotional and social restrictions.

191. It is further the Plaintiff/Applicant's submissions that the burial of the deceased on land parcel No. **Kericho/Kebeneti/2202** will impede him from recovering and using the said land if the Court delivers judgement in his favour.

192. The Plaintiff/Applicant submits that the Court in issuing the *status quo* orders on 10th November, 2025 exercised its jurisdiction under **Article 40** of the Constitution, **Sections 1A, 1B** and **63(e)** of the Civil Procedure Act, **Order 40 Rule 1** of the **Civil Procedure Rules** and **Sections 13 & 18** of the **Environment and Land Court Act**.

193. The Plaintiff/Applicant also submits that the Court has jurisdiction to enforce and safeguard the integrity of its proceedings as the actions of the Defendant/Respondent and

the Interested Parties/Respondents undermined the authority of the Court.

194. The Plaintiff/Applicant relies on the judicial decision of **Thompson V Park [1944] 2 ALL ER** as was cited in **Ms Gusii Mwalimu Investment Co. Ltd & 2 Others vs Ms Mwalimu Hotel Gusii Ltd [1996] KECA 69 KLR** and concludes his submissions by urging the Court to issue the following orders;

a. *The immediate exhumation of the remains of the late Samson Kiprono Terer alias Richard Kiprono Terer from Title No. Kericho/Kebeneti/2202.*

b. *That the body the late Samson Kiprono Terer alias Richard Kiprono Terer be re-interred in a public cemetery to be designated by the County Government of Kericho.*

c. *That all costs associated with the exhumation and re-burial of the remains of the late Samson Kiprono Terer alias Richard Kiprono Terer be*

borne jointly by the Defendant, the Interested Parties and the intended Interested Parties since they are wholly to blame for the disobedience of the Court order.

d. That the OCS Sondu Police Station do ensure compliance with the orders of this Court.

e. That the costs of the application be borne by the Defendant, the Interested Parties and the intended Interested Parties.

The Defendant/Respondent's submissions.

195. The Defendant/Respondent submits that he was served with the application under consideration on 17th November, 2025 and was only able to appoint new counsel on 18th November, 2025.

196. The Defendant/Respondent sets out his averments in his replying affidavit sworn on 18th November, 2025 and submits on the following issues;

a. Whether the Plaintiff/Applicant has established the cardinal principles for granting of temporary injunction.

b. Who bears the costs of the application?

197. On the first issue, the Defendant/Respondent relies on **Order 40** of the **Civil Procedure Rules**, the judicial decisions of **Giella vs Cassman Brown & Co. Ltd [1973] EA, Antony Gakuru Maina v Mourice Lorukia Lomilio [2022] KEELC 492 (KLR)** and submits that the Plaintiff/Applicant has not met the threshold for grant of a temporary injunction.

198. The Defendant/Respondent submits that the Plaintiff/Applicant does not have a *prima facie* case because he is relying on a title deed that was cancelled by the Land Registrar.

199. The Defendant/Respondent reiterates the averments in his Replying Affidavit and submits that the land sale agreement

that the Plaintiff/Applicant annexed to his affidavit in support of the application does not have the name of **Samson Terer** (deceased).

200. It is the Defendant/Respondent's submissions that the Plaintiff/Applicant has not demonstrated that he will suffer irreparable injury which cannot be adequately compensated by an award of damages.

201. It is also the Defendant/Respondent's submissions that an award of Kshs. 50,000/= would be sufficient if at all the Court decides to award the Plaintiff/Applicant costs.

202. It is further the Defendant/Respondent's submissions that the balance of convenience does not tilt in favour of the Plaintiff/Applicant.

203. The Defendant/Respondent submits that the Plaintiff/Applicant's application has been overtaken by events as the deceased has already been buried.

204. The Defendant/Respondent relies on the judicial decision of **Antony Gakuru Maina v Mourice Lorukia Lomilio [2022] KEELC 492 (KLR)** and submits that the Plaintiff/Applicant has introduced new prayers in his submissions.

205. The Defendant/Respondent submits that new prayers can only be introduced in amended pleadings and cannot therefore be raised in submissions.

206. The Defendant/Respondent also submits that for a party to amend pleadings they need to file a formal application and further, submissions are not meant to raise new issues.

207. The Defendant/Respondent concludes his submissions by submitting that costs follow the event. The

Defendant/Respondent relies on **Section 27 (1) & (2)** of the Civil Procedure Act in support of his submissions.

The 1st, 2nd and 3rd Interested Parties/Respondents and the 6th Intended Interested Party/Respondent's submissions.

208. The 1st, 2nd and 3rd Interested Parties/Respondents and the 6th Intended Interested Party/Respondent submit that the Plaintiff/Applicant must demonstrate that he has a *prima facie* case, that he will suffer irreparable injury which cannot be compensated by an award of damages and that the balance of convenience tilts in his favour.

209. The 1st, 2nd and 3rd Interested Parties/Respondents and the 6th Intended Interested Party/Respondent reiterate the averments of their Replying Affidavit and submit that the 3rd Interested Party/Respondent only came to learn of the *status quo* orders on 11th November, 2025 during a family meeting.

210. It is their submissions that parties are bound by their pleadings and the orders sought in the submissions do not form part of the orders sought in the application under consideration.

211. It is also their submissions that the Plaintiff/Applicant is a perennial litigant who has opted to canvass the entire suit in the application under consideration.

212. It is further their submissions that the application under consideration has been overtaken by events as the deceased was buried on 10th November, 2025.

213. The 1st, 2nd and 3rd Interested Parties/Respondents and the 6th Intended Interested Party/Respondent submit that the Plaintiff/Applicant is guilty of non-disclosure of material facts as he has not demonstrated the relationship between them and the deceased.

214. The 1st, 2nd and 3rd Interested Parties/Respondents and the 6th Intended Interested Party/Respondent rely on the judicial decision of **Koinange & 13 Others versus Koinange (1986)**, (sic) **Sections 107, 108 and 109** of the **Evidence Act** and submit that the Court cannot issue orders in anticipation of an event that has not been proved (sic).

215. The 1st, 2nd and 3rd Interested Parties/Respondents and the 6th Intended Interested Party/Respondent submit that the Plaintiff/Applicant has not demonstrated a *prima facie* case. They submit that the Plaintiff/Applicant testified on 6th December, 2023 while the Defendant/Respondent testified on 30th April, 2024.

216. It is their submissions that according to the Defendant/Respondent's evidence, the Plaintiff/Applicant has never lived on the suit parcel of land.

217. It is further their submissions that this was also the evidence of the 6th Intended Interested Party/Respondent when he testified on 26th February, 2025.

218. The 1st, 2nd and 3rd Interested Parties/Respondents and the 6th Intended Interested Party/Respondent submit that the Plaintiff/Applicant admitted in his evidence that he has never been in possession of the suit parcel of land.

219. The 1st, 2nd and 3rd Interested Parties/Respondents and the 6th Intended Interested Party/Respondent also submit that the Plaintiff/Applicant has come to Court with unclean hands.

220. The 1st, 2nd and 3rd Interested Parties/Respondents and the 6th Intended Interested Party/Respondent further submit that the Plaintiff/Applicant has not demonstrated that he will suffer irreparable injury which cannot be compensated by an award of damages.

221. The 1st, 2nd and 3rd Interested Parties/Respondents and the 6th Intended Interested Party/Respondent rely on the judicial decisions of **Peter Njoroge Ng'ang'a v Kenya Reinsurance Corporation Limited (Statutory Manager for United Insurance Company) & another [2018] eKLR, Giella vs Cassman Brown and Co. Ltd [1973] EA 360, Mrao v First American Bank of Kenya Ltd and 2 Others [2003] eKLR, American Cynamid Co. vs Ethicon Ltd (1975) 1 ALL E.R** in support of their submissions.

222. The 1st, 2nd and 3rd Interested Parties/Respondents and the 6th Intended Interested Party/Respondent rely on the judicial decisions of **RPM v PKM [2012] KEHC 5407 (KLR), Republic versus Rosemary Wairimu Munene Ex parte Applicant versus Thururu Dairy Farmers Co-operative Society Ltd** (sic) and urge the Court to award them costs.

The 4th and 5th Intended Interested Parties/Respondents submissions.

223. The 4th and 5th Intended Interested Parties/Respondents submit on the following issues;

a. *Whether the Amended Notice of Motion application dated 10th November, 2025 is merited.*

b. *Who should bear the cost of this application.*

224. The 4th and 5th Intended Interested Parties/Respondents submit that they do not object to their joinder to the suit as Interested Parties.

225. On whether the injunctive relief sought should be granted, the 4th and 5th Intended Interested Parties/Respondents rely on **Order 40 Rules 1 & 2** of the Civil Procedure Rules, the judicial decisions of **Giella v Cassman Brown [1973] EA 358, Mrao Ltd v First American Bank of Kenya Ltd & 2 others [2003] KECA 175 (KLR)** and while reiterating the averments of their replying affidavit, submit that the

deceased should not be buried in a cometary belonging to the County Government as sought by the Plaintiff/Applicant.

226.They reiterate that **Samson Kiprono Terer** alias **Richard Terer** (deceased) was buried on land parcel No. Kericho/Kebeneti/2201 where he has been residing with his wife who is the 4th Intended Interested Party/Respondent.

227.The 4th and 5th Intended Interested Parties/Respondents rely on the judicial decision of **Bellamy vs Sabine (1857) Ide J, 566, 585** and reiterate that the Plaintiff/Applicant does not live on the said parcel of land.

228.The reiterate that they were served with the *status quo* orders after the burial and that the Plaintiff/Applicant's contention that they were served before has not been supported by any evidence.

229. The 4th and 5th Intended Interested Parties/Respondents also submit that since they were served with the orders after the burial, the said orders are moot and unenforceable.

230. The 4th and 5th Intended Interested Parties/Respondents further submit that the prayers sought by the Plaintiff/Applicant in his submissions cannot be granted as they are beyond the scope of pleadings.

231. The 4th and 5th Intended Interested Parties/Respondents rely on the judicial decision of **Malawi Railways Ltd vs Nyasulu [1998] MWSC 3** as was cited in **Kahora v Ng'ang'a [2025] KEHC 11888 (KLR), Raila Amolo Odinga & another vs IEBC & 2 Others [2017] eKLR** and submit that the prayer of exhumation is not sought for in the application under consideration.

232. The 4th and 5th Intended Interested Parties/Respondents conclude their submissions by urging the Court to dismiss

the Plaintiff/Applicant's application with costs. They rely on the judicial decision of **Jasbir Singh Rai & 3 Others V Tarlochan Singh Rai & 4 others [2014] eKLR** in support of their submissions.

Analysis and Determination.

233. I have considered the Plaintiff/Applicant's application, the responses thereto and the rival submissions. It is my view that the following issues arise for determination;

a. *Whether Lucia Chelangat, Grace Chelangat and Gilbert Kiprono Kemboi should be joined to this suit as Interested Parties.*

b. *Whether a temporary injunction should be issued restraining the Defendant/Respondent, the 1st, 2nd & 3rd Interested Parties/Respondents and the 4th, 5th & 6th Intended Interested*

Parties/Respondents from burying Samson Kiprono Terer alias Richard Terer (deceased) on either of the suit properties pending the hearing and determination of this suit.

c. Who should bear costs of the application.

A. Whether Lucia Chelangat, Grace Chelangat and Gilbert Kiprono Kemboi should be joined to this suit as Interested Parties.

234. The Plaintiff/Applicant is seeking that **Lucia Chelangat, Grace Chelangat** and **Gilbert Kiprono Kemboi** be joined to this suit as Interested Parties.

235. **Lucia Chelangat**, the 4th Intended Interested Party/Respondent and **Grace Chelangat**, the 5th Intended

Interested Party/Respondent do not object to their joinder to this suit. **Gilbert Kiprono Kemboi**, the 6th Intended Interested Party/Respondent did not address this issue of his joinder in his response and/or submissions.

236. Order 1 Rule 10(2) of the Civil Procedure Rules provides as follows;

“(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.”

237.The Supreme Court 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)** held as follows;

“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.” (Emphasis mine)

238. In the judicial decision of **Skov Estate Limited & 5 others v Agricultural Development Corporation & another** [2015] eKLR the Court held as follows;

“In my view, for one to convince the Court that he/she needs to be enjoined to the suit as interested party, such person must demonstrate that it is necessary that he/she be enjoined in the suit, so that the Court may settle all questions involved in the matter. It is not enough for one to merely show that he/she has a cursory interest in the subject matter of litigation. Litigation invariably affects many people. A judgment or order in most cases does not only affect the litigants in the matter. It does have ramifications for others as well and one may very well argue that these others have an interest in the litigation. That is a fair argument, but a mere interest, without a demonstration that the presence of such party will assist in the settlement of the questions involved in the suit, is not enough to entitle

one be enjoined in a suit as interested party.

In other words, there needs to be a demonstration that the interest of the person goes further than “merely being affected” by the judgment or order. It must be shown that the presence of that person is necessary, so that the issues in the suit may be settled, and that if the person is not enjoined, the Court may not be fully equipped to settle the questions in the suit or may be handicapped in one way or another.

A joinder may also be allowed if the intended interested party has a claim of his own, which in the circumstances of the matter, needs to be tried, or is convenient to be tried alongside the claims of the incumbent plaintiff and defendant.

The threshold for joinder of an interested party should not be too low, or else, this is prone to open doors for busybodies to be joined to

proceedings, merely to spectate or confuse the issues in the matter. Apart from the above, whether or not to enjoin a person as an interested party, must be looked at within the context and surrounding circumstances of each particular case. (Emphasis mine)

239. In the above cited judicial decisions, it was held that in determining whether to join a proposed Interested Party to a suit, the Court must consider the stake the said party has in the suit, the prejudice they are likely to suffer and the case they intend to make before the Court.

240. On the grounds on the face of the application, the Plaintiff/Applicant contends that the 4th, 5th and 6th Intended Interested Parties/Respondents together with the Defendant/Respondent and the 1st, 2nd & 3rd Interested Parties/Respondents intend to bury **Samson Kiprono Terer**

alias **Richard Terer** (deceased) on either of the suit parcels of land.

241. It is evident that it is on this basis that the Plaintiff/Applicant is seeking that they be joined to the suit.

242. It is important to note that the Plaintiff/Applicant is seeking for orders of adverse possession in the Originating Summons.

243. It is apparent that the Plaintiff/Applicant has not demonstrated the personal interest or stake that the 4th, 5th and 6th Intended Interested Parties/Respondents have in this suit and neither has he demonstrated the prejudice they are likely to suffer if the orders sought are not granted.

244. Further, nothing has been placed before this Court to set out the case and/or show the submissions that the Intended Interested Parties/Respondents will make.

245. Even though the 4th and 5th Intended Interested Parties/Respondents do not object to their joinder to this suit, it is evident that the Plaintiff/Applicant has not demonstrated to the Court why they should be joined.

246. That being the case, I decline to grant orders to join the 4th, 5th and 6th Intended Interested Parties/Respondents to the suit.

B. Whether a temporary injunction should be issued restraining the Defendant/Respondent, the 1st, 2nd & 3rd Interested Parties/Respondents and the 4th, 5th & 6th Intended Interested Parties/Respondents from burying Samson Kiprono Terer alias Richard Terer (deceased) on either of the suit properties pending the hearing and determination of this suit.

247.The Plaintiff/Applicant seeks orders of a temporary injunction stopping the burial of **Samson Kiprono Terer** alias **Richard Terer** on either of the suit properties.

248.The Plaintiff/Applicant contends that **Samson Kiprono Terer** alias **Richard Terer** died on 3rd November, 2025 and the Defendant/Respondent, the 1st, 2nd & 3rd Interested Parties/Respondents together with the 4th, 5th & 6th Intended Interested Parties/Respondents intended to bury him on either of the suit parcels of land on 10th November, 2025.

249.In response, the Defendant/Respondent, the 1st, 2nd, & 3rd Interested Parties/Respondents together with the 4th, 5th & 6th Intended Interested Parties/Respondents contend that **Samson Kiprono Terer** alias **Richard Terer** was buried on land parcel No. **Kericho/Kebeneti/2202** on 10th November, 2025.

250. The Plaintiff/Applicant in his Supplementary Affidavit sworn on 27th November, 2025 in response to the Defendant/Respondent's Replying Affidavit admits at paragraph 7, that **Samson Kiprono Terer** alias **Richard Terer** (deceased) was buried on land parcel No. **Kericho/Kebeneti/2202.**

251. It is evident that this prayer as sought in the application has been overtaken by events. It cannot be granted.

252. It is important to note that the Plaintiff/Applicant has set out a list of prayers in his submissions which seek inter alia orders of exhumation and burial of **Samson Kiprono Terer** alias **Richard Terer** (deceased) in a public cemetery.

253. The 1st, 2nd & 3rd Interested Parties/Respondents and the 4th, 5th & 6th Intended Interested Parties/Respondents submit that the prayers sought by the Plaintiff/Applicant in his submissions are not supported by the pleadings.

254. It is true that the prayers as set out by the Plaintiff/Applicant in his submissions have not been sought in the application under consideration.

255. The Court of Appeal in **David Sironga Ole Tukai v Francis Arap Muge & 2 others [2014] KECA 155 (KLR)** held as follows;

“It is well established in our jurisdiction that the court will not grant a remedy, which has not been applied for, and that it will not determine issues, which the parties have not pleaded. In an adversarial system such as ours, parties to litigation are the ones who set the agenda, and subject to rules of pleadings, each party is left to formulate its own case in its own way. And it is for the purpose of certainty and finality that each party is bound by its own pleadings. For this

reason, a party cannot be allowed to raise a different case from that which it has pleaded without due amendment being made. That way, none of the parties is taken by surprise at the trial as each knows the other's case is as pleaded. The purpose of the rules of pleading is also to ensure that parties define succinctly the issues so as to guide the testimony required on either side with a view to expedite the litigation through diminution of delay and expense.

The court, on its part, is itself bound by the pleadings of the parties. The duty of the court is to adjudicate upon the specific matters in dispute, which the parties themselves have raised by their pleadings.

The court would be out of character were it to pronounce any claim or defence not made by the parties as that would be plunging into

the realm of speculation and might aggrieve the parties or, at any rate, one of them. A decision given on a claim or defence not pleaded amounts to a determination made without hearing the parties and leads to denial of justice. [Emphasis Mine]

256. In the judicial decision of **Kimani & 3 others v Wangora** [2025] KEELC 8202 (KLR) the Court held as follows;

“...This Court cannot determine an issue as raised in submissions. Courts have made pronouncements on the fact that submissions are not pleadings but marketing tools which cannot be used in place of pleadings. In Daniel Toroitich Arap Moi v Mwangi Stephen Muriithi & another [2014] KECA 642 (KLR) the Court of Appeal held: “...submissions are generally parties’ “marketing language”
(Emphasis mine)

257.In **Badri v Mbarak [2025] KEELC 1491 (KLR)** the Court also held as follows;

“95. It is trite law that submissions cannot introduce new issues. The Learned Counsel was guided by the case of “Republic v Chairman Public Procurement Administrative Review Board & another ex parte Zapkass Consulting and Training Limited & another [2014]eKLR” in which the Court held that:-

“The Applicant, the Respondents, and the Interested Party all introduced new issues in their submissions. Submissions are not pleadings. There is no evidence by way of affidavits to support the submissions. New issues raised by way of submissions are best ignored.”

(Emphasis mine)

258.In the above cited judicial decisions, the Court has held that new issues cannot be raised in submissions. The Court also

held that any new issues raised in submissions are best ignored. For those reason, I shall not consider the prayers sought by the Plaintiff/Applicant in his submissions.

259. I have also noted that the Plaintiff/Applicant filed an Amended Notice of Motion application dated 10th November, 2025. The same was filed without leave of the court and no directions were issued as to the hearing of the said amended application.

260. I also note that the 3rd Interested Party/Respondent filed an Amended Replying Affidavit sworn on 14th November, 2025. This, also, was filed without leave and I have therefore not considered it.

261. The Plaintiff/Applicant also filed a Supplementary Affidavit in response to the Amended Replying Affidavit sworn by the 3rd Interested Party/Respondent. I have not considered the said

Supplementary Affidavit as it has been filed in response to a pleading that was amended without leave of Court.

262. This Court has also observed that the Plaintiff/Applicant, the Defendant/Respondent, the 1st, 2nd & 3rd Interested Parties/Respondents and the 4th, 5th & 6th Intended Interested Parties/Respondent have, in the various affidavits and submissions filed, raised and/or addressed issues that go to the merits of this suit. My view is that it was unnecessary to raise them at this preliminary stage and I decline to address them. They shall be dealt at the hearing of this suit.

c. Who should bear costs of the application.

-

263. The general rule is that costs follow the event. This is in accordance with the provisions of **Section 27** of the **Civil Procedure Act. (Cap 21)**. A successful party should ordinarily be awarded costs of an action unless the Court, for good reason directs otherwise.

Disposition.

264. Taking the foregoing into consideration, I find that the Plaintiff/Applicant's application dated 10th November, 2025 lacks merit and it is hereby dismissed with costs.

265. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO
THIS 18TH DAY OF DECEMBER, 2025.**

**L. A. OMOLLO
JUDGE.**

In the presence of: -

Mr. Amutalah for Kipngeno for the Plaintiff/Applicant.

N/A for the Defendant/Respondent.

N/A for the 1st ,2nd , 3rd Interested Party and 6th Intended Interested Party/Respondents.

Mr. Kiletyen for the 4th and 5th Intended Interested Parties/ Respondents.

Court Assistant; Mr. Joseph Makori.

ORIGINAL COPY