

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ELC LAND CASE (OS) NO. E011 OF 2024

**CHINA JIANGSU INTERNATIONAL
ECONOMIC-TECHNICAL COOPERATION
CORPORATION EAST AFRICAN COMPANY**

PLAINTIFF

VERSUS

**CHINA JIANGSU INTERNATIONAL
ECONOMIC TECHNICAL CO-OPERATION
CORPORATION LIMITED**

DEFENDANT

**NATIONAL LAND COMMISSION ... PROPOSED INTERESTED
PARTY**

RULING

1. What is before Court for determination is the Plaintiff's Notice of Motion application dated the 24th July, 2025 and the Proposed Interested Party's Notice of Motion application dated the 5th September, 2025.

ELC LAND CASE (OS) NO. E011 OF 2024

Ruling

2. In the Notice of Motion application dated the 24th July, 2025, the Plaintiff seeks the following Orders:

1) The Honourable Court be pleased to direct and/or authorize its Deputy Registrar to execute all the necessary documents as may be required to effect the transfer and registration of land reference number 3734/428 in favour of the Plaintiff/Applicant, China Jiangsu International Economic Technical Cooperation Corporation East Africa Company, pursuant to the judgement date 3rd July, 2025 and subsequent Decree of this Court issued on the 9th July, 2025.

2) Spent.

3) The costs of this application be provided for.

3. The application is premised on the grounds on its face and the supporting affidavit of the Plaintiff's director GUO HUADONG. He confirmed that the Plaintiff filed the instant suit vide Originating Summons dated the 9th January, 2024 where it sought to be declared lawful owner of the suit land through adverse possession. He explained that the Plaintiff

was granted leave to serve the Defendant vide advertisement in the Standard Newspaper on 11th November, 2024. Further, that despite proper service, the Defendant failed to enter appearance and file any response. He states that judgement was entered in favour of the Plaintiff on the 3rd July, 2025 and the Plaintiff has prepared all the necessary documents for transfer but there is no party available to execute them. He reiterates that in the absence of a cooperating transferor, it is just and necessary for the Deputy Registrar of the Court to be authorized to execute the requisite forms.

4. In the application dated the 5th September, 2025, the proposed Interested Party seeks the following Orders:

1) Spent

2) That leave be granted to the firm of Koceyo & Company Advocates to come on record for the Interested Party/Applicant.

3) Spent

ELC LAND CASE (OS) NO. E011 OF 2024

Ruling

4) That this Honourable Court be pleased to enjoin the Interested Party/Applicant to these proceedings.

5) That the Judgement and Orders made by Honourable Lady Justice Christine Ochieng on 3rd July, 2025 as against the Defendant be reviewed and/or varied to the extent that the Plaintiff's claim herein be disallowed in its entirety with costs.

5. The application is premised on grounds on its face and the supporting affidavit of BRIAN IKOL, the Director of Legal Services and Dispute Resolution of the Interested Party. He confirms that on 3rd July, 2025, this Court entered judgement directing the Plaintiff to be registered as the proprietor of Land Reference Number 3734/428 in place of the Defendant. He states that the Interested Party was not a party to these proceedings, yet it is a necessary party to this suit, which will enable the Court conclusively adjudicate on the matter. He claims that the judgement seeks to alienate public land

without affording the Commission an opportunity to be heard. He insists that there was no definitive determination on whether the subject property was a leasehold or freehold, which is a prerequisite for a proper consideration of any claim for adverse possession. He argues that the judgement was rendered without the benefit of crucial facts and evidence pertaining to the nature of the parcel of land or its implications. Further, that should the suit land be determined to be a leasehold, the reversionary interest belongs to the public, administered by the Interested Party. He contends that the abandonment of the lease by the Defendant would not confer any right or title to the Plaintiff, since the legal effect of an abandoned lease is that reversionary interest is perfected and therefore the Plaintiff's occupation would be in the nature of a trespasser against the owner of public land. Further, that the trial Court was not made aware that the principle of adverse possession can neither be used nor applied to acquire an interest in public

land and that where the Lessee or allottee abandons the land, then the same interest escheats to the public through the National Land Commission. He further insists that the purported acquisition of the public land by way of adverse possession violates the provisions of section 37 and 41 of the Limitation of Actions Act, which protects public land whether registered or not from a claim on adverse possession. He reiterates that the Court assumed without evidence from an independent authority that the Plaintiff's occupation could defeat the title of the registered owner. Further, there was no independent verification of the cadastral position or boundaries of the suit land, yet the judgement conclusively determined proprietary rights. He reaffirms that the judgement was based on a flawed and incomplete legal analysis as the trial Judge failed to properly analyze whether the Plaintiff's occupation was without force, secrecy and/or permission; key tenets of a claim for adverse possession.

6. The Plaintiff has opposed the application by filing a replying affidavit sworn by GUO HUADONG, its director, where he deposes that there is no basis for the Applicant's firm to come on record for the Applicant for purposes of reviewing or varying the judgement of the Court. He avers that the Applicant need not be a party to the suit because the property is duly registered in favour of the Defendant since 13th August, 1990. Further, that since the property was rightfully registered in the name of the Defendant, no party is required to give consent to the change of ownership save for the Court. He insists that the suit land is private land and not public, hence it is outside the scope of the Applicant. He contends that the Certificate of Title itself reads **..' now registered proprietor of the estate in fee simple,**' which means absolute ownership. Further, that by virtue of the land being private land, the principle of adverse possession does apply. He reiterates that there was no boundary dispute for the Court to determine at the time the judgement was

pronounced. He insists that the Court made its findings based on the facts before it, as the Defendant failed to enter appearance and the Court confirmed that service was duly effected as provided by the Court procedures, therefore it cannot be said that the process was flawed. Further, that there is no proper ground or reason presented before the Court to vary or set aside the judgement already issued.

7. The applications were canvassed by way of written submissions.

Analysis and Determination

8. Upon consideration of the two instant applications including the respective affidavits and submissions, the following are issues for determination:
 - Whether leave should be granted to the firm of Koceyo & Company Advocates to come on record for the Interested Party/Applicant.

- Whether the Applicant should be joined in these proceedings as an Interested Party.
- Whether the Judgement delivered on the 3rd July, 2025 should be reviewed.
- Whether the Deputy Registrar should be authorized to execute all the necessary documents as may be required to effect the transfer and registration of land reference number 3734/428 in favour of the Plaintiff pursuant to the judgement dated 3rd July, 2025.

Whether leave should be granted to the firm of Koceyo & Company Advocates to come on record for the Interested Party/Applicant.

9. The firm of messrs Koceyo & Company Advocates have sought to come on record for the Applicant. On coming on record post judgement, Order 9 Rule 9 of the Civil Procedure Rules provides that:

'When there is a change of advocate, or when a party decides to act in person having previously engaged an advocate, after judgment has been passed, such change or intention to act in person shall not be effected without an order of the court

—

(a) upon an application with notice to all the parties; or'

10. Since this is a legal requirement, noting that the Plaintiff has not demonstrated any prejudice this would cause, I will allow this prayer.

Whether the Applicant should be joined in these proceedings as an Interested Party.

11. The Applicant has sought for joinder in these proceedings as an Interested party. It contends that it is a necessary party in this matter since the suit land is public land. The Plaintiff has opposed the application for joinder insisting that the

Applicant has no role to play in the dispute herein since the suit land is a private one.

12. On joinder, Order 1 Rule 10 (2) of the Civil Procedure Rules stipulates

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.'

13. Black's Law Dictionary, 9th Edition, defines an 'Interested Party' as follows:

ELC LAND CASE (OS) NO. E011 OF 2024

Ruling

“A party who has a recognizable stake (and therefore standing) in a matter”.

14. Further, in the case of **Trusted Society of Human Rights Alliance V Mumo Matemu & 5 Others (2015) eKLR** the Court defined an Interested party as follows: **‘(An) interested party is one who has a stake in the proceedings, though he or she was not party to the cause ab initio. He or she is one who will be affected by the decision of the Court when it is made, either way. Such a person feels that his or her interest will not be well articulated unless he himself or she herself appears in the proceedings, and champions his or her cause.’**

15. From perusal of the proceedings and judgement, I note the Plaintiff presented a title to the suit land which indicated the same belongs to the Defendant. Further, from the face of the said title, it is clear the title is for a private entity. I note the

proposed Interested Party is a government Commission mandated to handle public land. The Plaintiff has opposed the joinder insisting that the Applicant has no role to play since the suit land is private and not public.

16. Based on the facts before me, while relying on the legal provisions I have quoted as well as associating myself with the decisions cited above, which have set out the principles for joinder of an Interested Party, I find that the Applicant does not meet the criteria for joinder as suit land is registered in the name of the Defendant as per the Certificate of Title which was produced as an exhibit. It is my considered view that the Applicant's involvement in these proceedings is not necessary nor will it be affected by the impugned judgement delivered on the 3rd July, 2025 and will hence decline to join it herein.

As to whether the judgement delivered on 3rd July, 2025 should be reviewed, varied and or set aside.

17. The Applicant has sought for review, variation or setting aside of the Judgement delivered on 3rd July, 2025 claiming that the Court erred to award the suit land to the Plaintiff through adverse possession as it was public land. From the proceedings herein, I note the Plaintiff had produced a Certificate of Title in the name of the Defendant, which fact was not disputed by the Defendant that failed to enter appearance despite being duly served. Further, from the face of the title, it is clear it is private land and not public. The Applicant has made arguments attacking this Court's judgement insisting that if the Defendant had abandoned the suit land, since it was a leasehold, the said land should escheate to the government. It is trite that in a claim for adverse possession, the possessor has to demonstrate that the said land belonged to the owner that had a title and this is irrespective of whether the title was a freehold or leasehold. It is my considered view that the arguments

proffered against this Court's judgement are suitable for an Appeal and not an application for review.

18. On setting aside judgement, in the case of **Shah v Mbogo and Another [1967] EA 116** it was held that:

“This discretion is intended to be exercised to avoid injustice or hardship resulting from accident, inadvertence, or excusable mistake or error, but is not designed to assist a person who has deliberately sought, whether by evasion or otherwise, to obstruct or delay the course of justice.”

19. Further, in the case of **Wachira Karani v Bildad Wachira [2016] eKLR** Mativo J (as he then was) held that:

“Sufficient cause is thus the cause for which the defendant could not be blamed for his absence. Sufficient cause is a question of fact and the court has to exercise its discretion in the varied and special circumstances in the case at hand. There cannot be a straight-jacket formula of

universal application. Thus, the defendant must demonstrate that he was prevented from attending court by a sufficient cause...

20. While in the case of **CMC Holdings Limited -vs- Nzioki [2004] 1 KLR 173**, it was held that:

“In law, the discretion that a Court of law has, in deciding whether or not to set aside ex-parte order was meant to ensure that a litigant does not suffer injustice or hardship as a result of among other things an excusable mistake or error. It would not be proper use of such a discretion if the Court turns its back to a litigant who clearly demonstrates such an excusable mistake, inadvertence, accident or error.’

21. It is trite that setting aside of judgement is discretionary but the Court has to consider sufficient cause proffered by the Applicant, before proceeding to do so. However, based on the facts before me, I find that since the suit land is private land and the Applicant despite claiming it was public failed to tender any documentation to that effect, it was proper for

the Court to enter judgement in favour of the Plaintiff, that had proved all the tenets of adverse possession. I opine that the Applicant has not demonstrated whether there was an error apparent on face of record or that there was discovery of new materials to warrant the setting aside of the impugned Judgement. In the foregoing, I will decline to set aside the whole judgement in its entirety.

22. In the foregoing, I will authorize the Deputy Registrar of this Court to execute all the necessary documents as may be required to effect the transfer and registration of land reference number 3734/428 in favour of the Plaintiff pursuant to the judgement dated 3rd July, 2025.

23. In the circumstances, I find the Plaintiff's Notice of Motion application dated the 24th July, 2025 merited and will allow it. I however find the Proposed Interested Party's Notice of Motion application dated the 5th September, 2025 unmerited save for prayer No. 2 and will disallow it.

**DATED SIGNED AND DELIVERED AT NAIROBI THIS
15TH DAY OF JANUARY, 2026**

CHRISTINE OCHIENG

JUDGE

In the presence of:

Ms Muhindi for Plaintiff

Ms Nyakundi holding brief for Koceyo for Proposed Interested
Party Applicant

Court Assistant: Joan