

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA
ELCLC NO 121 OF 2023
BENJAMIN GAKUO GITUMA & 10 OTHERS..... PLAINTIFFS
VERSUS
PETER KARIUKI GITHINJI & 2
OTHERS.....DEFENDANTS

RULING

Before me is an Application dated 30/7/2025 same having been earlier dated 15/5/2025 under a Certificate of Urgency by the Plaintiffs seeking for Orders that: -

1. The Director of the Criminal Investigation do supply them with expert/forensic Reports prepared on investigations concluded on a complaint lodged by the said Plaintiffs on the sale and transfer of L.R No. NYANDARUA/ MAWINGO SALIENT/18/ 2016,2017 and 326.
2. Upon being served with the said Document/Report, the Plaintiffs be granted leave to file a supplementary list of Documents.

The Application is pegged on an Affidavit in support by Benjamin Gakuo on the grounds that the Plaintiffs lodged a complaint touching on the sale and transfer of the aforesaid parcels of land after it came to their knowledge that the signature on the sale

agreement and transfer forms of one Sarah Muthoni Kimani was forged.

The DCI has completed investigations but insists that without a Court Order, he cannot release or supply the Reports though he is ready to release the same and that the supply of the said Report would not prejudice the Defendants in any way.

In a Replying Affidavit by the 4th Defendant's chairman sworn on 20/9/2025, Mr. Charles Wanyoike Gatithi depones that the Application is made in bad faith and is a fishing expedition since this suit was filed in 2023, the DCI is not a party to this suit, same is an attempt at panel beating their case and that such a process would prejudice the 4th Defendant's case.

The earlier Application dated 15/5/2025 had also been responded to by the 1st Defendant, Peter Kariuki Githinji sworn on 3/6/2025 as the then chairman of Rivoi C.B.O where he deponed that the Application is untenable, an abuse of the Court process, misconceived, brought in bad faith and misleading.

He further said that during pre-trial on 4/11/2024, all the parties confirmed to the Court that they had complied with Order 11 of the Civil Procedure Rules thus signifying that the parties had filed all their respective Documents.

He further depones that Sarah Muthoni Kimani whose signatures is alleged to have been forged, is not a party to the suit and that the C.I.D should not be allowed to fish for irrelevant information,

but should be left to conduct their own independent investigations and take the action they deem fit.

In the Supplementary Affidavit of Sarah Muthoni Kimani sworn in the earlier Application on the 13/2/2024 that was attached to the Affidavit of Benjamin Gakuo Gituma sworn on 15/5/2025, she denied having signed the transfer forms and agreement and says that she was Treasurer of Rivoi CBO having been elected as such in 2008.

It is the right of every citizen under Article 35 (1) (a) and (b) of the Constitution of Kenya on Access to information to have any information held by the state that affects him given or released to him.

(1) Every citizen has the right of access to—

(a) information held by the State; and

(b) information held by another person and required for the exercise or protection of any right or fundamental freedom.

But this Court has not been shown that such a Report really exists. Besides, regarding the letter written on behalf of the 725 Rivoi CBO members to the Director of Criminal Investigations, Land Fraud Unit by 8 members viz Sarah Muthoni Kimani, Erastus Maina Hiuhu, Ann Waitherero, Benjamin Gakuo, Janet Njoro Mulinge, David Wanjau, John Mbote and Samuel Giteru on 21/3/2024 seeking assistance in the nature of investigations,

there is no indication that any such investigations have been carried out and if such had been done then I don't understand why the DCI should demand that an Order from the Court is necessary before they release the Report to the Plaintiffs. In any case, the complaint did not originate from the Court. I therefore find it not appropriate to make such Orders. Furthermore, there is not a single correspondence from the DCI to the effect that the Directorate can only release the Report upon being ordered to do so by the Court. Nonetheless, the Plaintiffs are free to apply for summons upon the DCI to appear in Court and testify as to their findings on the forgeries. I will leave it at that. Costs of the Application to abide the outcome of the suit.

**Ruling dated, signed and delivered at Nyandarua this
22nd Day of January 2026.**

MUGO KAMAU
JUDGE

In the presence of: -

Court Assistant - Samson.

Mr. Gakenia for the Appellant.

Mr. Komu for the Respondent.

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