



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ELC CASE NO 780 OF 2013

AGNES WAMBUI KIRITU.....1ST
PLAINTIFF

ESTHER NJERI KAROGO.....2ND
PLAINTIFF

VERSUS

NICASIO MURITHI.....1ST
DEFENDANT

FARROWSON MURITHI GICHOVI.....2ND
DEFENDANT

SAMUEL MWANGI THUO.....3RD
DEFENDANT

JOHN NGUGI WANJA.....4TH
DEFENDANT

MARY WAIRIMU MUTHONI.....1ST
INTERESTED PARTY

RULING

1. Before me for determination is the Notice of Motion dated 29th May 2025, brought under Order 10 Rule 11, Order 50 Rule 6 of the Civil Procedure Rules and Article 159 of the Constitution of Kenya, in which the Applicant seeks the following orders:

i. Spent.

ii. THAT leave be granted to join the Applicant as an Interested Party.

iii. Spent.

iv. THAT upon hearing this application inter partes, this Honourable Court be pleased to set aside the decree and judgment and decree entered on 22nd July 2021 and all other resultant orders.

v. THAT this Honourable Court be pleased to grant leave to the Applicants to file their defence to the claim as per the draft copy of the defence annexed hereto and that the same be deemed duly filed upon payment of the filing fees.

vi. THAT the costs of this application be provided for.

2. The application is based on the grounds appearing on its face together with the supporting affidavit of Mary Wairimu Muthoni, sworn on even date.

THE APPLICANT'S CASE

3. The deponent averred that sometime in the year 2020, John Ngáng'a Kibe sold her a portion of land from parcel No. Nairobi/Block/126/86, measuring 50 by 100, and that she was issued Certificate No. 293 by Jogiwaki Real Estate Agencies.
4. That she took possession of the land and built a permanent house, where she now lives with her family.
5. She further averred that on 2nd May 2025, she found a notice affixed to her house instructing her to demolish the structures and vacate the suit property. That upon perusal of the court file, her Advocate discovered that the Plaintiffs had obtained a judgment against the Defendants and had extracted a decree.

6. She explained that she was denied the opportunity to be heard because she was neither added as a party to the suit nor served with pleadings. The Applicant is apprehensive that her home would be demolished if the orders sought are not granted. She emphasized the importance of being included as a party to prove that she purchased the property from the registered owner. She contended that the suit infringes her rights to own property and to a fair trial.

THE PLAINTIFFS/RESPONDENTS CASE

7. The Respondents filed a replying affidavit sworn by Agnes Wambui Kiritu on 23rd June 2025 in opposition to the application.

8. The deponent averred that they are the registered owners of the suit property. She further averred that the certificate of lease in John Nganga Kibe's name shows that it was issued on 14/03/2011, whereas the certificate of search indicates that as of 12/9/2012, the suit property was registered in the names of the Plaintiffs. She asserted that the Applicant has neither produced a certificate of official search to prove who sold the

suit property to her nor demonstrated that she is currently in possession of the property.

9. She asserted that the joinder application is an abuse of the court process, given that judgment has been rendered and the case file has been closed. She further asserted that the Applicant has not demonstrated a valid defence and urged the court to dismiss the application with costs.
10. The application was canvassed by way of written submissions.

THE INTERESTED PARTY/APPLICANT'S SUBMISSIONS

11. The Applicant filed her submissions dated 15th August 2025. On behalf of the Applicant, Counsel outlined the following issues for the court's determination:
 - a) *Whether the Applicant should be enjoined as an Interested Party?*
 - b) *Whether a stay of execution of the judgment and decree dated 22nd July 2021 should be granted?*

c) Whether the judgment delivered on 22nd July 2021 should be set aside.

d) Whether the Applicant should be granted leave to file her defence.

12. Regarding the first issue, Counsel submitted that the Applicant would suffer irreparable loss if the structures are demolished, given that she is in actual possession of the suit property. Counsel further submitted that the Applicant's right to a fair hearing under Article 50 of the Constitution would be violated. To support this point, reliance was placed on the case of **Communications Commission of Kenya & 3 others v Royal Media Services Limited & 7 others (2014) eKLR.** Further reliance was placed on the cases of **Alton Homes Limited & another v Davis Nathan Chelogoi & 5 others (2020) eKLR** and **Martha Karua v the Independent Electoral Boundaries Commission & others, Nyeri Civil Appeal No. 1 of 2017**, to submit that the Applicant has demonstrated the necessity of her inclusion in the suit so that

she can prove that the properties being demolished are hers and that she purchased them from the registered owner.

13. Regarding the second issue, Counsel submitted that the Applicant was not aware of the suit because she was neither served with the plaint nor joined as a party. It was further submitted that the Applicant learned of the suit only after a notice was posted at her gate directing her to vacate the premises. It was also submitted that the Plaintiffs have obtained a decree, and that if it is executed, the Applicant will suffer irreparable loss, as she will be evicted and her family will be rendered homeless.

14. Regarding the third issue, Counsel submitted that the judgment should be set aside because it affects the Applicant, who is in possession of the suit property. Counsel further asserted that the Applicant's property rights would be violated if the judgment were not set aside. To support this argument, reliance was placed on the case **of Makandi (Suig as the legal representative of the Estate of Anita Nkaimura M'Mutunga-deceased) v Attorney General & 4 others;**

Kamange (Intended Interested Party) (2024) KEELC 5021 (KLR).

15. Regarding the fourth issue, Counsel submitted that the defence raises trial issues that should be heard and determined on the merits.
16. Concluding his submissions, Counsel urged the court to grant the application as prayed.

THE PLAINTIFFS/RESPONDENTS SUBMISSIONS

17. The Respondents filed their submissions dated 5th September 2025.
18. On behalf of the Respondents, Counsel outlined the following issues for the court's determination:
- a) Whether the Applicant qualifies to be joined as an Interested Party in a suit in which judgment has already been entered.*
 - b) Whether this Honourable Court has jurisdiction to enjoin a new party after judgment has already been delivered and a decree issued.*

c) Whether the Applicant has demonstrated sufficient grounds to warrant setting aside the judgment and decree delivered on 22nd July 2022.

d) Whether the Applicant has established a legal or proprietary interest in the suit property capable of protection in these proceedings.

e) Whether the Applicant is entitled to the equitable remedies of stay of execution and leave to file a defence out of time.

f) Who should bear costs?

19. Regarding the first issue, Counsel relied on the contents of the replying affidavit to support his submissions. It was submitted that the Applicant's claim is based on assertions, as she has not produced any documentation proving that she purchased, possessed, or developed the suit property.

20. Counsel further submitted that the Respondents are the registered owners of the suit property. To support this point,

reliance was placed on the lease certificate and the official search certificate.

21. Counsel further submitted that the Applicant did not meet the criteria for joinder as an interested party, as outlined in **Francis Karoki Muruatetu & another v The Republic.**

Counsel also submitted that the Applicant has not demonstrated an identifiable stake in the proceedings because she has not produced ownership documents. It was further submitted that the Applicant has not explained the prejudice she would suffer if she is not joined in the proceedings, as she has not shown that she is in occupation or has made any developments to the suit property.

22. Regarding the third principle, Counsel submitted that the Applicant did not annex a draft defence and failed to demonstrate whether she would challenge the Respondent's title.

23. With regard to the fourth issue, Counsel submitted that the court lacks jurisdiction to admit the Applicant to the proceedings at this stage because the matter has been

concluded and judgment has been rendered. Counsel contended that the authority to join a party is exercisable only before judgment and, therefore, the prayer is untenable.

24. Regarding the fifth issue, Counsel submitted that the judgment entered was a regular judgment, with all parties duly served, and that the matter was heard and determined on its merits. It was further asserted that the Applicant has not demonstrated any legal or proprietary interest in the suit property.

25. Counsel argued that the Applicant failed to show sufficient cause because she did not establish any mistake, inadvertence, or fraud that would have prevented her from participating in the proceedings.

26. Regarding the fifth issue, Counsel submitted that the Applicant has not demonstrated any legal interest in the property that would entitle her to be joined in these proceedings to set aside the judgment or to stay execution.

27. Regarding the stay of execution, Counsel argued that the Applicant has not met the criteria for a stay pending appeal

under Order 42, Rule 6(2) of the Civil Procedure Rules and in **New Stanley Hotel Limited v Arcade Tobacconist Limited (1986) KLR 757.** Counsel further submitted that the Applicant failed to attach a draft defence raising triable issues.

28. In conclusion, Counsel urged the court to dismiss the application with costs.

ANALYSIS AND DETERMINATION

29. Having considered the application in light of the pleadings, the respective affidavits, and the rival submissions, the following issues arise for determination:

- a) Whether the Applicant has satisfied the threshold for joinder as an Interested Party after judgment.*
- b) Whether the judgment should be set aside.*
- c) Whether an order of stay of execution should be granted.*

30. The law governing the joinder of parties is anchored in Order 1 Rule 10(2) of the Civil Procedure Rules, which states as follows:

“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 to enable the court to effectually and completely to adjudicate upon or settle all questions involved in the suit, be added.”

31. **Black’s Law Dictionary (8th Edition)** defines an Interested Party as follows;

“a party that has a recognizable stake and therefore a standing in the matter.”

32. In the case of **Trusted Society of Human Rights Alliance Vs Mumo Matemo & 5 Others (2015) eKLR**, the Court held that;

“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 interest will not be well articulated unless he or she appears in the proceedings and champions his or her cause.”

33. In **Francis Karoki Muruatetu & Another vs. Republic & 5 Others (2010) eKLR**, the Supreme Court of Kenya outlined the key elements to consider in an application to join an Interested Party as follows:

a) 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.’

b) 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.

c) Lastly, a party must, in its participation, 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.

34. These are compelling decisions that establish the legal position on joinder of Interested Parties. The present application was filed after judgment had been delivered. Although Order 1, Rule 10(2) of the Civil Procedure Rules permits joinder at any stage of the proceedings, courts have consistently held that this does not extend to reopening a matter after final judgment unless exceptional circumstances exist.

35. In **Kenya Medical Laboratory Technicians & Technologists Board & 6 others v Attorney General & 4 others (2017) eKLR**, the court held that:-

“Joinder of parties is not automatic. It is a discretionary remedy which must be exercised

judiciously and only where the presence of the party is necessary for the effectual and complete determination of the issues before the court.'

36. In the matter at hand, the Applicant alleged that she purchased the property in 2020 from one John Ngáng'a Kibe. However, she did not produce any sale agreement or any evidence of registration of the suit property. The alleged certificate issued by the Jogiwaki Real Estate Agencies does not confer ownership or any registrable interest in the land. No evidence was presented to the court showing actual occupation of the suit property.

37. In the absence of documentary proof of purchase, the Applicant has failed to demonstrate any legal or equitable interest capable of sustaining joinder. Mere apprehension of eviction without proof of interest does not meet the legal threshold. Allowing joinder at this stage would amount to reopening a concluded dispute.

38. In **Raila Odinga & 5 others v Independent Electoral and Boundaries Commission & 3 others (2013) eKLR**, the Supreme Court was categorical that:

“A court of law cannot reopen or re-litigate issues that have already been conclusively determined. Litigation must come to an end.”

39. Regarding the second issue, the Applicant seeks to set aside the judgment on the basis that she was not served with the pleadings, thereby denying her a fair hearing. The court's power to set aside its judgment is discretionary and must be exercised judiciously.

40. The well-established principles for setting aside an interlocutory judgment were set out in the case of **Patel v East Africa Cargo Handling Services Ltd (1974) EA 75**, in which the court held that:

“There are no limits or restrictions on the Judge’s discretion to set aside or vary an ex parte judgment, except that if he does vary the judgment, he does so on such terms as may be just. The main concern of the court is to do justice to the parties, and the court will not impose conditions on itself to fetter the wide discretion given to it by the Rules”.

41. In **James Kanyita Nderitu & another v Marios Philotas Ghika & another (2016) eKLR**, the Court of Appeal set out the criteria to be applied when exercising jurisdiction to set aside a regular ex parte judgment and an irregular ex parte judgment as follows:

“In a regular default judgment, the defendant will have been duly served with Summons to Enter Appearance, but for one reason or another, he had failed to enter appearance or to file a defence, resulting in a default judgment. Such a defendant is entitled under Order 10 Rule 11 of the Civil Procedure Rules, to move the court to set aside the default judgment and to grant him leave to defend the suit. In such a scenario, the court has unfettered discretion in determining whether or not to set aside the default judgment and will take into account such factors as the reason for the failure of the defendant to file his Memorandum of Appearance or defence, as the case may be, the length of time that has elapsed

since the default Judgment was entered, whether the intended defence raises triable issues, the respective prejudice each party is likely to suffer, whether on the whole it is in the interest of justice to set aside the default judgment, among others.

In an irregular default judgment, on the other hand, judgment will have been entered against a defendant who has not been served or properly served with Summons to Enter Appearance. In such a situation, the default judgment is set aside ex debito justitiae as a matter of right. The court does not even have to be moved by the party once it comes to its notice that the judgment is irregular; it can set aside the default judgment on its own motion. In addition, the court will not venture into considerations of whether the intended defence raised triable issues or whether there has been inordinate delay in applying to set

aside the irregular judgment. The reasons why such judgment is set aside as of right, and not as a matter of discretion, is because the party against whom it is entered has been condemned without notice of the allegations against him or an opportunity to be heard in response to those allegations.”

42. In **Shah v. Mbogo & Another (1967) E. A. 116**, the Court of Appeal stated that the discretion to set aside an ex parte judgment is intended to prevent injustice or hardship arising from accident, inadvertence, or excusable error, not to aid a party who has intentionally sought to obstruct or delay the course of justice, whether by evasion or other means.
43. The Respondent contends that they served all the Defendants and the matter was determined on the merits.
44. The Applicant was not a party to the proceedings. The Respondents had no obligation to serve a person who had not demonstrated any known or registered interest in the suit property.

45. The Applicant has not demonstrated a recognizable legal interest to invoke the court's discretion to reopen a matter that has been heard and determined.

46. The Applicant also seeks a stay of execution of the judgment. Order 42, Rule 6(1) and (2) of the Civil Procedure Rules set out the guiding principles that must be met for the grant of a stay as follows:

6(1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.

6(2) No order for stay of execution shall be made under sub-rule (1) unless-

a) the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay and such security of costs for the performance of such decree or order as may ultimately be binding on him has been given by Applicant.

The grant of an order of stay of execution is a discretionary one. In the case of **Butt vs Rent Restriction Tribunal (1982) KLR 417** the Court of Appeal gave the following guidelines on how a court should exercise its discretion as follows;

“The power of the court to grant or refuse an application for stay of execution is a discretionary power. The discretion should be exercised in such a way as not to prevent an appeal. The general principle in granting or refusing a stay is; if there is no overwhelming hindrance, stay must be granted so that an appeal may not be rendered nugatory should that appeal court reverse the judge’s decision. A judge should not refuse a stay if there are good grounds for granting it merely because, in his opinion, a better remedy may become available to the Applicants at the end of the proceedings. The court in exercise of its discretion whether to grant or refuse an

application for stay will consider the special circumstances of the case and its unique requirements.”

47. The Applicant has not demonstrated ownership, lawful possession, or any registrable interest in the suit property. Having found that the Applicant has failed to establish any legal interest in the suit property, the court has no basis to exercise discretion to stay execution. Mere apprehension of eviction, without proof of a legal right, does not constitute substantial loss.

48. Ultimately, I find that the application is devoid of merit and is hereby dismissed with costs.

RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS THIS 26TH DAY OF JANUARY, 2026.

.....
**HON. T. MURIGI
JUDGE**

IN THE PRESENCE OF:

Oonge for the Applicant

C.K Chege for the Plaintiffs/Respondents

Ahmed- Court assistant