

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

MILIMANI LAW COURTS

ELC CASE NO 777 OF 2016

MICHAEL KIMANI PLAINTIFF/APPLICANT

(Suing on his behalf and as the executor
of the Estate of Mweya Karonga)

= VERSUS =

GEORGE KIMANI GITAU DEFENDANT/RESPONDENT

(Sued on his behalf and in his capacity
as the administrator of the Estate of Gitau Karonga)

STEPHEN CATHUITA MWANCI INTERESTED PARTY

RULING

1. The plaintiff/applicant filed the application dated 2nd July 2025 under the provisions of section 79 of the Land Registration Act, order 37 of the Civil Procedure Rules and Article 40 of the Constitution. He is asking for orders:

- 1) **The Honourable Court be pleased to amend the phrase enshrined under Order Number 3 of its decree dated 15/08/2023 which reads, “and any other subsequent Register and Title resultant therefrom be cancelled.” to expressly include DAGORETTI/KANGEMI/1338 and DAGORETTI/KANGEMI/1339;**
- 2) **The Honourable Court be pleased to make a declaration that all transactions effected upon DAGORETTI/KANGEMI/7 by the**

Defendant/Respondent or others claiming through or under him are invalid null and void and that the Register and Titles issued for Titles No. DAGORETTI/KANGEMI/754, DAGORETTI/KANGEMI/755, DAGORETTI/KANGEMI/756 and DAGORETTI/KANGEMI/757, DAGORETTI/KANGEMI/1338 and DAGORETTI/KANGEMI/1339 and any other subsequent Register and Title Resultant therefrom be cancelled;

3) The District Land Registrar be compelled by this Honourable Court to unconditionally register and effect the Ruling delivered on 15/08/2023 and reinstate the Applicant's ownership in the records of DAGORETTI/KANGEMI/7 which includes Land Registration Numbers DAGORETTI/KANGEMI/754, DAGORETTI/KANGEMI/755, DAGORETTI/KANGEMI/756 and DAGORETTI/KANGEMI/757, DAGORETTI/KANGEMI/1338 and DAGORETTI/KANGEMI/1339;

4) Any further relief that this Honourable Court may deem fit and just to grant;

5) Costs of this application.

2. The application is premised on the grounds:

1) On 15/08/2023, this Honourable Court issued a decree declaring that the subdivision of land Title Number, DAGORETTI/KANGEMI/7 undertaken by the respondent herein and registered on 24/01/1994 is fraudulent, null and void;

2) *The Honourable Court in its decree dated 15/08/2023 ordered for the reinstatement of the Original Register and Title for DAGORETTI/KANGEMI/7 thereby cancelling all the subsequent fraudulent, illegal and irregular titles, including DAGORETTI/KANGEMI/754, DAGORETTI/KANGEMI/755, DAGORETTI/KANGEMI/756 and DAGORETTI/KANGEMI/757 respectively;*

1. *The land title No. DAGORETTI/KANGEMI/754 was further subdivided into DAGORETTI/KANGEMI/1338 and DAGORETTI/KANGEMI/1339, resulting to the opening of subsequent registers and issuance of new titles resultant from DAGORETTI/KANGEMI/ 754 which the Respondent has since transferred to the Interested Party herein whilst the proceedings were underway, a fact clearly brought before the attention of the court;*

2. *However, DAGORETTI/KANGEMI/1338 and DAGORETTI/KANGEMI/1339 are not expressly spelt out under Order Number 3 of the Honourable Court's decree dated 15/08/2023 which is frustrating the applicant's efforts to effect the Honourable Court's decree;*

3. *Despite the numerous efforts by the applicant to enforce the decree of the Court, neither has the cancellation of the titles*

*DAGORETI/KANGEMI/754, DAGORETTI/KANGEMI/755,
DAGORETTI/KANGEMI/756 and
DAGORETTI/KANGEMI/757 been done nor have the titles
reverted back to the Original Title DAGORETTI/KANGEMI/7
pursuant to the orders of the court owing to the fact that
DAGORETTI/KANGEMI1338 and
DAGORETTI/KANGEMI/1339 are not expressly captured
under Order Number 3 of the Court's Decree dated
15/08/2023.*

3. The applicant also swore supporting and further affidavit to reiterate facts in support of the application.
4. The application is opposed by the Defendant and the Interested Party vide their Replying affidavits both sworn on 22/9/2025. Both replying affidavits narrated similar facts. At paragraph 3, the defendant and replying affidavits set out the background of the plaintiffs.
5. Under paragraph 4, the defendant sets out grounds why he opposes the application. They state thus:
 - a) That as a matter of fact, parcel Dagoretti/Kangemi /754 ceased to exist upon lawful subdivision into Dagoretti/Kangemi/ 1338 and Dagoretti/Kangemi /1339.
 - b) That at the time of judgment, parcel Dagoretti/Kangemi/754 had already been subdivided into Dagoretti/Kangemi/1338

and Dagoretti/Kangemi/1339, both registered in the name of the interested party, Stephen Gathuita Mwangi.

- c) That these resultant parcels, Dagoretti/Kangemi/1338 and Dagoretti/Kangemi/1339 were never the subject of evidence at the hearing of this suit and were not included in the court's judgment or decree. It would therefore be prejudicial to the interested party to cancel them as the Interested Party would thereby be condemned unheard.
- d) That in its judgment, the court failed to consider that the land had previously been surveyed, sub-divided and titles issued to the beneficiaries of the late Mweya Karonga and Gitau Karonga. That we have filed a Notice of Appeal to at the Court of Appeal to challenge the court's decision.

- 6. It is his contention that the present application seeks to amend the decree which prayer amounts to introducing new subject matter post judgment. The defendant avers the court is functus officio to grant such an order.
- 7. That although the interested party is on record, the proprietary status of titles Dagoretti/Kangemi/ 1338 and 1339 was never put in issue at trial, and it would be prejudicial to cancel them without proper determination.
- 8. That the procedure to challenge a title is to file a suit against the Interested Party as the registered owner of the properties in question so

the Interested Party gets to file a defence and his case is heard on its merits.

9. That if the application is allowed, serious prejudice will be occasioned to both me, my family and the interested party by purporting to nullify titles that were not the subject of adjudication as well as create uncertainty in the land register and invite further disputes.
10. The Interested Party deposed that he is the registered owner of L.R Dagoretti/Kangemi/1339 and 1338 which he acquired for consideration in the year 2012. That he was not a party to the suit and has only been joined after judgment.
11. That further, the plaintiff wishes to have my titles cancelled without giving me an opportunity to be heard, which should have happened at the time of the hearing of the main suit. He didn't sue me or apply to enjoin me to the case. To grant his request is therefore to condemn me unheard, which is to offence a cardinal principle of natural justice that no man should be condemned unheard.
12. He urged the court to dismiss the application as the plaintiff remedy lie in filing afresh suit against him.
13. In response vide his further affidavit sworn on 13/10/2025, the plaintiff deposes that as the legal administrator of Dagoretti/Kangemi/7 which is

the head title to 754 that was fraudulently further sub-divided into L.R 1338 and 1339.

14. That as the executor of the estate, his sole intention is to remedy the fraud and have due process followed and reflected on the records. That the court already declared the sub-division of Dagoretti/Kangemi/7 done on 24/1/1994 was fraudulent, null and void.

Analysis and Determination:

15. The parties filed written submissions which I have read and considered. This application is urging the court to exercise its powers granted under Section 34 of the Civil Procedure Act.

16. Section 34 provides thus:

“(1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the court executing the decree and not by a separate suit.

(2) The court may, subject to any objection as to limitation or jurisdiction, treat a proceeding under this section as a suit, or a suit as a proceeding, and may, if necessary, order payment of any additional court fees.

(3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the court.”

17. The Defendant submitted that once the court pronounced itself on the merits of the dispute, it becomes functus officio and cannot reopen its decision except through the narrow window provided under Section 80 of the Civil Procedure Act.

18. They cited the Court of Appeal in **Republic v Attorney General & 15 Others ex parte Kenya Seed Company Ltd & Others [2010] eKLR** which held that while a court may correct an accidental slip to give effect to its intention, such correction cannot be used as a vehicle for re-litigating or expanding the scope of the judgment. The court stated as follows:

"What is certainty not permissible in the application of section 99, is to ask the court to sit on appeal on its own decision, or to redo the case or application, or where the amendment requires the exercise of an independent discretion, or if it involves a real difference of opinion, or requires argument and deliberation or generally where the intended corrections go to the substance of the judgment or order."

19. From the response to the application, neither the defendant nor the Interested Party is challenging the decree/judgment in place.

20. Paragraph (i), (ii), (iii) of the judgment ordered thus;

- (i) *A declaration be and is hereby issued that the subdivision of land registered on 24.1. 1994 is fraudulent, void and that the process of subdivision of title number Dagoreti/Kangemi/7 undertaken by Gitau Karonga is null and void.*
- (ii) *A declaration that the opening of new registers for title number Dagoreti/Kangemi/754, 755, 756 and 757 and all procedural steps leading thereto are null and void and the transfer of these titles by the Defendant to any party is null and void.*
- (iii) *A declaration that all transactions effected upon Dagoreti/Kangemi/7 by the Defendant or others claiming through or under him are invalid null and void and the registers and titles issued for Dagoretio/Kangemi/754, 755, 756 and 757 and any other sunsequent register and titles resultant therefrom be cancelled.*

21. There is no dispute that L.R NO Dagoretti/Kangemi/1e338 and 1339 were birthed from subdividing L.R Dagoretti/Kangemi/754. The decree therefore provided for cancellation of any title created from Dagoretti/Kangemi/7.

22. The Interested Party argues that if the application is grated, then he will be condemned unheard. That the plaintiff should file afresh case against him. Additionally, they both argue that the court is functus officio.

23. Section 99 of the CPA envisages situations such as this and in my view, the plaintiff has only come back to court after the Land Registrar refused to effect/implement the order. The plaintiff is not asking for any new orders. Paragraph 3 of the judgement includes “any other subsequent register and titles resultant therefrom be cancelled.”
24. The present titles Dagoretti/Kangemi/1338 and 1339 are among: those resultant titles having been created from sub-division 754. Therefore, it is the Interested Party to either apply to set aside the Judgement or sue the plaintiff.
25. As long as the decree remains in force, it must be obeyed and implemented. See the holding in the Case of Hardkinson vs Hardkinson for the proposition that an order remains one until it is set aside.
26. Consequently, I am not persuaded by the Respondent’s arguments that:
- a) *This court is functus officio to issue the orders singly.*
 - b) *That granting the order is equivalent to sitting on appeal on my own judgment.*
 - c) *That the Interested Party will be condemned unheard, as the said Interested Party has not moved the Court appropriately.*

27. In light of the foregoing analysis, I hold that the application is meritorious. It is granted as prayed.

Dated, signed & delivered at Nairobi virtually this 22nd day of Jan. 2026.

A. OMOLLO
JUDGE

ORIGINAL