



THE JUDICIARY



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

NAROK ELC NO. 3 OF 2020

SALOME NAANYU LESHAN LETOLUO.....1ST PLAINTIFF/RESPONDENT
JOY NAMUNYAK LESHAN.....2ND PLAINTIFF/RESPONDENT
LESHAN KUNTAI.....3RD PLAINTIFF/RESPONDENT
(Suing as the legal representatives of the Estate of Leshan Ole Letoluo – deceased)

-VERSUS-

HABA HABA INVESTMENT LTD.....1ST DEFENDANT/RESPONDENT
JAMES OCHENGO ONDUSO.....2ND DEFENDANT/RESPONDENT
SERAH NJOKI MUNGE.....3RD DEFENDANT/RESPONDENT
SANKALE OLE OTUNI.....4TH DEFENDANT/RESPONDENT
LAND REGISTRAR NA.....5TH DEFENDANT/RESPONDENT

AND

JOSEPH MURIUKI WAHOME.....1ST PROPOSED INTERESTED PARTY/APPLICANT
SAMUEL ANTHONY NGARUIYA....2ND PROPOSED INTERESTED PARTY/APPLICANT
MARGARET WAMBUI GICHUKI.....3RD PROPOSED INTERESTED PARTY/APPLICANT

RULING

1. The matter for determination is a **Notice of Motion Application** dated **19th May 2025**, filed by the Proposed Interested Parties/Applicants, **Joseph Muriuki Wahome, Samuel Antony Karungii Ngaruiya**, and **Margaret Wambui Gichuki**, which application is anchored under **Articles 48 and 50(1) of the Constitution of Kenya, 2010, Sections 1A, 1B, 3A, and 45 of the Civil Procedure Act Cap 21 Laws of Kenya, Order 10, rule 11; Order 22, rule 22; and Order 51, rule 1 of the Civil Procedure (Amendment) Rules 2020.**

2. The Applicants seek for orders that they be joined in the matter as **Interested Parties**, for **conservatory orders** to maintain the status quo of the suit property pending the determination of the application, for **stay of execution** of the judgment delivered on **20th February 2025**, and decree issued on **3rd March 2025**, and for **review of the judgment** and **all consequential orders** issued thereto to allow the suit to be heard de novo.
3. The application is premised on the grounds set on the face of the application among them being; that the Proposed Interested Parties/Applicants are necessary parties to this matter being bonafide purchasers for value of part of the suit property being land parcel No **L.R. No. NrK/Cis-Mara/Ilmashariani Morijo/1190**.
4. The application is further supported by the Supporting Affidavit of the 2nd Proposed Interested Party/Applicant, **Samuel Antony Karungii** sworn on **19th May 2025**, with full authority from 1st and 3rd Proposed interested to swear on their behalf.
5. The 2nd Proposed Interested party/Applicant stated that 4th Defendant/Respondent acquired Land parcel LR. Number **Nrk/Cis-Mara/Ilmashariani Morijo/333**, from Group Ranch. The said land was subdivided into three parcels of land known as **Nrk/Cis-Mara/Ilmashariani Morijo/1188**, **Nrk/Cis-Mara/Ilmasharian Morijo/1189** and **Nrk Cis-Mara/Ilmashariani 1190**.

6. The deponent averred that the proposed interested parties purchased for value part of the suit property being Parcel L.R. **Nrk/Cis-Mara/Ilmasharian Morijo/1190**, and that they have been in **continuous occupation** of their respective portions since purchasing them.
7. The deponent further averred that the 4th Defendant/Respondent concealed material facts from the court, including the sale of portions of the suit property to third parties, which would have led to a different judgment had full disclosure of material facts been made.
8. The 2nd Proposed Interested Party/Applicants further stated that their proprietary interests have been jeopardized, as they conducted **due diligence, paid stamp duty**, and **obtained necessary consents**, prior to purchasing their respective parcels of land. The deponent alleged that the 4th Defendant/Respondent has evicted the Proposed Interested parties from their portions of the suit property, and transferred the land to the Plaintiffs/Respondents, leaving them destitute.
9. The deponent argued that the Respondents are taking advantage of the judgment delivered on **20th February 2025**, and Decree issued on **3rd March 2025**, which are being used to defeat the Applicants' legitimate claims on the suit property and request the court to grant them leave to present their case and defend the suit to safeguard their interests and prevent injustice.

10. The Application is opposed. The Plaintiffs/ Respondents filed their Replying Affidavit dated **17th November 2025**, sworn by **Leshan Kuntai**, on behalf of the 1st and 2nd Plaintiffs/Respondents. **Leshan Kuntai**, the 3rd Plaintiff/Respondent, averred that he was authorized by his co-administrators of the estate of the late **Leshan Ole Letoluo** to swear the said Affidavit on their behalf. In opposing the instant application, the deponent contended that the application is **frivolous, vexatious, incompetent, and devoid of merit**. He argued that the application was based on **material non-disclosures, misrepresentations, and inaccuracies** intended to mislead the court.
11. Further, he averred that their advocate on record has advised them that the Proposed Interested Parties sought to be joined in the suit after judgment had already been delivered on **26th February 2025**. Further that the applicants sought for orders of **stay of execution** and a **review of the Judgment**, to have it **set aside**, and the suit to proceed de novo. He argued that the application was improperly anchored on **Order 45** of the **Civil Procedure Rules**, as the Proposed Interested Parties failed to satisfy the requirements of the provisions.
12. Further the deponent averred that joinder of parties to a suit is only permissible when proceedings are still pending before the court, as per **Order 1 Rule 10(2)** of the **Civil Procedure Rules**. He cited the case of **Njogu & 2 others v Githinji & 2 others; Ngiricha & 4 others (Intended Interested Party) (ELC 151 of 2013) [2025] KEELC 936 (KLR)**.

13. The deponent argued that the Proposed Interested Parties failed to demonstrate any triable issues directly affecting their interests that would necessitate their inclusion. He further contended that they lacked **valid titles, ownership rights, or proprietary interests**, rendering their application **incompetent** and an **abuse of the court process**. It was his contention that the court was **functus officio**, having delivered a binding judgment and decree, and it lacks jurisdiction to **revisit its findings** or **entertain** an application seeking to reopen the matter.
14. He also contended that the proper recourse for the Proposed Interested Parties, if aggrieved by the judgment, was to file a **Notice of Appeal** under **Rule 77** of the **Court of Appeal Rules**. He argued that the application was legally untenable, violated the doctrine of **functus officio**, and amounted to an abuse of the court process.
15. The deponent detailed the history of the case, initially filed by the deceased in **2017 as ELC 553 of 2017**, and later converted to **ELC No. 3 of 2020**. The deceased sought declarations of ownership by **adverse possession, cancellation of the registration of parcel NRK/CIS-MARA/ILMASHARIANI-MORIJO/1189** in the name of the 1st Defendant, and other reliefs.
16. The judgment delivered on **26th February 2025** declared the Plaintiffs entitled to 5 acres out of parcel **NRK/CIS-MARA/ILMASHARIANI-MORIJO/1190**, and directed the 4th

Defendant to execute transfer documents or pay the estate the equivalent value of **5 acres** at the current market price.

17. The Respondents also addressed the Proposed Interested Parties' claims, and pointed out the inconsistencies and legal deficiencies in their documents, including sale agreements, title deeds, and official searches. Further, the deponent argued that the Proposed Interested Parties failed to demonstrate compliance with mandatory legal steps required for lawful subdivision and transfer of land. He averred that the Proposed Interested Parties could not have acquired valid or enforceable titles to the properties described as **CIS-MARA/ILMASHARIANI-MORIJO/5606** and **5607**, due to the absence of evidence of lawful subdivision, registration, and conveyancing documents.

18. In conclusion the deponent contended that the Proposed Interested Parties failed to undertake **due diligence**, and ignored ongoing litigation, relying on contradictory documents and transacting with a party legally barred from dealing with the property due to the doctrine of **lis pendens**. He argued that the proposed interested parties conduct amounted to an abuse of the court process and demonstrated unclean hands. He urged the court to dismiss the instant application with costs.

19. The application was canvassed by way of written submissions. The Proposed Interested Parties/Applicants filed their written submissions dated **21st July, 2025**, through

Maina Ngaruiya & Co Advocates and raised the following issues for determination;

- i) Whether the Proposed Interested Parties/Applicant should be joined in the matter as Interested parties?**
- ii) Whether an order for stay of execution of the Judgment entered on 20th February 2025 by Hon. Justice Mbogo C. G. and Decree issued on 3rd March 2025 should be made in this suit?**
- iii) Whether there should be a review of the Judgment entered on 20th February 2025 by Hon Justice Mbogo C. G. and all consequential orders?**
- iv) Whether the Judgment delivered on 20th February 2025 by Hon. Justice Mbogo C. G. should be set aside and the suit be heard de novo?**

- I) Whether the Proposed Interested Parties/Applicants should be joined in the matter as Interested parties?**

20. It was the Applicants submissions that they ought to be joined in the matter as **Interested Parties**, since they are innocent purchasers for value without notice. They gave history of the suit land wherein the 4th Defendant/Respondent acquired Land Parcel **Cis-Mara/Ilmashariani Morijo/333**, from the Group Ranch. Further, the 4th Defendant subdivided the said land into 3 parcels being;

- i) Land Parcel LR Number Nrk
Cis-Mara/Ilmasahariani Morijo/1188**
- ii) Land Parcel LR Number Nrk
Cis-Mara/Ilmasahariani Morijo/1189**

**iii) Land Parcel LR Number Nrk
Cis-Mara/Ilmasahariani Morijo/1190**

21. They argued that they are bona fide purchasers for value of portions of the suit property, known as land parcel **L.R. No. Nrk/Cis-Mara/Ilmashariani Morijo/1190**, and their inclusion in the suit is necessary to enable the court to effectively and completely adjudicate upon and settle all questions involved.
22. They relied on **Order 1 Rule 10** of the **Civil Procedure Rules**, which provides for the addition of a necessary party to proceedings. Further, the applicants cited the case of **Mary Beach Limited v Attorney General and 18 others (2018) eKLR**, where the Court of Appeal outlined the principles for joinder, emphasizing that exceptional circumstances, such as adverse orders issued against a party who was not given notice or heard, justify their inclusion even after judgment has been passed.
23. **On whether an order for stay of execution of the Judgment entered on 20th February 2025, by Hon. Justice Mbogo C. G. and Decree issued on 3rd March 2025 should be made in this suit**, the applicants submitted that the execution of the decree had led to their eviction from their respective portions of the suit property, and that 2nd and 3rd Interested Parties parcels of lands have been taken away by the 4th Defendant/Respondent and the same have been transferred to the Plaintiffs/Respondents and a new parcel of land registered as **L.R. No. Nrk/Cis-**

Mara/Ilmashariani Morijo/10681, leaving them destitute despite being innocent purchasers for value.

24. Further, the applicants argued that their proprietary interests had been jeopardized, as they had conducted ***due diligence***, paid the ***full purchase price, paid stamp duty***, and ***obtained all necessary consents*** prior to purchasing their respective parcels of land. The applicants relied on ***Order 22, Rule 22*** of the ***Civil Procedure (Amendment) Rules, 2020***, which allows the court to stay execution upon sufficient cause being shown.

25. ***On whether there should be a review of the Judgment entered on 20th February 2025 by Hon Justice Mbogo C. G. and all consequential orders***, the Applicants prayed for a review of the judgment on the grounds of discovery of new and compelling evidence. They submitted that the 4th Defendant/Respondent had wilfully concealed material facts from the court, including the fact that portions of the suit property had already been sold to third parties, including the Proposed Interested Parties. They argued that full disclosure of these facts would have led the court to render a different judgment. The applicants relied on ***Order 45, Rule 1*** of the ***Civil Procedure (Amendment) Rules, 2020***, which provides for the review of a decree or order on the discovery of new and important evidence.

26. Further, the Applicants sought to have the judgment delivered on ***20th February, 2025***, set aside and the suit heard afresh. The applicants argued that they were not

served with court documents and were condemned unheard, which is a violation of their fundamental right to be heard.

27. In conclusion, the Proposed Interested Parties/Applicants submitted that the execution of the Judgment and decree was greatly prejudicial to their rights and that they have good and triable defences to the matter. They prayed that their application dated **19th May, 2025**, be allowed in its entirety and that costs be borne by the Respondents.
28. The Plaintiffs/Respondents filed their submissions dated **24th November 2025** in opposition of the Proposed Interested Parties/Applicants' Notice of Motion Application and submitted that the application dated **19th May 2025**, by the Proposed Interested Parties/Applicants should be dismissed with costs.
29. It was the Plaintiffs/ Respondents submissions that the application was filed in abuse of the court process, and it failed to meet the legal requirements for **joinder, stay of execution, review, or setting aside** of the judgment delivered on **20th February 2025**, by **Hon. Justice Mbogo C.G.** The Plaintiffs/Respondents raised the following issues for determination;
 - i) **Whether the Proposed Interested Parties/Applicants should be joined as parties in the matter as interested parties.**
 - ii) **Whether an Order of stay of execution of the Judgment entered on 20th February 2025 by Hon. Justice Mbogo C. G. and Decree issued**

on 3rd March 2025 should be made in this suit.

iii) Whether there should be a review of the Judgment entered on 20th February 2025 by Hon. Justice Mbogo C. G. and all consequential orders.

iv) Whether the Judgment delivered on 20th February 2025 by Hon. Justice Mbogo C.G should be set aside and the suit be heard de novo.

v) Who should bear the costs of this Application.

30. **On whether the Proposed Interested Parties/Applicants should be joined as parties in the matter as interested parties,** the Plaintiffs/Respondents submitted that the Proposed Interested Parties/Applicants could not be joined as parties in the matter because the judgment had already been delivered, and the court has now become functus **officio**. The plaintiffs/ Respondents relied on **Order 1 Rule 10(2)** of the **Civil Procedure Rules**, and cited precedents such as **Everton Coal Enterprises Ltd v Rose Wakanyi Karanja & 5 Others (2023)** and **JM K v MWM & Another [2015] eKLR**, which emphasized that joinder of parties can only be done in pending proceedings.

31. **On whether an Order of stay of execution of the Judgment entered on 20th February 2025 by Hon. Justice Mbogo C. G. and Decree issued on 3rd March 2025 should be made in this suit,** the

Plaintiffs/Respondents submitted that the Proposed Interested Parties/Applicants failed to demonstrate sufficient cause, substantial loss, or provide security as required under **Order 22 Rule 22** and **Order 42 Rule 6** of the **Civil Procedure Rules**.

32. Reliance was also sought in the case of **Elena D. Korir vs Kenyatta University [2012]eklr**, and they submitted that the Proposed Interested Parties/Applicant failed to show that the 4th Defendant/Respondent, their purported vendor, possessed a legitimate title capable of conferring rights to them. They further relied on the case of **Dina Management Ltd vs County Government of Mombasa (2023)**.
33. It was their further submissions that the court lacked jurisdiction to grant the stay order as it was now **functus officio** after delivering the Judgment. Reliance was sought in the case of **Dickson Muricho Muriuki vs Timothy Kagonde Muriuki & 6 others [2013]KECA 543 (KLR)**
34. **On whether there should be a review of the Judgment entered on 20th February 2025, by Hon. Justice Mbogo C. G. and all consequential orders**, the Plaintiffs/Respondents submitted that the Proposed Interested Parties/Applicants did not meet the threshold for review under **Order 45** of the **Civil Procedure Rules**, as they failed to demonstrate the discovery of new and important evidence, an error apparent on the face of the record, or any other sufficient reason.

35. ***On whether the Judgment delivered on 20th February 2025, by Hon. Justice Mbogo C.G should be set aside and the suit be heard de novo***, the Plaintiffs/Respondents submitted that on the request to set aside the judgment and rehear the suit de novo, the Proposed Interested Parties/Applicants had not demonstrated any ***irregularity, illegality, or denial of natural justice*** in the proceedings leading to the judgment. They emphasized that the application was an attempt to relitigate issues already conclusively determined, which is impermissible under procedural law.
36. ***On who should bear the costs of this Application***, the Plaintiffs/Respondents submitted that the Proposed Interested Parties/Applicants should bear the costs of the application, relying on ***Section 27(1)*** of the ***Civil Procedure Act*** and relevant case law, including ***Cecilia Karuru Ngayu vs Barclays Bank of Kenya & another [2016] eklr.*** They also argued that the application was filed in abuse of the court process, and the Plaintiffs/Respondents had incurred costs in defending it.
37. In conclusion, the Plaintiffs/Respondents urged the court to dismiss the application dated ***19th May 2025***, with costs.
38. The Defendants/Respondents did not file any response to the Application nor any written submissions, and it is evident that the application is only opposed by the Plaintiffs herein, who are the beneficiaries of the Judgment entered on ***20th February 2025***.

39. The above are the grounds for and against the instant application, which this court has carefully considered together with the rival written submissions, and renders itself as follows.
40. There is no doubt that Judgment was entered herein on **20th February 2025**; wherein the court pronounced itself and held that the Plaintiffs suit had partially succeeded to the extent that a declaration was issued that the Plaintiffs were entitled to **5 acres** out of the parcel of land known as **Nrk/Cis Mara/Ilmashariani-Morijo/1190**.
41. From the pleadings and evidence adduced in court, it is evident that the plaintiffs claim was hinged on a claim of adverse possession, wherein the late **Leshan Ole Letulo**, alleged that he had acquired land parcels **No Nrk/Cis Mara/Ilmashariani-Morijo/1189** and **1190**, by virtue of adverse possession. It was his claim that he purchased the two parcels of land in the **2001**, from the 4th Defendant and the 4th Defendant did not transfer the land to him, but he took possession and developed it. Further, by the time of filing the suit in 2017, more than 12 years had lapsed, and thus the 4TH Defendant's ownership had been extinguished by effluxion of time.
42. It is also evident that after the issuance of a Judgment, the court becomes **functus officio**, though post judgment proceedings can be entertained. However, in the instant suit, the proposed interested parties have averred and submitted that the Judgment entered by the court on **20th February 2025**, has adversely affected them. That the said Judgment

was in respect of proceedings that the Applicants were not aware of though they were in possession of the suit property and that the Respondents did not give full material disclosure of facts, which facts if the court was aware could not issue the said Judgment as it did.

43. Having laid down the above background, the court finds and holds that the issue for determination is whether the Proposed interested parties application dated **19th May 2025**, is merited. In determining whether the applicants are deserving of the orders sought, the court will consider the issues for determination as framed by both the applicants and the Plaintiffs/Respondents.
44. From the court record, it is evident that land parcel **No 1190**, which is the subject of this application and the Judgment of **20th February 2025**, is a subdivision of **Nrk /Cis Mara/Imasharian -Morijo/333**, which was initially allocated to the 4th Defendant/Respondent herein by the Group Ranch. It is evident that the 4th Respondent later subdivided that suit land into three portions of land being **Nrk /Cis Mara/mashariani-Morijo/ 1188, 1189 and 1190**.
45. The proposed interested parties have averred that the 4th Respondent later subdivided the suit land into two parcels being parcel No. **5606** and **5607**, which parcels of land were sold to the proposed interested parties herein, and they have been in possession since then.
46. It was their claim that after the judgment, the 4th Defendant/Respondent executed the decree emanating from

the said Judgment and evicted them from the suit land. They urged the court to set aside the judgment of **20th February 2025**, and allow the matter to proceed denovo.

47. The Plaintiffs/ Respondents would hear none of the proposed interested parties allegations, and they urged the court to dismiss the instant application with costs.
48. The applicants have sought to be joined in this proceeding as interested parties. An interested party is an individual or entity with an **identifiable, direct, and legal stake** in the outcome of a suit despite not being Plaintiff or defendant to the suit. The interested parties are added to proceedings because the court's decision will directly affect **their rights, liabilities, or interests**, or because their presence is necessary for the effectual and complete determination of the matter.
49. In the case of **Everton Coal Enterprises Limited -vs- Rose Wakanyi Karanja & 5 Others (2023) KESC 98 (KLR) , Supreme Court of Kenya in application No. E026 of 2023**, the court stated as follows:

“Strictly speaking, though joined, the applicant was not a party to “the proceedings” in the Court of Appeal having been joined post-judgment, yet a joinder contemplates a situation where proceedings are still pending before the Court and in terms of Rule 5 (d) (ii) of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 (Mutunga Rules) which is in pari materia with

Orders 1 Rule 10 (2) of the Civil Procedure Rules, a party will only be added to on-going proceedings in order to enable the Court adjudicate fully upon and settle all questions involved in the particular proceedings before it.

50. Therefore, it is not in doubt that an interested parties are basically joined during the proceedings if they have an identifiable stake. However, after Judgment has been entered, the proposed interested party must demonstrate that the Judgment entered directly affects its rights. In the case of ***Communications Commission of Kenya & 4 Others v. Royal Media Services Limited & 7 Others, Petition Number 7 of 2014, eKLR***, where the Supreme Court of Kenya observed as follows;

“An interested party is one who has a stake in the proceedings, though he/she was not a party to the cause ab initio. He/she is one who will be affected by the decision of the Court when it is made, either way a person feels that his interest will not be articulated unless he or she himself/herself appears in the proceedings and champions his or her cause.”

51. The Applicants herein have filed this application after the Judgment, and the question now is whether they should be joined as interested parties after Judgement. It was the interested parties allegations that they purchased their

respective parcels of land in 2017, and took possession thereof.

52. It was the Plaintiffs/Respondent's case that the late **Leshan Ole Letulo** was entitled to the suit land by virtue of **adverse possession**. The court after analysing the evidence found that the plaintiff who were the legal Representatives of the estate of **Leshan Ole Letulo** were entitled to **5 Acres** from the suit land, **Nrk/ Cis Mara/Ilmasharuani-Morijo/1190**.
53. From the annexures attached to the application, this land parcel **No 1190**, is no longer in existence as it was subdivided and it gave rise to land parcel No **Cis Mara/Ilmashariani-Morijo/ 10681**. Therefore, it is evident that the judgment of **20th February 2025**, has been executed.
54. If the said judgment of **20th February 2025**, has been executed, what is remaining for the interested parties to set aside and then be joined as interested parties? The court finds and holds that if the said judgment of the court has been executed and a new title issued in compliance with the court order, then there is nothing remaining to fight over, and it would not be necessary to join the applicants herein as interested parties after the judgement has been executed and enforced, and new title issued.
55. After the judgment and enforcement of the same, the court became **functus officio**, which is a doctrine that prevents a Court from revisiting its decision once a matter has been conclusively determined. This doctrine ensures the finality of

litigation and stops Courts from sitting on Appeal in their own decisions.

56. **Black's Law Dictionary (10th ed. 2014)** defines a Judgment as a decision made by a Court regarding the rights and obligations of the parties involved in a legal action or proceeding. A Judgment is the Court's final order concerning these rights and liabilities, and therefore, a Judgment makes the Court "**functus officio**," meaning it cannot re-open the case.
57. The concept of "**functus officio**" signifies that once a Court has issued a Judgment following a lawful hearing, it is unable to revisit the matter, and this doctrine serves as a mechanism by which the law upholds the *principle of finality*.
58. It is evident that **Order 1 Rule 10(2)** of the **Civil Procedure Rules** allows for joinder only during ongoing proceedings. The Supreme Court in the case of **Everton Coal Enterprises Ltd (supra)** was emphatic that joinder of parties was only permissible in ongoing proceedings and not in a matter that has been concluded as in the instant case. **Order 1 Rule 10(2) of the Civil Procedure Rules** provides 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 in order to enable the Court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.”

59. From the above provisions of law, it is clear that the said provision does not envisage that where a matter has been concluded, a party can apply to be joined either as a Plaintiff or Defendant. The applicants have not demonstrated why they did not join the suit while it was on going given that the plaintiffs filed the suit in **2017**, and there were allegations during the proceedings that the Plaintiffs structures or development on the suit land had been demolished and late **Lashan Ole Letulo** as the initial Plaintiff had been evicted from the said parcel of land.
60. The suit herein was initially filed in **2017**, which is the same year that the applicants allegedly purchased the suit land. The Plaintiffs were on the suit land and the applicants cannot feign lack of knowledge that the Plaintiffs were staking claim of the suit land.
61. This court finds no reasons as to why the applicants should be joined in the suit after Judgment. The court is now ***functus officio.***
62. On whether the court should issue an order for stay of execution of the Judgment of **20th February 2025** and the decree issued on **3rd March 2025**, the applicants averred

and submitted that the court should grant them the said order since their land has been taken away and transferred to the Plaintiffs leaving them destitute. They also submitted that new title deed **No 10681** has been issued to the Plaintiffs.

63. On their part, the plaintiffs submitted that the applicants have failed to demonstrate sufficient cause and an arguable case to warrant stay of execution of the Judgment in issue. In any event, the said Judgment has been executed and the court is now ***functus officio***.
64. Indeed, if the judgment has been executed and/ or enforced and a new title has been issued, what is there to stay? The court having found that it cannot join the applicants after the Judgment, and the said Judgment having been executed, the court finds the applicants have not shown sufficient cause to warrant the court to issue stay of execution.
65. On whether the court should review the judgement of the court issued on **20th February 2025**, the applicants submitted that there is discovery of new and important evidence which warrants the court to review the existing Judgment.
66. On their part, the Plaintiffs /Respondents submitted that the Applicants have not demonstrated any discovery of new and important evidence nor any of the recognized grounds for review as provided by **Order 45** of the **Civil Procedure Rules**.

67. Indeed, the court has not seen any evidence of discovery of new and important evidence, and it is clear that the court did analyse the available evidence and held that the 4th Defendant/Respondent did sell the suit land to late **Leshan Ole Letulo** in **2001**, and thus allowed the Plaintiffs claim. Allowing a review herein would be tantamount to re-opening a concluded matter, wherein the court is already **functus officio**. This is a concluded matter and the doctrine of finality in litigation should set in, and therefore, the court declines to allow the prayer for review of the Judgement issued on **20th February 2025**.
68. On whether the Judgment in place should be set aside, this court finds that the Judgment herein is a **regular judgment** having been issued after an inter-parties hearing. Having found and held that the applicants are not deserving of the orders of joinder as interested parties after the Judgment, and having found that there is no sufficient reasons to allow the review of the said judgment, and having found that the Judgment herein is a regular Judgment, this this court finds no reasons to set aside the said Judgment.
69. On the issue of costs, the court will be guided by the provisions of **Section 27** of the **Civil Procedure Rules**, on the basis that costs are granted at the discretion of the court. However, costs follow the event and are awarded to the successful litigant. See the case of **Jasbir Singh Rai & 3 others v Tarlochan Singh Rai & 4 others SC Petition No 4 of 2012: [2014] Eklr.**

70. The proposed interested parties' application is not successful. The Plaintiffs/Respondents are the successful litigants and are entitled to costs of this application.

71. Ultimately having carefully considered the applicants /proposed interested parties application dated **19th May 2025**, and the rival written submissions, the court finds it not merited, and the said application is **dismissed entirely with costs** to the Plaintiffs/Respondents.

It is so ordered.

Dated, signed and delivered virtually at Narok this 29th Day of January 2026.

**L. Gacheru
Judge**

**Delivered online in the presence of
Elijah Meyoki - Court Assistant**

**Ms.Kabura holding brief for Mr. Kimathi
Plaintiffs/Respondents**

Mr. Kamwaro for 1st to 4th Defendants/Respondents

N/A for 5th Defendant/Respondent

**Ms. Lyona holding brief for Mr. Maina Ngaruiya for 1st to
3rd proposed interested parties/Applicants.**

**L. Gacheru
Judge
29/1/2026**