



**Mwangi v Vision Afrika Housing Co-operative Society Ltd & 3 others
(Environment and Land Appeal 21 of 2024) [2026] KEELC 137 (KLR)
(Environment and Land) (22 January 2026) (Ruling)**

Neutral citation: [2026] KEELC 137 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA
ENVIRONMENT AND LAND
ENVIRONMENT AND LAND APPEAL 21 OF 2024**

**MC OUNDO, J
JANUARY 22, 2026**

BETWEEN

STEPHEN KAMAU MWANGI APPELLANT

AND

**VISION AFRIKA HOUSING CO-OPERATIVE SOCIETY LTD 1ST
RESPONDENT**

LAND REGISTRAR, NAIVASHA 2ND RESPONDENT

REGIONAL SURVEYOR, RIFT VALLEY 3RD RESPONDENT

THE HON. ATTORNEY GENERAL 4TH RESPONDENT

RULING

1. What is before me for determination is a Notice of Motion Application dated 22nd September 2025 brought under the provisions of Section 3 of the *Environment and Land Court Act* and Section 79B of the *Civil Procedure Act* and all other enabling Provisions of the Laws of Kenya wherein the 1st Respondent has sought for the following orders:
 - i. That the Appeal herein be dismissed since the substratum of the Appeal which was a boundary dispute had been concluded and determined through an interlocutory Decree on appeal given in Nakuru ELC. Land Appeal No.10 of 2019 whereby there was no appeal over the said Judgement/Decree of the interlocutory appeal.
 - ii. That this Honourable Court be pleased to dismiss the Appeal since it had been overtaken by events upon full implementation of the trial court's decree and thus it would be an academic exercise to hear or determine the Appeal.



- iii. That the costs of this application and of the entire appeal be awarded to the 1st Respondent.
2. The said Application is premised on the grounds therein and the Supporting Affidavit of even date sworn by Ayub Gatheru Maingi, the 1st Respondent's Chairman who sought that the instant Appeal be dismissed on the ground that the same was moot hence it would be an academic exercise to prosecute it.
 3. He deponed that the instant appeal seeks to question and/or set-aside the orders for re-alignment of the boundary/beacons between parcel title number Gilgil/Karunga Block 2/257 measuring approximately 2.040 Ha and Gilgil/Karunga Block 2/258 measuring approximately 2.21 Ha 4. That parcel No. Gilgil/Karunga Block 2/257 was registered in the 1st Respondent's name on 15th November, 2017 whereas the parcel No. Gilgil/Karunga Block 2/258 was registered in the Appellant's name on 29th August, 1989.
 4. That on 4th May, 2018 and 30th April, 2018 respectively, the Land Registrar Naivasha, the 2nd Respondent herein and the Regional Surveyor Rift Valley, the 3rd Respondent herein had given their reports to the effect that the boundary/beacons for the parcel No. Gilgil/Karunga Block 2/258 had been re-positioned and had encroached onto the parcel No. Gilgil/Karunga Block 2/257 belonging to the 1st Respondent by an approximate area of 0.17 Hectares.
 5. That on 13th June, 2019, the 1st Respondent then filed suit being Nakuru MC. ELC. No. 127B of 2018 against Stephen Kamau Mwangi, Land Registrar Naivasha and Regional Surveyor Rift Valley, the 1st to 3rd Respondents herein, seeking that the land boundary for parcel No. Gilgil/Karunga Block 2/257 be re-fixed to align with the RIM (Registry Index Map) and to conform with the boundary reports compiled.
 6. That subsequently, on 23rd January, 2019, the learned Magistrate delivered a Ruling dismissing the said Application wherein the 1st Respondent lodged an appeal via Nakuru ELC Land Appeal No. 10 of 2019. Vide its ruling of 20th February, 2020, the Environment and Land Court directed the Land Registrar Naivasha, the 2nd Respondent herein and the Regional Surveyor Rift Valley, the 3rd Respondent herein to re-fix the boundaries/beacons between parcel Nos. Gilgil/Karunga Block 2/257 and Gilgil/Karunga Block 2/258 within 60 days.
 7. On 4th March, 2020, the Appellant herein had filed a Notice of Appeal and stay of execution against the decision of the wherein on the 30th September, 2020, the ELC Judge (in Nakuru ELCLA No. 10 of 2019) dismissed his Application for Stay of Execution. The Appellant did not pursue his appeal and subsequently, the ELC decree of 20th February, 2020 issued in Nakuru ELCLA No. 10 of 2019 was implemented by re-fixing the boundaries/beacons wherein after the 2nd and 3rd Respondents filed their reports for implementation dated 8th January, 2021 and 6th January, 2021 respectively following which on 22nd August, 2019, he registered a mutation for sub-division of its parcel No. Gilgil/Karunga Block 2/257 into 37 Plots which gave rise to being numbers Gilgil/Karunga Block 2/1068 - Block 2/1104.
 8. That the portion with a boundary dispute had been designated on the mutation as Plot Number 37 and registered as parcel No. Gilgil/Karunga Block 2/1104 measuring approximately 0.2288 Hectares into his name and a title deed issued on 23rd August, 2019.
 9. That subsequently on 10th August, 2023, the trial magistrate in Nakuru MC. ELC. 127B of 2018 granted the orders of a Mandatory Injunction to demolish the structures which had encroached on the parcel belonging to the 1st Respondent as well as costs for damages of Kshs. 400,000/=. The Appellant's attempt to seek for stay of execution vide Nakuru ELC. Misc. Application No. E17 of 2023 was dismissed on the 19th October, 2023 wherein the Trial court's decree of 10th August, 2023



was implemented and parcel of land No. Gilgil/Karunga Block 2/1104 was sold and transferred its new owner (who is not party to the Appeal) one Paul Kamore Gathima and a title deed issued to him on 7th October, 2024.

10. That Geo-Acre Surveys, the Survey firm which had sub-divided the parent parcel of the 1st Respondent's title number Gilgil/Karunga Block 2/257 into 37 Plots issued a Summary Report dated 18th September, 2025 detailing on the mutation of the parent parcel and highlighting on the fact that one of the mutated parcels which was the subject of the encroachment dispute being title number Gilgil/Karunga Block 2/1104 had already been sold and transferred to a third party.
11. That subsequently, it would be an academic exercise to proceed with the appeal herein since the impugned judgement/decree of the trial court had already been executed. That the Appeal ought to be dismissed with costs.
12. In response and in opposition to the 1st Respondent's Application, the Appellant vide his Replying Affidavit sworn on 7th November, 2025 deponed that the 1st Respondent's application herein was misconceived and a non-starter as the same is premised on falsehoods hence it ought to be dismissed with costs.
13. That on 13th June 2018, the 1st Respondent had filed a claim against him vide a certificate of urgency, seeking eviction and mandatory injunction orders in relation to parcel of land Title No. Gilgil/Karunga Block 2/257 measuring 2.040ha. He also sought that the 2nd and 3rd Respondents herein be ordered to re-fix land boundaries between Land parcel Title Nos. Gilgil/Karunga Block 2/257 and Gilgil/Karunga Block 2/258.
14. He confirmed that the Application had been dismissed by the trial court on 23rd January 2019, to which the 1st Respondent filed appeal No. Nakuru ELCA No. 10 of 2019 seeking to set aside the said orders. That on 20th February 2020 the appeal was allowed in terms of prayer 2 which was an interlocutory order allowing the 2nd and 3rd Respondents to re-fix the land boundaries/beacons between the subject parcels of land so as to conform with the Registry Index Map as per the boundary reports attached dated 4th May 2018 and 30th April 2018 respectively.
15. That he filed a Notice of Appeal with a corresponding application seeking to stay the orders of the 1st appellate court issued on 20th February 2020, which application had been dismissed vide a ruling of 30th September 2020.
16. That he did not prosecute his intended appeal as the same had been rendered nugatory by the said ruling. That accordingly, the main suit in Nakuru CMCC ELC No. 127b of 2018 was heard and a judgement entered for the 1st Respondent on 10th August 2023.
17. That being aggrieved by the decision of the said trial court, he filed an application for stay of execution pending the hearing and determination of the intended appeal namely; Nakuru ELCA No. E12 of 2023 both in the trial court and in the 1st appellate court, which application was dismissed in the 1st appellate court. That he subsequently lodged the present appeal, formerly Nakuru ELCA E12 of 2023, seeking to set aside the judgement and the decree that had been issued on 10th August 2023.
18. He deponed that the interlocutory order and/or decree that had been issued by the trial judge (sic) was not the final decree as it had been issued pending the final determination of the main suit in the lower court in CMCC ELC No. 127B of 2018. That in any event, the present appeal does not seek to challenge the correctness of the interlocutory order and/or decree but rather the final decree that had been issued by the trial lower court in Nakuru CMCC ELC No. 127B of 2018.



19. That subsequently, even though the 1st Respondent had executed the lower court decree in Nakuru CMCC ELC No. 127B of 2018, the Honorable court had the powers and mandate to vacate the said orders or modify the decree that had been given in the aforementioned lower court. He deponed that it was only fair and just that he be given a chance to have the appeal heard and determined to avert miscarriage of justice noting that the right to appeal against the said decree had not been extinguished and that the Appellate court had the right to hear and determine the said appeal based on the grounds as they appear in the memorandum of appeal.
20. He thus prayed that the 1st Respondent's application herein be dismissed with costs as the same was without merit.

PARA 21.

The Application was disposed of by way of written submissions.

1st Respondent's Submissions.

22. In their submissions dated 14th November 2025, the 1st Respondent through its submissions argues that the appeal is legally dead and should be dismissed. Their arguments was cantered on two main legal pillars:
23. Firstly that the core of this dispute being a boundary location was already a settled matter of law hence the subsequent Appeal was Res Judicata.
24. That the 2020 ruling in Nakuru ELC Land Appeal No. 10 acted as a "Preliminary Decree." Under Sections 2 and 68 of the *Civil Procedure Act* to the effect that wherein a party did not appeal a preliminary decree, they were barred from challenging it later in the final appeal.
25. They asserted that the 2020 decision conclusively settled the rights of the parties regarding the re-fixing of beacons according to the Registry Index Map (RIM) and the trial court's final judgment in 2023 did not create new rights but simply "worked out" the enforcement, the mandatory injunction and damage) of the boundary rights already established in 2020. That the boundary issue could therefore be re-opened on appeal. Reliance was placed on the decisions in the cases of Muthike –vs- Kenya Film Corporation Ltd [1989] Klr 499 At Page 500, Alba Petroleum Limited –vs- Total Marketing Kenya Limited[2019] eKLR, Supreme Court of India's decision in Shankar vs. Chandrakant, AIR 1995 SC 1211.
26. The 1st Respondent further argued that the appeal was moot as it had been overtaken by events thereby becoming an "academic exercise" because the court can no longer provide a practical remedy. That the trial court's decree had been fully implemented, the encroaching structures demolished, after the Appellant's application for stay of execution had been dismissed.
27. That subsequently the disputed portion of land being Parcel No. 1104 had been sold and a title deed issued to a third party, Paul Kamore Gathima, on 7th October 2024, who was not party to the Appeal.
28. Citing the Court of Appeal's decision in the case of Public Service Commission v Osoro [2023] KECA 1209 (KLR) they argued that since the land was now owned by someone not involved in the suit, and the boundaries were physically re-fixed, any judgment the court makes now would have no practical effect.
29. They concluded by submitting that because the substratum (the foundation) of the appeal was settled by the 2020 preliminary decree and the subject matter has been alienated to a third party, the appeal was moot and should be dismissed with costs.



Appellant's Written Submissions.

30. In his Written Submissions dated 7th November 2025, the Appellant opposed the 1st Respondents Application seeking for the dismissal of the appeal, arguing that neither the previous interlocutory orders nor the execution of the decree prevented the court from hearing the matter.
31. His response was summarized into two key arguments being that he refuted the claim that the boundary issue had been settled with finality in 2020 and argued that the decision in Nakuru ELCA 10 of 2019 was purely interlocutory. That it had dealt with "procedural and interim matters" (re-fixing beacons) rather than the substantive rights of the parties, which were only determined later in the main suit.
32. The Appellant emphasized that he was not challenging the correctness of the 2020 interlocutory decree but was appealing against the entire final judgment of the trial court which had been delivered on 10th August 2023.
33. He maintained that for a party to exercise their full right of appeal, there must be a final decree from a final decision. That since the main suit continued after the 2020 ruling, that ruling could not have disposed of the entire matter.
34. In regard to the second issue, the Appellant argued that the fact that the 1st Respondent had already demolished the structures or sold the land did not render the appeal moot. Citing the provisions of Section 78(2) of the *Civil Procedure Act*, he asserted that Appellate Courts had broad powers to "do justice even after execution which powers included the power to vary, set aside, or modify a decree regardless of whether it had been implemented.
35. He submitted that the execution of a decree was not a legal bar to an appeal wherein were the appeal to succeed, the court would have the authority to issue orders for restitution thus restoring the parties to the position they were in before the decree was executed.
36. He argued that the appeal ought to be heard to its logical conclusion to ensure fairness, as the right to challenge a final judgment was a fundamental legal entitlement. He concluded by submitting that the 1st Respondent's application was without merit and maintained that that the appeal was validly before the court, the issues are not res judicata, and the court retained the mandate to grant relief even after the physical implementation of the trial court's orders.

Determination.

37. I have considered the Notice of Motion Application dated 22nd September 2025 and filed by the 1st Respondent seeking the dismissal of the Appellant's Appeal on the grounds that it is moot; the boundary dispute having been concluded and determined through an interlocutory Decree on appeal in Nakuru ELC Land Appeal No.10 of 2019 and therefore was an "academic exercise. I have also considered the Appellant's response in opposition to the effect that the execution of the decree was not a legal bar to an appeal. Finally, I have considered the parties submissions and authorities herein cited.
38. The gist of the matter giving rise to the present application is that pursuant to a judgement delivered on 10th August, 2023 by the trial Magistrates Court in Nakuru CMCC ELC No. 127 of 2018, the Appellant being dissatisfied with the same, filed the current Appeal wherein he sought for the following orders;
 - i. That the present Appeal be allowed with costs.



- ii. The judgement of 10th August 2023 be set aside and the court be pleased to enter judgement in favour of the Appellant by finding that the 1st Respondent did not establish a case against the Appellant.
 - iii. Costs of the appeal and of the trial court be provided for.
 - iv. That such further and/or relief to the Appellant as this Honourable court may deem fit and just to grant.
39. The 1st Respondent then sought for the dismissal through the current application for reasons that:
- i. That the core issue which had been a boundary dispute had already been determined by an interlocutory decree in a previous appeal in Nakuru ELC Land Appeal No. 10 of 2019 and that since the Appellant did not appeal that specific judgment, the matter stands settled.
 - ii. That the trial court's orders had been fully executed where the boundaries were re-fixed by the Land Registrar and Regional Surveyor, and the land Parcel No. 257 had since been subdivided into 37 plots.
 - iii. That the specific portion under dispute, now Parcel No. 1104 had already been sold and transferred to a third party (Paul Kamore Gathima), who was not a party to the appeal.
 - iv. Lastly that because the structures on the disputed land had been demolished and the title transferred, hearing of the appeal would serve no practical purpose.
40. In Response and in opposition, the Appellant's position was that the application was "misconceived" and based on "falsehood", clarifying that the previous orders from 2020 judgement were interlocutory orders and intended only to hold until the final determination of the main suit in CMCC ELC No. 127B of 2018.
41. He argued that the current appeal was not challenging the old interlocutory orders, but rather the final judgment and decree delivered on 10th August 2023 maintaining that his right to appeal this final decision had not been extinguished.
42. He contended that that even if the 1st Respondent had already executed the decree, the Appellate Court still possesses the mandate to vacate or modify those orders to prevent a miscarriage of justice. He insisted that the appeal should be heard on its merits based on the grounds in the Memorandum of Appeal, regardless of the current status of the land.
43. Based on the brief history of the matter, I find the issues arising for determination as follows;
- i. Whether the Judgement and interlocutory Decree, on appeal, in Nakuru ELC Land Appeal No.10 of 2019 had determined the boundary dispute.
 - ii. Whether the Appellant's Appeal is res judicata and therefore moot.
44. I have considered the impugned judgement of 20th February 2020 herein cited as Vision Afrika Housing Co-operative Society Ltd v Stephen Kamau Mwangi, Land Registrar, Naivasha, Regional Surveyor Rift Valley & Attorney General [2020] KEELC 3578 (KLR) wherein it had been held as follows;
- "The order for mandatory injunction prayed for by the appellant under prayer (3) of the Notice of Motion dated 12th June 2018 was premature as prayer (2) of the application had sought for the refixing of the boundary and until that had been done the mandatory injunction could not issue. In the premises I allow the appeal and in place of the learned trial magistrate's order dismissing the Notice of Motion dated 12th June 2018 I substitute thereof an order allowing the application in terms of prayer



- (2) thereof save that, instead 14 days for the Land Registrar to comply with the order hereof, I direct that the compliance be within sixty (60) days from the date of the judgment hereof having regard to the logistics that have to be put in place before the site visit can be done”.
45. Upon consideration of the above judgement, I find that it did not conclusively determine the boundary dispute; rather, it established the legal process for doing so and was therefore an interlocutory step rather than a final determination.
 46. Under Section 18(2) of the *Land Registration Act*, the court noted that it lacked the jurisdiction to fix boundaries itself wherein the Judge ruled that only the Land Registrar, acting with a surveyor, has the "statutory mandate" to determine the boundary. The court did not say, "The boundary is at Point X." Instead, it said, "The Land Registrar must go to the site and fix the boundary."
 47. The 1st Respondent had asked for a Mandatory Injunction (to demolish structures) wherein the Judge specifically found that the prayer was premature because the boundary had not been "fixed" on the ground by the relevant authorities. This confirmed that the judgment was a "stepping stone" (interlocutory) toward a final decision, not the final decision itself.
 48. The judge only allowed Prayer (2) of the application, which sought for the "re-fixing" of the boundary/ beacons and therefore the substantive rights (who owns exactly which inch of land and whether the structures must be destroyed) were left to be determined after the Land Registrar filed a report following the 60-day window. This then set the stage for the trial to continue and the "Final Decree" only came later in 2023 when the trial Magistrate heard the evidence, looked at the Registrar's completed report and finally made a determination in Nakuru CMCC ELC No. 127 of 2018 on 10th August 2023, meaning the "right to appeal" only fully ripened in 2023.
 49. I thus find that the 2020 judgment was a mandate for investigation and fixing, not a final adjudication of the trespass and therefore, the Appellant was correct by stating that they could not have appealed that determination until the Magistrate delivered the actual final judgment in 2023.
 50. The 1st Respondent has argued that there was no subject matter left to litigate the suit land having been subdivided and the disputed portion sold to a third party who was not a party to the Appeal and/or proceedings.
 51. The Supreme Court of Kenya in its judgement in *Sehmi & another v Tarabana Company Limited & 5 others* [2025] KESC 21 (KLR) held as follows;

“In view of this court’s pronouncement in *Dina Management Limited* (supra), the answer as to whether the doctrine of innocent purchaser for value without notice protects a purchaser of an illegally or irregularly allocated title to public land lies squarely in the negative. We hasten to add that such a transaction cannot attract the protection of equity because “the latter follows the law”. In this regard, two critical elements of the doctrine would be missing because, first, the purchaser must have purchased “ a legal estate”, and secondly, such purchase must have been without “notice”. Since the holder of an illegally allocated title cannot confer a valid title upon a third party, there would be no “legal estate” to be purchased in the first place. Similarly, the absence of “notice” is in reference to the existence of “an equitable interest” in the land and not “the incidence of illegality or irregularity of the title” in question. Therefore, there can be no protectable “purchaser of an illegal title without notice of such illegality”. In other words, a purchaser will only be regarded as bona fide if he buys property in good faith without notice of any defect or claims against the title. So that



if the title in question is illegal or obtained through unlawful means, the purchaser cannot claim protection even if he was not aware of the illegality.”

52. The court thus weakened the "innocent buyer" protection and held that a title was only as good as its root. The implication therefore was that if the Appellant can prove the trial court's boundary decree was fundamentally flawed or illegal, the third party's title could potentially be at risk, or the 1st Respondent could be held liable to compensate the Appellant for the "lost" land. This possibility I therefore find, prevents the appeal from being dismissed as academic. Indeed, pursuant to the provisions of Section 91 of the *Civil Procedure Act*, the same provides for restitution where a decree is varied or reversed and therefore an appeal is not "academic" simply because the land changed hands; it becomes a matter of financial compensation for a lost interest. In this case, the third-party purchaser took the title while the dispute was active, potentially subjecting that title to the final outcome of the litigation.
53. The Appeal I therefore find is neither Res judicata nor moot Nakuru ELC Land Appeal No.10 of 2019 in essence therefore, the Application dated the 22nd September 2025 lacks merit and is herein dismissed with cost.

DATED AND DELIVERED VIA MICROSOFT TEAMS AT NAIVASHA THIS 22ND DAY OF JANUARY 2026.

M.C. OUNDO

ENVIRONMENT & LAND COURT– JUDGE

