



Kavoo & 2 others v Lukenya Ranching and Farming Co-operative Society Limited & 3 others; Mwega & another (Plaintiffs to the Counterclaim); Lukenya Ranching and Farming Co-operative Society Limited & another (Defendant to the Counterclaim) (Environment and Land Case 43 of 2016) [2026] KEELC 609 (KLR) (10 February 2026) (Ruling)

Neutral citation: [2026] KEELC 609 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT AND LAND CASE 43 OF 2016**

AY KOROSS, J

FEBRUARY 10, 2026

BETWEEN

**BERNARD MBOLE KAVOO 1ST PLAINTIFF
MUTUNGA MUSYOKI 2ND PLAINTIFF
DAVID MUTUKU NZAU 3RD PLAINTIFF**

AND

**LUKENYA RANCHING AND FARMING CO-OPERATIVE SOCIETY
LIMITED 1ST DEFENDANT
JOHN KIMANI MWEGA 2ND DEFENDANT
MACHAKOS DISTRICT LAND REGISTRAR 3RD DEFENDANT
JOSIAH MAKAU NZIOKA 4TH DEFENDANT**

AND

**JOHN KIMANI MWEGA PLAINTIFF TO THE COUNTERCLAIM
JOSIAH MAKAU NZIOKA PLAINTIFF TO THE COUNTERCLAIM**

AND

**LUKENYA RANCHING AND FARMING CO-OPERATIVE SOCIETY
LIMITED DEFENDANT TO THE COUNTERCLAIM
MACHAKOS DISTRICT LAND REGISTRAR DEFENDANT TO THE
COUNTERCLAIM**



RULING

1. This is a ruling on a notice of motion dated 19/05/2025, filed by the 2nd and 4th defendants against the 1st plaintiff, and expressed to be brought under Article 159(2)(d) of *the Constitution*, Section 5(1) of the *Judicature Act* Cap 8 of the Laws of Kenya, Sections 3A and 63 of the *Civil Procedure Act*, Cap 21, Laws of Kenya, Part 23, Part 81 of the English Civil Procedure (Amendment No. 3) Rules, 2020, Laws of England, as amended from time to time, and any other enabling provisions of law. They seek the following orders from this court:
 - a. Spent.
 - b. That this honourable court be pleased to issue notice to show cause to the 1st plaintiff as to why he should not be committed to civil jail and ordered to pay a sum of money as a penalty for contempt of the court orders of 25/06/2021.
 - c. That this honourable court be pleased to issue a declaration that the 1st plaintiff is in contempt of the court orders of 25/06/2021 and that all his actions relating to Land Reference Mavoko Town Block 3/3342, now Block 3/90392, 90393, 90394 & 90395 are null and void.
 - d. That this honourable court be pleased to order that the 1st plaintiff be arrested and committed to civil jail for a period the court may determine, and be ordered to personally pay the sum of money the court may determine as a penalty for knowingly and deliberately violating the clear, concise and unequivocal orders of this honourable court of 25/06/2021.
 - e. That the costs of this application be awarded to them.
2. The motion is supported on the face of it by several grounds and by the supporting affidavit of the 2nd defendant, deposed on 19/05/2025. In a nutshell, he avers that on 27/01/2016, the 1st plaintiff instituted this suit, alleging that the 2nd and 4th defendants' title was a nullity. The 1st plaintiff proceeded ex parte, without their knowledge, and obtained an ex parte judgment and decree dated 16/11/2018.
3. Upon learning of the judgment, they successfully moved the court to have the ex parte judgment set aside on 25/06/2021. The 1st plaintiff was determined to have defeated the administration of justice and committed acts of lis pendens by subdividing Land Reference Mavoko Block 3/3342 ("suit property") and transferring the subdivided parcels to third parties. The applicant was unable to present the 1st plaintiff's illegal actions before the matter was heard, as he had unsuccessfully sought green cards for the original parcel numbers and had only obtained them for the new parcel numbers on 7/05/2025. He presented several documents that substantiated their claims.
4. The 1st plaintiff challenged this motion via his replying affidavit, sworn on 28/05/2025. He informed the court that on 16/11/2018, the 3rd defendant was directed to cancel the title deed of the suit property and that the title was registered in his name on 2/06/2021. On 23/06/2021, he transferred the suit property to third parties, as evidenced by the green cards, who are not parties to this suit. The court orders setting aside the ex parte judgment were issued and served upon his advocates on 9/07/2021; therefore, he was not in contempt or in defiance of this honourable court's order, as the transfers preceded the service of this court's orders.
5. In rejoinder, the 2nd plaintiff filed a further affidavit sworn on 30/07/2025, wherein he reaffirms his previous statements. Furthermore, he asserts that by 9/07/2021, the 1st plaintiff was aware of the court orders; however, on 27/04/2023, he transferred the suit property to third parties. Despite the



1st plaintiff obtaining ex parte orders in 2018, he took no steps to effect the transfers until 2/06/2021, after an application to set aside the judgment, which was pending a ruling.

6. Upon court directions, the motion is argued through written submissions filed by M/s Chege & Sang Co. Advocates for the 2nd and 4th defendants, dated 1/07/2025. It raises issues as to whether this court has jurisdiction to punish for contempt; whether the doctrine of lis pendens is in force in Kenya; and whether the 1st plaintiff committed acts of lis pendens and contempt of court.
7. As for the 1st plaintiff, his law firm, Ms Koki Mbulu & Co. Advocates, on record, filed written submissions dated 11/09/2025, in which only the issue of whether the 1st plaintiff is in contempt of the orders dated 25/06/2021 is framed, but his counsel also addressed the doctrine of lis pendens. Accordingly, the rival submissions, the provisions of law, and the judicial precedents relied upon shall be taken into consideration in the analysis and determination of the issue, namely, whether the 1st plaintiff's actions violated the doctrine of lis pendens. We will now proceed with the analysis and determination of this issue.
8. In addressing this issue, it is important to establish the prevailing jurisprudence over it. As to the definition of this doctrine, Black's Law Dictionary, 11th Edition, Page 1117, defines it in the following manner: -
 - “ 1. A pending lawsuit.
 2. The jurisdiction, power, or control acquired by the court over property while a legal action is pending.
 3. A notice, recorded in the chain of title to real property, required or permitted in some jurisdictions to warn all persons that certain property is the subject matter of litigation, and that any interests acquired during the pendency of the suit are subject to its outcome.”
9. Although the 1st plaintiff contends that the doctrine does not apply in our jurisdiction and relies on the Court of Appeal decision of Co-operative Bank of Kenya Limited v Patrick Kangethe Njuguna & 5 others [2017] KECA 79 (KLR), that is not true as he obviously did not appreciate this decision, which affirmed the application of the doctrine and further stated as follows: -

“On whether the doctrine can be interpreted to mean that the filing of proceedings serves as an automatic stay of the sale; we are of the view that it cannot. As stated under the repealed Section 52 of the ITPA, an automatic prohibition of dealings or transfers of the property is only during the ‘active prosecution’ of the proceedings. Consequently, while the parties are automatically duty bound to preserve the property during the pendency of active proceedings, the same cannot be said of fresh proceedings that have just been filed and whose prosecution is yet to begin...In Kenya, however, no such measures have been legislated regarding lis pendens. As such, the practical approach remains that mere institution of suit does not trigger the doctrine. Rather, it is upon the active prosecution of that suit that the doctrine automatically sets in.”
10. The non-exhaustive guiding principles of the doctrine were well articulated in the decisions of Co-operative Bank of Kenya Limited (Supra) and Naftali Ruthi Kinyua v Patrick Thuita Gachure & another [2015] KECA 911 (KLR), which was relied upon by the 2nd and 4th defendants. In summary, these principles are as follows:



- a. It is necessary for the final adjudication of the matters before the court and in the general interests of public policy and good, effective administration of justice.
 - b. The doctrine is couched in equity, good conscience or justice because they rest upon an equitable and just foundation, and it will be impossible to bring an action or suit to a successful termination if alienations are permitted to prevail
 - c. Every purchaser pendente lite with or without notice is bound by the judgment or decree in the suit.
 - d. There has to be active prosecution of the suit.
 - e. the doctrine is based on the legal maxim ‘ut lite pendente nihil innovetur’ (During a litigation, nothing new should be introduced).
11. In the present case, the parties have provided differing dates, which directly impact the resolution of the dispute. Considering that this is a court of record, and noting that the plaintiff has not contested the subdivisions and transfer, the court will rely on its own records to reach its findings and conclusions.
 12. On 16/11/2018, an ex parte judgment was entered in favour of the plaintiffs, and several orders, including the cancellation of the title and registration of the suit property in the 1st plaintiff’s name, were issued. A decree was issued to the plaintiffs on 5/12/2018; however, they did not proceed with execution, and the matter remained inactive until the 2nd and 4th defendants filed an application on 30/09/2020, seeking to set aside the ex parte judgment. This application was served upon the plaintiffs’ legal counsel on record on 16/10/2020, as evidenced by the return of service, deposed to on 17/11/2020, by Advocate Chege Kamau. This court finds that, upon service, the suit was once again active from 16/10/2020 until such time as the application was dismissed or the suit was determined.
 13. On 19/10/2020, his counsel, Ms. Koki, attended court and actively participated in the proceedings, and a ruling was subsequently issued on 25/06/2021, which set aside the ex parte judgment. During this period, the 1st plaintiff, through his surveyor, clandestinely submitted a mutation form dated 28/05/2021, leading to the subdivision of the suit property into four portions: Mavoko Town Block 3/90392, 90393, 90394, and 90395 (“subdivisions”), with title deeds issued in the 1st plaintiff’s name on 2/06/2021.
 14. The actions of the first plaintiff continued unlawfully, despite being fully aware that the ex parte judgment had been set aside and that the matter was actively pending in court, as evidenced by the numerous attendances of counsel representing both parties, which culminated in a hearing on the merits that is currently awaiting the reservation of a judgment date. On 23/06/2021, when the matter was reserved for ruling on the application filed on 30/09/2020, he transferred Mavoko Town Block 3/90393 to Josephine Mueni Mutunga.
 15. On the same date of 23/06/2021, he transferred Mavoko Town Block 3/90394 to Patrick Mbolo Mwololo, who subsequently transferred it to Stephen Kimwaki Njuguna and Irene Kawira Maingi on 27/11/2023. Additionally, on 28/06/2021, following the delivery of the ruling, he transferred Mavoko Town Block 3/90395 to Scolastica Mutave Mutisyo, who later subdivided it into parcel numbers 116381-116389 on 22/01/2025. Respecting Mavoko Town Block 3/90392, it is still in the 1st plaintiff’s name. These transfers were undoubtedly executed sequentially to secure a win against the second and fourth defendants unfairly, and were therefore unlawful.
 16. From the record, it appears that the 2nd and 4th defendants became aware of the subdivisions at or around 20/01/2022, as evidenced by their subsequent application for injunctive relief, which they later withdrew; nonetheless, they eventually obtained the relevant green cards on 7/05/2025. In the court’s



humble opinion, this motion ought to have been filed at that time to prevent further unlawful acts by the 1st plaintiff, a step they failed to take. However, this neglect cannot excuse the 1st plaintiff's illegal conduct.

17. The plaintiff has contended that these third parties, who gained advantages from the illegality, are not parties to the proceedings. However, this argument is unpersuasive, as it would undermine the integrity of justice to subject the 2nd and 4th defendants to additional litigation solely due to the 1st plaintiff's unlawful actions during the active pursuit of an application to set aside the judgment, which persisted long after the court had set aside this judgment.
18. The law and equity disapprove of conduct intended to undermine the administration of justice. The 1st plaintiff in this case engaged in unlawful acts, and neither he nor the third parties may derive rights or benefits from these illegal acts. Furthermore, all subdivisions originating from the suit property are found null and void. Accordingly, the appropriate course of action for the third parties is to initiate a claim against the 1st plaintiff for damages. Therefore, in the end, this court finds the notice of motion dated 19/05/2025 merited and will issue appropriate orders. Costs shall be in the cause. In the end, the following final disposal orders are hereby issued: -
 - a. The District Land Surveyor-Machakos or any other designated officer is hereby ordered to amend the Registry Index Map (RIM) of where the subdivisions known as Mavoko Town Block 3/90392, 90393, 90394, and 90395 (now Mavoko Town Block 3/116381-116389) or any other subdivisions emanating from Mavoko Town Block 3/3342 are located so that the land reverts to the previous number being Land Parcel no. Mavoko Town Block 3/3342.
 - b. The Land Registrar- Machakos does cancel the subdivisions known as land parcels numbers Mavoko Town Block 3/90392, 90393, 90394, and 90395 (now Mavoko Town Block 3/116381-116389) or any other subdivisions emanating from Mavoko Town Block 3/3342 so that the land reverts to the previous number being Land Parcel no. Mavoko Town, Block 3/3342, and it be registered in the name of John Kimani Mwege, as per the title deed dated 28/05/2013.
 - c. The 2nd and 4th defendants shall bear the costs of the District Land Surveyor-Machakos or any other designated officer, and of the Land Registrar-Machakos, as comprised in orders (a) and (b) hereinabove.
 - d. A mention date shall be issued for purposes of issuing a judgment date.

It is so ordered.

DELIVERED AND DATED AT MACHAKOS THIS 10TH FEBRUARY, 2026.

HON. A. Y. KOROSS

JUDGE

10.02.2026

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform

In the presence of;

Ms Kanja Court Assistant

Mr. Chege Kamau for Applicant

Mr. Koki Mbulu for Respondent

