

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA
ELC LAND CASE NO. 007 OF 2024
(FORMERLY NAKURU ELC. NO 551 OF 2016)

LINNET WAIRIMU MUKUHA.....1ST
PLAINTIFF

GRACE WAMBUI MUKUHA.....2ND
PLAINTIFF/APPLICANT

LUCY WANJIRU NYAGA (Suing as the administrator of the
Estate of JOSEPH NYAGA WAMBITI (Deceased).....3RD
PLAINTIFF

VERSUS

COUNTY GOVERNMENT OF NAKURU.....1ST
DEFENDANT

PHARIS NDUNGU CHEGE.....2ND
DEFENDANT/RESPONDENT

GURSHARN SINGH.....3RD
DEFENDANT

CHIEF LAND REGISTRAR,
NAIVASHA LAND REGISTRY.....4TH
DEFENDANT

NAIVASHA INDUSTRIAL COMPLEX LTD.....5TH
DEFENDANT

NATIONAL LAND COMMISSION.....6TH
DEFENDANT

THE HON. ATTORNEY GENERAL.....7TH
DEFENDANT

RULING

1. Before me for determination is a Notice of Motion dated 27th November 2025 brought pursuant to the provisions of Sections 1A, 1B, 3, 3A and 63 of the Civil Procedure Act and Order 52 Rule 1 of the Civil Procedure Rules 2010 wherein the 2nd Plaintiff/Applicant herein has sought the following orders:

- i. That the Honourable Court be pleased to issue an order that the 2nd Defendant/Respondent do forthwith deposit in an interest earning bank account to be opened in the joint names of the counsel for the 2nd Plaintiff/Applicant and the counsel for the 2nd Defendant/Respondent the rent arrears from 1st February 2017 to the date of the Ruling at the rate of Kshs. 65,000/= per month or such other sum as the Court may find fit and just to order upon inquiry as to such rent.
 - ii. That the Honourable Court be pleased to issue an order directed upon the 2nd Defendant/Respondent to pay the subsequent current rent falling due at the rate of Kshs. 65,000/= per month, into the said escrow account to be opened on or before the 5th day of each succeeding month.
 - iii. That in default of compliance with any of the above Orders, the 2nd Plaintiff/Applicant be at liberty to levy distress for rent.
 - iv. That the above orders issuing, each party be at liberty to apply.
 - v. That the costs of the Application be borne by the 2nd Defendant/Respondent.
2. The said Application was supported by the grounds therein as well as the Supporting Affidavit of equal date sworn by Grace Wamboi Mukuha, the 2nd Plaintiff/Applicant herein who deponed that she is the allottee and beneficial owner entitled to the possession of one of the suit premises hereof namely Plot No. 2 Lake View, Nyaga Portions measuring 0.085 Hectares (approximately) being a sub-division of the parent parcel known as Plot No. B Lake View Estate, Naivasha, presently under the occupation of the 2nd Defendant/Respondent as a defaulting tenant. That she had acquired the said parcel of land by way of purchase from two widows of one Joseph Nyaga alias Joseph Nyaga Wambiti (deceased), who was the original allottee of the parcel of land from the now defunct Town Council of Naivasha. That the sale of the said parcel of land between her and the

two widows, namely Wanjiru Nyaga (3rd Plaintiff herein) and Elizabeth Kamzungu Nyaga (now deceased), had been reduced into writing vide an Agreement dated 9th October 2006.

3. That the parent property is denoted as Plot No. B Lake View Estate, Naivasha, measuring 2.167 Acres from which the suit property was excised, had been allotted to the said Joseph Nyaga (deceased) vide the Minutes of the 19th meeting of the Town Council of Naivasha Town Planning Markets, Works and Housing Committee dated 16th August 1985. That the 2nd Defendant/Respondent had chaired the two Committee meetings and had also served the defunct Town Council of Naivasha as a Councilor alongside the said Joseph Nyaga (deceased), who was his personal friend.
4. She deponed that at the time of purchasing the suit premises, the parent parcel had been subdivided into 14 subplots, hence she and the 1st Plaintiff had purchased the ones denoted as Plot Nos. 1 and 2 with the assistance of their father, namely Peter Mukuha (now deceased). That accordingly, an informal transfer of the subject plot had been effected at the Offices of the succeeding Municipal Council of Naivasha (now also defunct) in her favour and which had been executed by one James Ngumi Ngugi under the direct instructions and authority from the widows of the allottee of the parent property. That upon acquiring the said property, she had taken immediate possession and, with the assistance of her late father, constructed therein a one, five (5) bedroom bungalow and two, three (3) bedroom bungalows. That thereafter, she had connected the said premises with services such as water and electricity.
5. That upon completing the construction, she had put successive tenants in possession of the premises who had been paying rent to her as follows:
 - i. Sum of Kshs. 20,000/= for each of the two, three-bedroom bungalows.
 - ii. Sum of Kshs. 25,000/=for the one, five-bedroom bungalow.

That consequently, the expected total rental income for her developments is Kshs. 65,000/= per month.

6. That ultimately, in the year 2014, she had secured a tenant in the name of Julia Wangare, the second wife of the 2nd Defendant/Respondent, who

had taken occupation of the five-bedroom bungalow. That the 2nd Defendant/Respondent and his wife had continued to meet their rental obligations towards her until August 2016, when no further rent was forthcoming. Suddenly, the 2nd Respondent's wife asserted that she could no longer pay rent for a property owned by her husband.

7. That subsequently, she had been compelled to instruct a firm of auctioneers to levy distress for rent, which they did in January 2017, and the 2nd Defendant/Respondent promptly settled all the rent arrears of Kshs. 150,000/= vide a Cheque dated 21st January 2017, issued through the 2nd Defendant/Respondent's company known as Phammay Transporters Company Limited, which cheque had been drawn in her favour.
8. She deponed that back in the year 2010, when she and the 1st Plaintiff had commenced plans to process Title Deeds for their respective parcels of land, the surveyor had informed them that there had been an overlap of their two plots by another allocation. The name that had cropped up as the allottee of the overlapping property was one Gurshan Singh Bra, the 3rd Defendant herein; however, after extensive investigations spanning over a long period of time, they had become aware that the 2nd Defendant/Respondent had caused himself to be fraudulently registered on or about 24th August 2015 to the suit premises which was now bore Title No. Naivasha/Municipality Block 6/117.
9. This revelation compelled her and her Co-Plaintiffs to file the instant suit in December 2016, seeking *inter alia* orders of cancellation of the impugned Title, vacant possession and *mesne profits*.
10. That soon thereafter, the 2nd Defendant/Respondent's wife then resumed her refusal to pay rent, contending that since the suit property belonged to her husband, it was no longer tenable to continue with the landlord/tenant relationship with her.
11. In March 2017, they (1st and 2nd Plaintiff) filed a suit against the 2nd Defendant/Respondent's wife before the Rent Restriction Tribunal in RRT Case No. 33 of 2017, where the 2nd Defendant/Respondent was joined as an Interested Party.

12. The Tribunal's award/orders issued on 25th September 2017 directed the tenant *inter alia* to settle rent arrears within 30 days of the Ruling and that the subsequent rents be paid on or before the 10th day of each succeeding month when the same fell due, with liberty for the 2nd Plaintiff/Applicant to levy distress in default.
13. That in the intervening period, the 2nd Defendant/Respondent chased away her tenants who had rented the two, 3-bedroomed units and now took over occupation of the same together with the 5-bedroom unit, which his family had been in occupation as her tenants. It was thus manifestly clear that the 2nd Defendant/Respondent had deliberately planted his second wife on the suit premises, posing as a tenant, as part of a nefarious and well-calculated/orchestrated scheme to dispossess her and the 1st Plaintiff of the suit premises.
14. That being aggrieved by the Order of the said Tribunal, the 2nd Defendant/Respondent and his wife had filed an Appeal to the Superior Court in Nakuru, being Nakuru HCA No. 137 of 2017, contemporaneously with an application dated 30th October 2017 seeking *inter alia* stay of execution of the Tribunal's orders. The application was dismissed on 18th December 2018.
15. That the 2nd and 3rd Defendants/Respondents then filed an application dated 7th June 2019 seeking *inter alia* orders of injunction against both her and the 1st Plaintiff, restraining them from levying distress against them in recovery of rent arrears. This application was also dismissed vide a Ruling delivered on 5th March 2020.
16. That still being dissatisfied with this Ruling, the 2nd and 3rd Defendants filed yet another application dated 16th March 2020 in the Court of Appeal sitting in Nairobi seeking injunctive relief to restrain them from distressing for rent and eviction. This Application was also dismissed.
17. That after a sustained defeat in numerous Applications, and in a bid to counter imminent distress and eviction, vide an Application dated 17th October 2017, the 2nd Defendant/Respondent sought an Order that the rental income of the suit premises be deposited in Court until the hearing and determination of the instant suit.

18. That since there was a rent dispute pending before the Rent Restriction Tribunal, the Court declined the 2nd Defendant's request vide a Ruling dated 13th October 2018. The 2nd Defendant/Respondent and his wife then filed a Judicial Review before the Environment and Land Court, which then terminated the matter before the Rent Restriction Tribunal on the ground of want of pecuniary jurisdiction.

19. That upon the discovery of the overlap incident, she and the 1st Plaintiff had pursued their claim to the suit premises with the offices such as the defunct Municipal Council of Naivasha, the National Land Commission, the Directorate of Criminal Investigation, the 2nd and 3rd Defendants and ultimately before the Court, but the process of establishing their titles had been painstakingly slow. That, indeed, since February 2017 to date, the 2nd Defendant/Respondent has not remitted any rent to her but continues to house his second family in her houses, thereby enjoying her developments free of charge.

20. She summed up the 2nd Defendant/Respondent's arrears, which she was reasonably apprehensive that she would never recover by the time the instant matter is concluded, as at the month of November 2025, to a tune of Kshs. 6,890,000/= herein computed as follows:

- i. 5-bedroom unit (1) at the sum of Kshs. 25,000/= per month.
 - a. 1st February 2017 to 31st December 2017 Kshs. 275,000/=
 - b. 1st January 2018 to 31st December 2018 Kshs. 300,000/=
 - c. 1st January 2019 to 31st December 2019 Kshs. 300,000/=
 - d. 1st January 2020 to 31st December 2020 Kshs. 300,000/=
 - e. 1st January 2021 to 31st December 2021 Kshs. 300,000/=
 - f. 1st January 2022 to 31st December 2022 Kshs. 300,000/=
 - g. 1st January 2023 to 31st December 2023 Kshs. 300,000/=
 - h. 1st January 2024 to 31st December 2024 Kshs. 300,000/=
 - i. 1st January 2025 to 30th November 2025 Kshs. 275,000/=

TOTAL Kshs.

2,650,000/=

ii. 3-bedroom units (2) at a sum of Kshs. 20,000/= per month per unit.

a. 1st February 2017 to 31st December 2017 Kshs. 440,000/=

b. 1st January 2018 to 31st December 2018 Kshs. 480,000/=

c. 1st January 2020 to 31st December 2020 Kshs. 480,000/=

d. 1st January 2021 to 31st December 2021 Kshs. 480,000/=

e. 1st January 2022 to 31st December 2022 Kshs. 480,000/=

f. 1st January 2023 to 31st December 2023 Kshs. 480,000/=

g. 1st January 2024 to 31st December 2024 Kshs. 480,000/=

h. 1st January 2025 to 31st November 2025 Kshs. 440,000/=

TOTAL Kshs.

4,240,000/=

21. She deponed that, irrespective of the 2nd Defendant/Respondent being an alleged registered proprietor of the suit premises, which registration was now under scrutiny, he had absolutely no claim over the developments that she had carried out on the suit premises.

22. That the failure on the part of the 2nd Defendant/Respondent to pay her rent had occasioned untold financial loss and suffering, causing her great mental anxiety and anguish. That this was not only unjust, but oppressive and unconscionable. That the current state of affairs has heavily disadvantaged her, while the 2nd Defendant/Respondent continues to live off her by evading his obligations towards her in respect of rent dues.

23. She thus prayed that the accumulated rent arrears unpaid by the 2nd Defendant/Respondent and future rent falling due be deposited in an interest earning escrow account in the joint names of the firms of Advocates acting for the 2nd Plaintiff to wit Messrs Muthuri Riungu & Co. Advocates and the firm of Advocates acting for the 2nd Defendant/Respondent, Messrs Karanja Mbugua & Co. Advocates pending the outcome of the suit hereof.

24. That this would not only be just but would be in the best interest of justice so as to avoid any party taking undue advantage of the status quo, and especially in light of the fact that one of her claimed reliefs related to *mesne profits*.

25. In response and in opposition to the Application, the 2nd Defendant/Respondent, through his Replying Affidavit dated 3rd February 2026, deponed that the Application was a Res Judicata Application dated 17th October 2017, which had been filed in the instant case by himself seeking not dissimilar reliefs from the instant Application and which application had been strenuously opposed by the Applicant herein. That, subsequently, the same culminated in a Ruling delivered on 13th March 2018, in which Justice D.O. Ohungo was categorical that the issue of who was entitled to the rent and where such rent should be paid should await the full hearing and determination of the case.
26. That in fact, the Applicant herein had strongly opposed his request in the said Application dated 17th October 2017, where he had requested that he deposits the rent in court pending the outcome of the case or alternatively, a Licensed Estate Agent be appointed to collect all the rents, deduct his fees and retain the balances until the case is heard and determined. That the decision of 13th March 2018 had not been appealed against, reviewed or varied in any way, showing that the Applicant herein must have been fully satisfied with her success in opposing the same.
27. He placed reliance on the provisions of Section 7 of the Civil Procedure Act to submit that the Applicant, who had been an active participant in the Application dated 17th October 2017, could not be permitted to come up with a similar Application.
28. He deponed that the instant Application is Res Judicata and a classic case of an abuse of the Court process. He thus urged the Honourable Court to disallow the same with costs to him and find favour in going to a full hearing of the case as had been ordered by Hon D.O Ohungo (J).
29. Vide their Grounds of opposition dated the 17th February 2026, the 3rd and 5th Defendants/Respondent's opposed the Application on the grounds that it was bad in law, fatally incompetent, devoid of any merit and an abuse of court process, to the effect that it was Res Judicata a ruling of 13th March 2018 delivered by the court of equal status and therefore, the court could not sit on its own Appeal.

30. That as it stood, the 2nd Defendant was the registered owner and in occupation of the suit property and therefore he could not be asked to pay rent for his own property.
31. That no evidence whatsoever had been tendered of any Tenancy Agreement, or any rent ever paid by the 2nd Defendant to any of the Plaintiffs herein; nor is there any evidence tendered on the quantum of the alleged monthly rent.
32. That since the 2nd Respondent/Defendant was the proprietor of the suit property, he was entitled to all the rights and privileges appurtenant to his registered proprietorship, including the right to quiet possession, under section 25 of the Land Registration Act, 2012.
33. The 6th Defendant, vide its Replying Affidavit dated 11th December 2025, sworn by Korir Justice, the County Coordinator- National Land Commission-Nakuru, did not oppose the 2nd Plaintiff/Applicant's Application herein for the reason that none of the orders sought had been directed at the Commission, nor did they require any action, intervention, or compliance by the Commission. Further, none of the said orders pertained to the constitutional mandate of the Commission under Article 67 of the Constitution or the National Land Commission Act, 2012.
34. He clarified that the 6th Defendant's only involvement was a preliminary 2013 inquiry following a complaint about overlapping allocations affecting the parent parcel and its subdivisions, which inquiry did not conclude because the statutory mandate under the provisions of Section 14 of the National Land Commission Act to review historical grants had expired prior to the completion. That indeed, the Ground Status Report that had been prepared by the 6th Defendant had affirmed that the 6th Defendant was not involved in the allocation, survey approval, or land registration processes relating to the disputed parcel and recommended determination be made by the court.
35. That subsequently, no adverse, coercive or substantive orders should be directed at the National Land Commission.
36. The 1st, 3rd, 4th, 5th and 7th Defendants did not participate in the 2nd Plaintiff/Applicant's Application herein.'

Determination.

37. On the 15th December 2025, the parties took directions to have the application disposed of through written submissions. On the 26th January 2026, the court reminded them to file the said submissions. As I retired to write the ruling, none of the parties had complied with the court's directions to file the said submissions.

38. It is now a settled practice under the new constitutional dispensation that filing of written submissions is the norm, as written submissions serve the purpose of expedience and amount to addressing the court on the evaluation of the evidence of each party and analysis of the law. It is therefore trite that parties who fail to file their submissions on an application as ordered by the court are deemed as parties who have failed to prosecute their application and therefore that application is liable for dismissal. The filing of submissions having been ordered, and the failure by the parties herein to exercise the leave granted and extended to them to file their respective written submissions clearly demonstrated inertia and inordinate delay, lack of interest and/or seriousness on their part in the prosecution of the matter.

39. The Court of Appeal in **Rowlands Ndegwa and 4 Others vs. County Government of Nyeri and 3 Others; Agriculture, Fisheries and Food Authority & Another (Interested Parties) [2020] eKLR**, citing with approval the decision of the High Court in, **Winnie Wanjiku Mwai vs. Attorney General & 3 Others [2016] eKLR**, observed as follows:

“With regard to dismissal for want of prosecution, there are indeed no hard and fast rules as to the manner in which the inherent power and discretion to dismiss an action for want of prosecution is to be exercised. It is however generally accepted that dismissal will be invited if there should be a delay in the prosecution of the action and the Respondent is prejudiced by the delay with attention also being paid to the reasons for the inactivity....”

40. The matter is caught up by the principle of "Vigilantibus non dormientibus jura subveniunt," which means that the law assists those who are vigilant, not those who sleep over their rights. The mode of hearing of the Application having been accepted by the parties, and there having been no compliance to prosecute the same, I am persuaded to dismiss the motion dated the 27th November 2025, which I now do. Each party shall bear its costs.

**Dated and delivered via Microsoft Teams at Naivasha this 19th day of February
2026.**



M.C. OUNDO

ENVIRONMENT & LAND COURT - JUDGE