

REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT AT NAIROBI
ELC NO. E359 OF 2024

LUCY NJOKI MWANGI (Suing as
guardian ad litem of JULIUS MWANGI
KARIKUI)

- 1ST PLAINTIFF

JULIUS MWANGI KARIKUI

- 2ND PLAINTIFF

VS

AHMED ABDIRASHID

- 1ST DEFENDANT

TORAB (K) LIMITED

- 2ND DEFENDANT

JUDGMENT

(In respect of the 2nd Defendant's application 12/3/2025 and Plaintiff's application dated 24/6/2025)

1. For determination before this court are two applications; the Notices of Motion dated 12/3/2025 and 24/6/2025 by the 2nd Defendant and the Plaintiff, respectively.

The 2nd Defendant Application dated 12/3/2025

2. The application by the 2nd Defendant is anchored on Section 1A, 1B,1C of the Civil Procedure Act, Order 42 Rule 6 Civil Procedure Rules. The 2nd Defendant seeks the following orders:
 - a. The Honourable Court be pleased to grant an order of stay of execution of the orders issued on the 20/2/2025, pending the hearing and determination of this Application.
 - b. The Honourable Court be pleased to set aside the orders of the Honourable Court issued on 20/2/2025, pending the hearing and determination of this Application.
 - c. The Honourable Court be pleased to review and/or set aside the ruling delivered by Hon. Lady Justice G. Kemei on 20/2/2025, and all consequential orders therein, pending the hearing and determination of this Application.

- d. The costs of the Application be provided for.
3. The application is premised on the face of it and supported by the Affidavit of Abdirashid Ismail Daud, the 2nd Defendant's Director, sworn on 12/3/2025. The Deponent avers that this court delivered its Ruling on 20/2/2025, restraining the 1st and 2nd Defendants from interfering with the Plaintiff's possession and occupation of all that parcel of land known as LR No. 36/1/74, the suit property herein.
 4. He avers that he is apprehensive that, following the delivery of the ruling and the issue of the ensuing orders, the Plaintiffs will proceed to evict the 2nd Defendant from the suit property. He maintains that the Applicant has been in occupation and possession of the property for over 20 years. He argues that the Applicant has adduced sufficient evidence of their acquisition of the property.
 5. He avows that he has discovered that the Plaintiffs are relying on a forged title. He contends that this is new and compelling evidence that warrants the review and setting aside of the ruling and the orders arising therefrom. He argues that the Applicant stands to suffer substantial loss and injustice if they are forcibly evicted from their property.

The Plaintiffs' Grounds of Opposition

6. The Plaintiffs opposed the application vide the Grounds of Opposition dated 4/4/2025. The grounds of opposition are that the application is fatally misconceived and an abuse of the court process, as the purported discovery of alleged forgery does not constitute new and important evidence. The Plaintiffs argue that the 2nd Defendant had knowledge of the Plaintiffs' title documents at the commencement of this suit. The documents were referred to in the pleadings and formed part of the court's determination. Therefore, the documents do not

qualify as new and important evidence under Order 45, Rule 1, to warrant review.

7. The Plaintiffs further argue that the application has not particularised the alleged forgery, thereby making it impossible for the Plaintiffs to respond. Further, the 2nd Defendant has not adduced any evidence to substantiate the assertion. The Plaintiffs accuse the 2nd Defendant of contempt of court by disregarding the court's explicit orders to remain in occupation of the suit property, despite the clear terms of the orders that restored the Plaintiffs to possession.
8. They further contend that the 2nd Defendant has not met the threshold for a stay of execution. The Plaintiffs maintain that the 2nd Defendant has not presented any compelling reason to warrant a review of the court's decision. They urge the court to dismiss the application with costs.

The Plaintiffs' application

9. The Plaintiffs' application dated 24/6/2025 is expressed to be brought under the provisions of Section 3, 3A and 63 of the Civil Procedure Act, Order 40 Rule 1, Order 51 Rule 1 of the Civil Procedure Rules, 2010 and Section 24 of the National Police Service Act. Substantively, the Plaintiffs pray for orders that;
 - a. Pending the hearing and determination of this suit, the Honourable Court be pleased to issue an order directing the Officer Commanding Police Division, Nairobi, and the Officer Commanding Station, Eastleigh North Police Post, under the supervision of the Regional County Commander, Nairobi, to deploy and station adequate police personnel on the suit property to ensure the enforcement and compliance of this Honourable Court's order issued on 3/3/2025.
 - b. Pending the hearing and determination of this suit, this Honourable Court be pleased to issue an order directing the

Officer Commanding Police Division, Nairobi, and the Officer Commanding Station, Eastleigh North Police Post, under the supervision of the Regional County Commander, Nairobi, to ensure that the Respondent, whether by themselves, their employees, officials, proxies, servants, agents or any other persons acting under their authority, to immediately comply with the Orders of this Honourable Court issued on 3/3/2025, by ensuring that they do not trespass, occupy, enter upon, remain thereon, construct/erect or carry on with any construction / erection of any structure(s) , building (s), fence, perimeter wall, or from howsoever dealing with and/or interfering with the Plaintiffs/Applicants possession, occupation and/or proprietorship of all that parcel of land known as LR No. 36/1/74 situate along Muyuyu Road, Eastleigh, Nairobi.

- c. This Honourable Court be pleased to issue an order directing the Officer Commanding Police Division, Nairobi, and the Officer Commanding Station Eastleigh North Police Post, under the supervision of the Regional County Commander, Nairobi, to facilitate the Plaintiffs'/ Applicants restoration to the suit property pursuant to the Orders issued by this Honourable Court on 3/3/2025.
 - d. Any order and/or further Order be made in the interest of justice and to ensure effective enforcement of this Court's orders.
 - e. Costs of the application.
10. The application is premised on the grounds set out on the face of it and further supported by the Affidavit of Lucy Njoki Mwangi, the 1st Plaintiff herein, sworn on 24/6/2025. The 1st Plaintiff avers that the Defendants have failed to comply with the orders issued on 3/3/2025, despite their clarity. She avers that the Defendants continue to occupy the suit premises and, in fact, have commenced construction activities thereon, including the erection of a structure.

She deposes that the Defendants have deployed armed persons with instructions to deny the Plaintiffs entry to the suit property. Hence, the need for police intervention to ensure compliance, as the Plaintiffs' attempts to peacefully regain access to the suit property have consistently been prevented by the said persons.

11. She avers that the Defendants' non-compliance is shocking in light of the Ministry of Land's Letter dated 14/11/2024, which established that the Defendants' title is fraudulent and denounced the alleged transfer from Mohamed Iqbal Rehman to the 2nd Defendant. She contends that the Defendants' unauthorised construction activities have caused an irreversible and substantial change to the suit property to the Plaintiffs' detriment as the rightful owners. She further contends that the Defendants' continued occupation amounts to both continuing trespass and unjust enrichment. She therefore avers that, in the absence of police intervention to enforce the court orders, the Defendants will continue to occupy the suit premises with impunity. The Plaintiffs urge the court to grant the sought orders in the interests of justice and the promotion of the rule of law, to ensure that court orders are obeyed.

The 1st Defendant's Replying Affidavit

12. The 1st Defendant opposed the Plaintiffs' application through his Replying Affidavit, sworn on 25/7/2025. The 1st Defendant disputes the collective reference to the Defendants, averring that it misrepresents the parties' individual positions, thereby creating joint culpability. He further asserts that he has no claim of ownership to the suit property. He avers that he has no proprietary interest in the subject property and has never been in possession of it. He therefore submits that it would be unjust to issue enforcement orders collectively. He urges the court to find that no cause of action has

been raised against him, and that his name be struck out from the proceedings with costs.

The 2nd Defendant's Replying Affidavit

13. The Plaintiffs' application is opposed by the 2nd Defendant, vide the Replying Affidavit of Abdirashid Ismail Daud, its Director, sworn on 18/7/2025. The deponent maintains that the 2nd Defendant is the registered proprietor of the suit land, having acquired it on 13/12/2023 from Mohamed Rehman Iqbal, the administrator of the estate of the late Sughra Begum, who had been in possession of it since the year 2000.
14. The 2nd Defendant asserts that the Plaintiffs' claim to the suit property is based on a fraudulent title, as the chain of title presented by the Plaintiffs is incomplete and inconsistent with the property's actual history of occupation and use. The Plaintiffs failed to disclose material defects in the title, and the court's orders were therefore based on misrepresented facts. The deponent contends that the court's Ruling delivered on 20/2/2025 went beyond the interlocutory determination by granting final relief on contested matters, including the issue of ownership, despite the existence of competing titles. The orders, therefore, departed from the well-established principles prohibiting the grant of mandatory reliefs before the hearing of a suit.
15. The deponent asserts that the court's orders ousted the 2nd Defendant from possession of the suit property and transferred it to the Plaintiffs without affording the 2nd Defendant the opportunity to be heard at trial and to present its evidence. The deponent further asserts that the said orders prejudiced the 2nd Defendant and violated its right to a fair hearing guaranteed under Article 50 (1) of the Constitution.

16. The deponent avers that granting the Plaintiff interim possession based on a questionable title is tantamount to sanctioning an illegality. He therefore urges the court to exercise its discretion and grant a review of the orders sought in the interest of justice. That the 2nd Defendant risks being evicted summarily.

The Plaintiffs' Supplementary Affidavit

17. In response to the Defendants' assertions in their respective Affidavits, the Plaintiffs filed a Supplementary Affidavit, sworn by the 1st Plaintiff on 15/8/2025. In rebuttal to the 1st Defendant's assertions, the Plaintiffs aver that his repeated denial of any ownership claim or involvement with the suit property is contrary to the documentary evidence adduced in the proceedings herein, specifically his WhatsApp communication of 16/8/2024, which shows his coordination of the invasion.

18. That the text messages on his registered number show him instructing the site foreman regarding the occupation and fencing of the suit property. That the communications form part of their complaints recorded with the police at Pangani and Eastleigh Police Stations. Therefore, the assertion that he was wrongly sued is false, as he participated in the unlawful invasion and attempted occupation of the property in suit.

19. In reply to the 2nd Defendant's Replying Affidavit, the Plaintiffs aver that the allegations of fraudulent title are baseless, as they have established a prima facie case with a probability of success based on their well-documented chain of title. They argue that the claim that the orders sought were beyond interlocutory determination is baseless, as the impugned orders sought to maintain the status quo pending the determination of the suit herein.

20. The Plaintiffs further aver that, contrary to the allegation that their title is fraudulent, it is the 2nd Defendant's title that is riddled with inconsistencies. The 2nd Defendant was registered on 11/6/2020, yet alleges that it has been in occupation of the suit property since 2000. Further, the acquisition through the succession proceedings in 2023 and the Ministry's Letter declaring its title fraudulent invalidate the 2nd Defendant's claim. The court duly considered the material evidence adduced before granting the orders vide the Ruling of 20/2/2025, issued on 3/3/2025. The 2nd Defendant cannot therefore make unsubstantiated claims of fraud to avoid compliance with the orders of the court.

21. She asserts that they have established a prima facie case and that the ongoing destruction and interference with the suit property amount to irreparable injury, hence the need to maintain the status quo and to enforce the orders previously issued. She further asserts that defiance of court orders undermines the authority of the court and erodes public confidence in the judicial system, hence the need for police assistance in ensuring compliance. They urge the court to grant the prayers sought in the interest of justice.

22. The applications were canvassed by way of written submissions. Parties complied. The Court has had occasion to read through the submissions and considered the arguments raised by the parties.

Analysis and determination

23. I have considered the applications, the replies as well as rival submissions, in my considered view the issues for determination are as follows:

- a. Whether the 2nd Defendant's application 12/3/2025 is merited;
- b. Whether the Plaintiffs' application dated 24/6/2025 is merited;
- c. Who should bear the costs of the applications?

Whether the 2nd Defendant's application 12/3/2025 is merited;

24. It is a settled principle of law that parties are bound by their pleadings. The Court of Appeal case of Dakianga Distributors (K) Ltd - vs- Kenya Seed Company Limited (2015) eKLR which cited the Article “The present importance of pleadings” published in 1960 where Sir Jacob stated;

“The Court is bound by the pleadings of the parties. It is not part of the duty of court to enter upon any inquiry into the case before it other than to adjudicate upon the specific matters in dispute which the parties themselves have raised”

25. Looking at the 1st Defendant’s Application dated 12/3/25 , the prayers sought are already spent save for costs. Prayer (b) sought a stay of execution pending the hearing and determination of the application setting aside of the Orders emanating from the Ruling of 20/2/2025. On the other hand, prayer (c) sought the setting aside and/or review of the impugned Orders pending the hearing and determination of the application. The application having been heard, the third prayer as framed is spent.

26. Accordingly, I find that the application is spent and therefore there is nothing for the Court to determine in the circumstances.

Whether the Plaintiffs’ application dated 24/6/2025 is merited;

27. Turning to the Plaintiffs’ application, a reading of the Plaintiffs’ application shows that the Applicant seeks the police to provide security in ensuring that the orders issued by this court on 20/2/2025 are complied with. Section 24 of the Police Service Act provides for the functions of the Police Service. They include; investigating crime, maintenance of law and order and protection of life and property. The police are required to exercise their powers and discharge their functions subject to the constitutional safeguards of human rights and fundamental freedoms.

28. However, the prayers as drafted seek deployment of police officers at the suit property to ensure compliance with the court order. This court lacks jurisdiction to order the deployment of police officers. This court can only issue orders directing the police to ensure that law and order is maintained.

29. From the record, the court orders issued on 20/2/2025 are still in force. In the absence of an order from a court of competent jurisdiction setting aside and/or varying the said orders or stay of execution orders either from this court or the appellate court, the Defendants have no option but to comply with the impugned orders.

30. I also note the 1st Defendant's contention that he has been wrongly sued in these proceedings. He maintains that he has no proprietary interest in the suit property hence he ought to be removed from the instant proceedings. Order 1 Rule 10 (2) of the Civil Procedure Rules states 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 or settle all questions involved in the suit, be added."

31. The Plaintiffs have on the other hand maintained that the 1st Defendant organized the invasion on the suit property hence a necessary party to the proceedings. For the court to effectively determine whether the 1st Defendant is a necessary party to these proceedings or not, the 1st Defendant should formally move the court for its determination.

32. The upshot of the foregoing is that;
- a. The 2nd Defendant's application dated 12/3/2025 is spent.
 - b. The Plaintiffs' application dated 24/6/2025 is allowed in the following terms; the Officer Commanding Station, Eastleigh North Police Post to provide security and maintain law and order.
 - c. Each party to bear its own costs.
33. It is so ordered

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 12^H DAY OF FEBRUARY 2026 VIA MICROSOFT TEAMS.

J. G. KEMEI
JUDGE

Delivered Online in the Presence of:

1. Mr Murgor for the Plaintiff
2. Mr AbdulRizak for the 1st Defendant
3. Ms Njenga HB for Mr Bashir for the 2nd Defendant
4. CA- Ms. Yvette Njoroge