

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT ELDORET

ELC CASE No. 196 OF 2015

ROSE	JERONO	TIREN	.....	1ST
PLAINTIFF/RESPONDENT				
SPROMIL	INDUSTRIES	LTD	.....	2ND
PLAINTIFF/RESPONDENT				
VERSUS				
GETRUDE	JERUTO		.....	1ST
DEFENDANT/APPLICANT				
BYNADETTE	CHEPKEMBOI		.....	2ND
DEFENDANT/APPLICANT				
STANELY	KIPTALAM	KIPROP	.....	3RD
DEFENDANT				
PHYLIS	KOBILO	KIPROP	.....	4TH
DEFENDANT/APPLICANT				
ZEPHANIAH	KANGOGO	CHEBET	.....	5TH
DEFENDANT/APPLICANT				
LUKA	ROKOCHO		.....	6TH
DEFENDANT				
EMILY	JEMELI	MASIT	.....	7TH
DEFENDANT				

RULING:

1. This ruling is in respect of the Notice of Motion Application dated 17th July, 2025 brought by the 1st, 2nd, 5th and 6th Defendants/Applicants against the Plaintiffs seeking the following orders:-

- (1) Spent
 - (2) THAT the Plaintiffs be directed to surrender to the Land Registrar Uasin Gishu the Original Title deed for Title Number Karuna/Karuna Block 4 (Cheplaskei)/82 within (5) days from the date of the Order for purposes of cancellation.
 - (3) THAT in default of compliance by the Plaintiffs of the Order (2) above the Land Registrar Uasin Gishu be directed to dispense with surrender of the Original Title deed for Title Number Karuna/Karuna Block 4 (Cheplaskei)/82 and to cancel the Title in the register.
 - (4) THAT the costs of this application be borne by the Plaintiffs.
2. The Application is premised on the grounds set out on the face thereof, and supported by an Affidavit sworn on the same date by the 1st Defendant/Applicant, Getrude Jeruto Chelimo, on behalf of the 2nd, 5th and 6th Defendants/Applicants. She deponed that pursuant to the previous orders of this court, the Land Registrar and the Director of Survey have carried out the subdivision process. That the Land Registrar has advised that the next step is issuance of titles for the resultant sub-divisions. However, for this to be done, the Plaintiffs are required to surrender the original Title document for Title Number Karuna/Karuna Block 4 (Cheplaskei)/82 (the suit property herein).
 3. The 1st Defendant claims that the Land Registrar has informed them that the Plaintiffs have refused to surrender the original title for the process of cancellation and issuance of new titles. The 1st Defendant averred that their Advocate on record wrote

to the Plaintiffs Advocates on 9th July, 2025 requesting the Plaintiffs to surrender the title but is yet to receive a response. She pleaded that owing to the Plaintiffs refusal to surrender the title, they have been forced to come to court to seek further orders. She thus asked the court to compel the Plaintiffs to surrender the mother title to the Land Registrar. In default, the 1st Defendant prayed that the surrender be dispensed with and the Land Registrar be directed to cancel the register for the suit parcel and proceed to issue titles for the resultant sub-divisions.

4. On being served with the Application, the Plaintiffs filed a Replying Affidavit sworn by 1st Plaintiff on 21st October, 2025 opposing the Application. The 1st Plaintiff claimed that the Application is misconceived and an abuse of court process since it seeks to circumvent existing court orders and re-open issues already conclusively determined. That it also seeks to defeat the Mediation Consent recorded in Mediation Case No. 86 of 2021 that was adopted by this court. She deponed that no lawful subdivision has been completed as the map relied upon by the Defendants/Applicants is inaccurate, unapproved and does not conform to the Mediation consent which requires the provision of 9-metre access roads and boundary adjustments to avoid landlocked parcels.
5. The 1st Plaintiff alleged that the alleged mutation and resultant parcels were never approved by the Land Control Board (LCB) due to the defective survey map prepared by Top Link Surveyors. She deponed that she had presented an approved plan by Simuplans Consultants which is in compliance with the mediation consent, but the Defendants/Applicants are instead

relying on the unapproved version to create confusion and dispossess other parties. She claimed that the Plaintiffs had not refused to surrender the title as alleged. That on the contrary, they had prepared all requisite documentation pending proper verification and correction of the defective survey. She deponed that surrendering the title in the current circumstances would perpetuate an illegality and prejudice the parties whose parcels have been rendered inaccessible.

6. The 1st Plaintiff termed the prayer for cancellation unfounded, oppressive and contrary to Section 26 of the Land Registration Act. She also accused the Defendants/Applicants of acting in bad faith throughout the transaction, and lodging a caution which caused a 6-year delay in its completion, thus they cannot blame the Plaintiffs of delay. She averred that the court had already pronounced itself in its ruling of 23rd July, 2024 and this application is an attempt to review, vary and/or overturn the valid orders of the court through the back door.
7. The 1st Plaintiff claimed that the court is now functus officio in regards of the matters addressed in the said ruling and any grievances therein must be addressed before the Court of Appeal where an appeal has already been filed. She averred that the Applicants have not demonstrated any prejudice they stand to suffer if the lawful process is allowed to proceed as directed by the court. That the Plaintiffs stand to suffer prejudice by the cancellation of the parent title through a defective survey plan. She alleged that the application is actuated by malice and deceit, and is meant to frustrate the

Plaintiff's rights. She asked the court to dismiss the application and allow the subdivision to proceed as per the court-adopted mediation consent and the approved survey plan.

8. On 24th September, 2025 when the matter was mentioned for directions, Counsel for the 3rd and 4th Defendants, as well as Counsel for the 7th Defendants informed the court that they were in support of the 1st, 2nd, 5th and 6th Defendants' application. They therefore did not file any responses on the same.

Submissions:

9. The court directed that the Application be canvassed by way of written submissions. The 1st, 2nd, 5th and 6th Defendants/Applicants filed written submissions dated 5th November, 2025. The Plaintiffs filed their submissions dated 24th November, 2025. The 3rd, 4th and 7th Defendants opted to rely fully on the Applicants' submissions.

The 1st, 2nd, 5th & 6th Defendants/Applicants'

Submissions;

10. In his submissions, Counsel for the Applicants acknowledged that the parties had entered into a mediation agreement which was adopted as the judgment of the court. Counsel submitted that the court also allowed the Defendants/Applicants' application dated 5th May, 2023 allowing the Deputy Registrar to execute all instruments that the Plaintiffs would be required to execute to facilitate conclusion of the sub-division and transfers. Counsel for the Defendants submitted that the Plaintiff filed an application on 11th June, 2024 seeking orders to

have a map drawn by their physical planner adopted by the court, and which application was heard and dismissed.

11. Counsel explained that the Plaintiffs filed yet another application dated 28th March, 2025 seeking a stay of execution among other orders, which application was also heard and dismissed. He reiterated the Defendants' averment that the sub-division process is now complete, and the only thing pending is the surrender of the original title by the Plaintiffs to allow for the registration of the new subdivisions, then the execution of the instruments of transfer by the Defendants and the Deputy Registrar.
12. Counsel submitted that in opposing the application, the Plaintiffs seek to rely on the same grounds that they used in the previous applications that they filed, which applications were heard and dismissed. Counsel urged that the Plaintiffs had had their day in court and cannot be allowed to re-litigate the same issues they have previously raised unsuccessfully.

The Plaintiffs/Respondents' Submissions;

13. Counsel for the Plaintiffs argued his submissions along three issues. The first issue is whether the Application is competent and maintainable before this court. On this issue, Counsel submitted that the application is premised on misrepresentation of facts and a misunderstanding of the law. He added that the Application is aimed at circumventing the Mediation Consent entered into in Mediation Cause No. 86 of 2021, which is binding on the parties and has been adopted by the court.

Counsel argued that the Applicants seek to rely on a defective survey map which contravenes the mediation agreement and dispossesses other parties whose parcels will be landlocked.

14. Counsel argued that the reliefs sought are not interlocutory but final and substantive and cannot be granted without full hearing and due process, and relied on **John Onger Macharia vs Paul Matundura (2004) eKLR**. Counsel also argued that equity disfavours parties who seek to delay lawful implementation of court orders and cited the case of **Flora N. Wasike vs Destino Wamboko (1988) eKLR**. Counsel claimed that the defendants are the ones liable for the delay in this matter. Counsel urged that the instant motion is inter alia incompetent, procedurally defective and unmaintainable and asked that it be dismissed with costs.
15. Counsel also raised the issue of whether the Plaintiffs are obliged to surrender the original title. Under this issue Counsel argued that the surrender of title is unwarranted and legally impermissible. Counsel asserted that the application fails to meet statutory or equitable requirements for cancellation of title. Counsel cited Section 26 of the Land Registration Act which provides that a title can only be cancelled if it was procured through fraud, misrepresentation or illegality, which is not the case herein.
16. Counsel claimed that the Plaintiffs had fully complied with the orders of the court, thus there is no basis to compel surrender. In addition to the already cited cases, Counsel further relied on

Munyu Maina vs Hiram Gathiha Maina (2013) eKLR and **Republic vs Kenya Tea Growers Association & 2 Others (2024) KESC 3 (KLR)**. He asked the court to dismiss the prayer for surrender of the title and confirm that the Plaintiffs are not obliged to surrender the title except in accordance to the law and the mediation consent.

17. Counsel for the Plaintiffs finally questioned whether the Subdivision plan relied upon by the Applicants complies with the mediation agreement. In this regard, Counsel submitted that any sub-division map that fails to comply with the clauses in the mediation consent is invalid and cannot serve as a basis for transferring or cancelling title. Counsel argued that the survey map relied on by the Defendants is defective as it was prepared without proper verification or compliance with the mediation consent.
18. Counsel asserted that the Defendants/Applicants' insistence on relying on the defective plan, instead of the Plaintiffs approved plan is an attempt to create confusion, undermine the Plaintiffs' title and circumvent the proper process for lawful subdivision. Counsel asked the court to reject the subdivision plan relied upon by the Defendants and direct that subdivision proceeds based on the approved plan by Simuplan Consultants.

Analysis and Determination:

19. I have carefully considered the present application, the response by the Plaintiffs and the written submissions filed on

behalf of the respective parties. The singular issue for determination is whether the orders sought are merited.

20. To answer this issue, I have taken time to read through the court file. In doing so, I have come across a Notice of Motion Application dated 5th March, 2020 by the Plaintiffs herein. At prayer no. 4 of that Application, the Plaintiffs herein sought to have the Part Development Plan (PDP) prepared by Leonard Simiyu Mulongo of Simuplan Consultants adopted as evidence confirming the acreage of the land and the physical planning site map of the suit property. At prayer 5 of the same application, the Plaintiffs sought to have the survey and subdivision undertaken in accordance with the said PDP prepared by Simuplan Consultants.
21. From the record, when the case was mentioned on 29th July, 2020 Counsel for the Plaintiffs informed the court that parties were negotiating and about to reach a compromise. In the course of these negotiations, the matter was referred for court annexed mediation, through Mediation File No. 86 of 2021. The court annexed Mediation then gave rise to the mediation report of 1st October, 2021. It appears from the record of 18th October, 2021 that there were a total of 4 mediation agreements that were adopted as the orders of this court.
22. I have also seen the Order made on 18th October, 2021 adopting the Mediation Settlement Agreements as orders of the court. There was indeed a requirement that the seller would provide roads of access measuring 9 metres (order no. iv), and that the current boundaries would be slightly adjusted to enable the creation of the access roads while maintaining the actual acreage agreed in the mediation settlement. In addition, order

no. X thereof allowed the deputy Registrar of the Environment and Land Court to sign for whichever party that does not sign.

23. Further to this, the Defendants/Applicants herein also filed an application dated 25th May, 2023 for orders directing the Deputy Registrar to sign and execute all the necessary documents on behalf of the Plaintiffs to facilitate the sub-division of the suit property pursuant to the mediation consent. When this application came up for hearing on 23rd July, 2024, Counsel for the Plaintiffs raised the issue that the Plaintiffs had a problem with the survey map being used in the survey exercise. The Court delivered its ruling on the same day allowing the Application, and held that:-

“... what is clear is that the Plaintiff is seeking to set aside the consent that the parties willingly entered into and which was adopted by the court on 09.11.2022 without making a formal application to do so. This is not acceptable.

The parties having entered into the consent are bound by it. The issue of the absence of roads of access which the Plaintiff is now bringing up is an attempt to renege on the consent.”

24. Under the Mediation Consent order, the parties agreed that the County Surveyor, Uasin Gishu was the one to conduct the survey to give effect to the mediation agreements. I see no indication that the survey was done by anyone other than the County Surveyor, Uasin Gishu. The Mutation Forms annexed to the Defendants’ Supporting Affidavit as GJC-1 equally indicate the name and registration number of the surveyor who

prepared them as Samuel Kipsang Langat (1995005948) and bear the stamp of the County Land Surveyor, Uasin Gishu.

25. There was also the allegation by the Plaintiffs that the Mutation was rejected by the LCB owing to the defective survey plans. This is clearly not true as the Defendants have also annexed an application for consent to subdivide, and the resultant Letter of Consent from the Moiben Sub-County Land Control Board approving the subdivision of the suit property. There is also a certificate of Compliance from the CECM Lands, Physical planning, Housing and Urban Development, Uasin Gishu County approving the subdivision of the suit property per the approved sub-division plan.
26. Aside from claiming that the Plaintiffs have acquired all the documents required for subdivision according to the approved plan prepared by Simuplan Consultants, the Plaintiffs have annexed no such document to prove their claims. No single document, not even the purported approved survey plan by Simuplan Consultants was annexed to the Plaintiffs' Replying Affidavit. Therefore, the claims that they are committed to carrying out the survey in accordance to the law, or that they have obtained all the requisite documents remain mere allegations unsupported by evidence.
27. In addition, Counsel for the Plaintiffs argued that the reliefs sought are not interlocutory but final and substantive and cannot be granted without full hearing and due process. The matter was concluded through the adoption of the mediation consent as the judgment of this court. Any application thereafter is only a post-judgment Application seeking to enforce the order/decree, and cannot therefore be termed an

interlocutory application. It is not therefore clear why the Plaintiffs would argue that there is need for a full hearing and production of evidence on a post-judgment application.

28. The Plaintiffs cited the case of **Flora N. Wasike vs Destino Wamboko (1988) eKLR** where it was held that:

“It is now settled law that a consent judgment or order has contractual effect and can only be set aside on grounds which would justify setting a contract aside, or if certain conditions remain to be fulfilled, which are not carried out: see the decision of this court in J M Mwakio v Kenya Commercial Bank Ltd Civil Appeals 28 of 1982 and 69 of 1983. In Purcell v F C Trigell Ltd [1970] 2 All ER 671, Winn LJ said at 676;

‘It seems to me that, if a consent order is to be set aside, it can really only be set aside on grounds which would justify the setting aside of a contract entered into with knowledge of the material matters by legally competent persons, and I see no suggestion here that any matter that occurred would justify the setting aside or rectification of this order looked at as a contract’.

29. This authority is very relevant in this case. However, as noted by Hon. Lady Justice Onyango J. in her ruling of 23rd July, 2024 it is the Plaintiffs herein who are intent on setting aside and/or varying the mediation Consent entered into willingly by the parties through the backdoor.

30. The Defendants/Applicants however do not seek to set aside the consent judgment delivered herein, but rather seek to

enforce it. As submitted by the Plaintiffs, equity indeed disfavours parties who seek to exploit the court process to delay the lawful implementation of court orders, which party in this instance would once again be the Plaintiffs themselves and not the Defendants.

31. In further opposition of the prayers, the Plaintiffs cited section 26 of the Land Registration Act which is to the effect that a title can only be cancelled where there has been fraud, misrepresentation or illegality. This statutory provision does not apply in the instant case because there is no allegation in the application that the title is sought to be cancelled owing to fraud, illegality or misrepresentation.
32. The Defendants/Applicants are very clear that the title document is to be surrendered for cancellation to allow the completion of the subdivision process, registration of the new parcels and issuance of new titles with respect to these resultant subdivisions. The Plaintiffs evident misapprehension of the orders sought and their import is to me only deliberate and aimed at delaying the enforcement of the orders of this court.
33. I must point out that I do in fact agree with Counsel for the Plaintiffs that the Plaintiffs are not obliged to surrender the title except in accordance to the law and the mediation consent. My point of departure from Counsel's submissions however, is that such an occasion has arisen where legally, the Plaintiffs are required under the law to surrender the title so that due process can be followed in cancellation of the mother title to pave way for issuance of the new titles to the new sub-divisions.
34. The Plaintiffs are also bound by the mediation consent which gave rise to the survey and sub-division process being

undertaken by the Defendants/Applicants. As parties bound by that agreement, the Plaintiffs are equally bound to comply with the procedural requirements of the said process, one of which is the surrender of the original title. The Plaintiffs are thus obligated under the law, as well as under the mediation consent adopted as an order of this court, to surrender the original title to the Land Registrar, Uasin Gishu as sought in the Application. In default of such surrender, the Registrar shall be at liberty to cancel the register of the suit property and proceed with the issuance of the new titles to the resultant parcels.

Orders:-

35. The upshot is that the Defendants/Applicants' Notice of Motion Application dated 17th July, 2025 is merited. The same is allowed in its entirety, with the following orders issuing therefrom:-

- (a) The Plaintiffs are hereby directed to surrender to the Land Registrar Uasin Gishu the Original Title deed for Title Number Karuna/Karuna Block 4 (Cheplaskei)/82 within (5) days from the date of the Order for purposes of cancellation.
- (b) In default of compliance by the Plaintiffs of the Order (2) above the Land Registrar Uasin Gishu be directed to dispense with surrender of the Original Title deed for Title Number Karuna/Karuna Block 4 (Cheplaskei)/82 and to cancel the Title in the register.
- (c) The costs of this application shall be borne by the Plaintiffs.

36. Orders accordingly.

DATED, SIGNED and DELIVERED virtually at **ELDORET** on this **5TH** day of **FEBRUARY, 2026** vide Microsoft Teams.

HON. C. K. YANO
ELC, JUDGE

In the virtual presence of;

Ms. Waweru for Plaintiffs/Respondents.

Mr. Bundotich for 1st, 2nd, 5th & 6th Defendants/Applicants.

Mr. Mwetich for 3rd & 4th Defendants.

Mr. Kipnyekwei for 7th Defendant

Court Assistant - Laban.

ORIGINAL