



THE JUDICIARY



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MURANG'A

ELCLMISC E025 OF 2025

SAMUEL NGERU MWANGI.....PLAINTIFF/APPLICANT

VERSUS

JOHN THUO1ST DEFENDANT

SETTLEMENT FUND TRUSTEES2ND DEFENDANT

RULING

(1) This ruling is on the notice of motion dated 17-11-2025. The motion which is brought under **Order 40 rule 7 of the Civil Procedure Rules, Sections 1A, 1B and 1C (sic) of the Civil Procedure Act, Article 40** of the Constitution, the inherent powers of the Court and all the enabling provisions of the law seeks the following orders.

- (i) **That this Court be pleased to reopen and admit for hearing this matter concerning land parcel number Ithanga Phase II/260.**
- (ii) **That this Court be pleased to summon the 1st Defendant, John Thuo and the 2nd Defendant the Settlement Fund Trustees, to explain how and why land parcel No. Ithanga Phase II/260 – originally belonging to the Plaintiff's late father was irregularly and illegally transferred to one Gibson Warubu Gitau, a non-beneficiary.**
- (iii) **That this court be pleased to nullify and/or suspend any transfer, registration or dealings undertaken in respect of the suit land pending the hearing and determination of this suit.**
- (iv) **That costs of this application be provided for.**

(2) The motion is based on three (3) grounds and an affidavit by the Applicant dated 17-11-2025. The gist of the motion is as follows. Firstly, the suit land belongs to the Applicant's father and has always been family property possessed and occupied by them. Secondly, the 1st Respondent was summoned before the Assistant County Commissioner, Ithanga regarding the complaints made by the Applicant. Thirdly, despite the findings and proceedings of the

said summons, the title deed was still irregularly and illegally transferred to one Gibson Warubu Gitau who is not a family member or beneficiary and he therefore had no legitimate claim to the land. Fourthly, the said transfer was facilitated, sanctioned and officiated by the 2nd Respondent without the Applicant's knowledge, consultation or consent. Fifthly, the irregular transfer has deprived the Applicant of his rightful inheritance and threatens to deprive the Applicant of his rightful inheritance. For the above and other reasons, he prays that the motion dated 17-11-2025 be allowed.

- (3) The motion was served upon the 1st Respondent on 23-1-226 at Juja town. The notice dated 13-1-2026 says that the matter would be mentioned at the Magistrate's Court at Thika on 2-2-2026.
- (4) I have carefully considered the motion in its entirety including the affidavit, annexures and the affidavit of service dated 26-1-2026. I make the following findings.
- (5) Firstly, the service was only on the 1st Defendant and it was misleading for stating that the same would be mentioned at the Magistrate's Court at Thika instead of the ELC Court at Murang'a.
- (6) Secondly, there is no service upon the 2nd Respondent. No explanation has been offered for failure to serve the 2nd Defendant.
- (7) Thirdly, the alleged beneficiary of the transfer Gibson Warubu Gitau has not been sued in this case yet he is a necessary party as the beneficiary of the suit land.
- (8) Finally and more importantly, it is my finding that a notice of motion is not a proper way to institute a suit where the Applicant expects the Court to nullify a title deed. There are four recognized methods through which a party may approach the court where that party expects the Court to issue far reaching orders which include cancellation or revocation of a title deed.

These time honoured methods include the following.

- (a) Plaintiff**
- (b) Originating Summons**

(c) Petition

(d) Judicial Review Proceedings.

The above four would result in serious orders including nullifying title deeds.

There are other minor methods recognized by law which are not far reaching. These methods include the following.

(e) Reference

(f) Notice of motion

(g) Chamber summons

(9) It is up to the Applicant to choose the method most suitable for the reliefs that he wishes to seek from this Court or any other court. That method excludes the minor ones mentioned above in paragraph 8.

(10) For the above stated reasons, I find **no merit** in the motion dated 17-11-2025 which I dismiss. Since there is no appearance by the Respondents, there will be no order as to costs.

It is so ordered.

Dated, Signed and Delivered virtually at Murang'a this 3rd day of March, 2026.

**M.N. GICHERU
JUDGE.**

Delivered online in the presence of; -

Court Assistant – Jackline

Applicant – Present

Respondents – Absent