



Ndundu & 2 others v Embakasi Ranching Company & 5 others (Environment and Land Case 281 of 2012) [2026] KEELC 1148 (KLR) (2 March 2026) (Ruling)

Neutral citation: [2026] KEELC 1148 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE 281 OF 2012**

CA OCHIENG, J

MARCH 2, 2026

BETWEEN

**STEPHEN KIMANI NDUNDU 1ST PLAINTIFF
SAMUEL NDUNDU KIMANI 2ND PLAINTIFF
MARY NYAMBURA NDUNDU 3RD PLAINTIFF**

AND

**EMBAKASI RANCHING COMPANY 1ST DEFENDANT
TERESIAH WAMBUI NJOROGE 2ND DEFENDANT
MAINA NDEGWA 3RD DEFENDANT
WANGURURO MBUGUA 4TH DEFENDANT
GERALD KARIMI 5TH DEFENDANT
LAND REGISTRAR NAIROBI 6TH DEFENDANT**

RULING

1. There are three applications for determination before this Court, all filed subsequent to this Court's judgement issued on 8th June 2023, declaring the 1st Plaintiff as owner of Plot C20 and the 2nd Plaintiff as owner of Plot C24.

A. Notice of Motion dated 9th July 2025

2. It is filed by Peter Njoroge Kimani who seeks the following Orders;
 - a. Spent.
 - b. That this Court be pleased to reinstate this matter.



- c. That this Court be pleased to enjoin the Applicant herein in this matter.
 - d. Spent.
 - e. Spent.
 - f. That the judgement delivered on 8th June 2023 be and is hereby set aside.
 - g. That this Court be pleased to set aside or vacate the orders of this Court dated 24th June 2025.
 - h. That the Plaintiffs be ordered to serve the Applicant herein with their pleadings and the Applicant herein to be given a chance to file a defence.
 - i. That the costs of this application be in the cause.
3. The application is premised on grounds on its face and on the supporting affidavit of Peter Njoroge Kimani. He avers that he is the registered proprietor of Nairobi Block 136/12656 (formerly C20) which he has occupied for over 20 years and made permanent developments thereon.
 4. He claims that on 8th July 2025, he was served with a Notice of eviction by the 1st Plaintiff's son and contends that the 1st Plaintiff deliberately failed to inform him of the instant suit despite knowing he had been living on the suit plot. Further, that the 1st Plaintiff sued his grandmother (the 2nd Defendant) who passed away two years before the suit was filed.
 5. He annexed a copy of title, the 2nd Defendant's death certificate, correspondences from the 1st Defendant and a draft defence and sought to be joined in the suit on the basis that he has an arguable case with chances of success, being that he was allocated the suit plot on 9th December 2008, earlier than the 1st Plaintiff and on the basis that the 1st Defendant who is the allocating company has determined that he is the owner of the suit plot, which status, he alleges has also been confirmed vide investigations from the Director of Criminal Investigations.

B. Application dated 21st July 2025

6. It is filed by the Plaintiffs who seek the following Orders:
 - a. This Honourable Court to review and vary its order issued pursuant to the Ruling delivered following the Plaintiff's contempt application, by substituting the reference to the "OCS Ruai Police Station" with "OCS Kamulu Police Station."
 - b. The Court be pleased to issue an amended order reflecting the above substitution to enable effective and lawful execution of the judgement and decree issued on 8th June 2023.
 - c. Costs of this application be in the course.
7. The application is premised on grounds on its face and on the 1st Plaintiff's supporting affidavit. He avers that upon attempting to execute this Court's orders of 24th June 2025, the Plaintiffs were informed that plot numbers C20 and C24 fall under the jurisdiction of Kamulu Police Station, not Ruai Police Station thus in the eviction orders issued by this Court, OCS Ruai Police Station should be substituted with OCS Kamulu Police Station to enable timely execution.

C. Notice of Motion dated 25th July 2025

8. It is filed by the 4th and 5th Defendants who seek the following orders:
 - a. Spent.



- b. Spent.
 - c. That this Court be pleased to set aside or vacate the orders of this Court dated 24th June 2025.
 - d. That the costs of this application be in the cause.
9. The application is premised on grounds on its face and on the 4th and 5th Defendants' joint supporting affidavit. They claim that they were served with orders issued on 25th June 2025 committing them to civil jail, which were obtained on the basis of material non-disclosure as they were not served with hearing notices in the suit and in the application for contempt of Court. They claim to have lost contact with the advocate who was representing them in the matter and allege that they have since learnt that he filed an application to cease acting on their behalf. They annexed a transfer of share document issued by the 1st Defendant indicating transfer from the 4th Defendant to the 5th Defendant and a Certificate of title issued to the 5th Defendant. They claim that the 1st Defendant processed title in line with its register and urged the Court to allow them an opportunity to be heard.

Responses

10. The Plaintiffs filed a response to Peter Njoroge Kimani's Notice of Motion dated 9th July 2025 and the 4th and 5th Defendant's Notice of Motion application dated 25th July 2025. They insist that the Defendants and their then advocates were at all times aware of the instant proceedings, having been duly served with the requisite hearing notices and other pleadings thus failure to participate was a result of their own inaction and negligence. Further, that the Court considered affidavits of service and confirmed service before allowing the matter to proceed.
11. With regard to the application of Peter Njoroge Kimani, he avers that if the said Peter Njoroge Kimani had any genuine interest in the property, he had the liberty to apply for joinder as an Interested party at any stage before judgement, which he did not.
12. The applications were canvassed by way of written submissions.

Submissions

13. Mr. Peter Njoroge Kimani submits that the judgement delivered on 8th June 2023 was an irregular judgement as the Plaintiffs deliberately refused to join him in the suit so as to prevent him from defending his title and sued his grandmother (2nd Defendant) who had passed away on 28th February 2010 long before the suit was instituted in 2012. Further, that documents from the 1st Defendant confirm that together with his deceased grandmother (2nd Defendant), they were the bonafide owners of Plot No. C20.
14. He insists that he was never served with a Notice of entry of judgement or mention Notices for application of execution of the judgement, by design, to stop him from challenging the judgement, which offends the principles of natural justice.
15. To buttress his averments, he relied on the following decisions: James Kanyiita Nderitu & another v Marios Philotas Ghikas & another [2016] eKLR, Job Kilach v Nation Media Group Ltd, Salaba Agencies Ltd & Michael Rono [2015] KECA 846 (KLR) and Patel v EA Cargo Handling Services Ltd [1974] EA 75.
16. With respect to the application of 25th July 2025, the 4th and 5th Defendants submit that they were not served with hearing notices post their advocate's cessation in the matter, violating their right to be



heard thus impugned orders herein were procured irregularly, violate constitutional safeguards, and overlook their valid defenses.

17. They also submit that Article 40 of *the Constitution* protects them against arbitrary deprivation of property, including unjust evictions, except through lawful processes. They reiterate that they possess valid titles issued by the 1st Defendant.
18. To buttress their averments, the 4th and 5th Defendants relied on the case of *Shikwe v Judicial Service Commission* (Petition E011 of 2024) [2025] KEELRC 1748.
19. On their part, the Plaintiffs submit that the judgement entered herein was regular, maintaining that the Defendants were duly served with all pleadings, hearing notices and orders. Further, that the Defendants did not demonstrate sufficient cause to warrant setting aside the judgement herein, save for blaming their Counsel. They also submit that contempt proceedings are designed to preserve the authority and dignity of the Court and that a contemnor cannot seek discretionary relief while still in contempt of this Court's orders.
20. To buttress their averments, they relied on the following decisions: *Wafula* (Legal representative of Peter Mayeku Khisa - Dcd) & another v *Khisa* [2025] KEELC 3127 (KLR), *Kasamani Charles Lutta & 4 others v Amani National Congress & 3 others* [2017] eKLR and *Philip Chepkwony v Benjamin Tarus & 4 others* [2019] KEEELC 4865(KLR).

Analysis and Determination

21. Upon consideration of the three instant applications including the respective affidavits and rivalling submissions, the following are the issues for determination:
 - a. Whether the judgment delivered on 8th June 2023 should be set aside.
 - b. Whether Peter Njoroge Kimani has established sufficient interest to warrant joinder at this stage of the proceedings.
 - c. Whether the contempt orders of 24th June 2025 were irregularly obtained and if they should be set aside
 - d) Whether the Plaintiffs have satisfied the statutory grounds for review under Order 45 of the Civil Procedure Rules.
22. On the first issue, the 4th and 5th Defendants claim that the judgement entered herein is irregular for want of service of hearing notices. They allege that their advocate on record ceased acting for them without notifying them and that after cessation, the Plaintiffs did not serve them with hearing notices and judgement notice.
23. On their part, the Plaintiffs contend that judgment was lawfully obtained, premised on proper service, and the 4th and 5th Defendants have failed to demonstrate sufficient cause to warrant setting aside of the said judgement, as they only blame their Counsel yet the case was theirs to follow up.
24. Before I make a determination on whether to set aside the impugned judgement or not, I wish to establish whether the said judgement was regular. In *James Kanyiita Nderitu & Another* [2016] eKLR, the Court of Appeal distinguished between regular default judgement and irregular default judgment by observing as follows:

“From the outset, it cannot be gainsaid that a distinction has always existed between a default judgement that is regularly entered and one which is irregularly entered. In a regular default



judgement, the defendant will have been duly served with summons to enter appearance or to file defence, resulting in default judgment. Such a defendant is entitled, under order 10 rule 11 of the Civil Procedure Rules, to move the court to set aside the default judgement and to grant him leave to defend the suit. In such a scenario, the court has unfettered discretion in determining whether or not to set aside default judgment, and will take into account such factors as the reason for failure of the defendant to file his memorandum of appearance or defence, as the case may be; the length of time that has elapsed since the default judgment was entered; whether the intended defence raises triable issues; the respective prejudice each party is likely to suffer and whether on the whole it is in the interest of justice to set aside the default judgment, among others..... In an irregular default judgment, on the other hand; judgment will have been entered against a defendant who has not been served or properly served with summons to enter appearance. In such a situation, the default judgment is set aside ex debito justiae, as a matter of right. The court does not even have to be moved by a party once it comes to its notice that the judgment is irregular; it can set aside the default judgment on its own motion....”

25. The same Court stated as follows in *Kenya Power & Lighting Co Ltd v Abdulhakim Abdulla Mohamed & another* [2017] eKLR:

“The overriding consideration in an application to set aside a default judgment where the intended defence raises triable issues and, absent evidence of intention or deliberate action by the Appellant to overreach, obstruct or delay the cause of justice, is to do justice to both parties...”

26. The Applicant Peter Njoroge Kimani has also sought to set aside the impugned judgement of this Court as well as joinder as a Defendant. He insists that he was not served with pleadings herein yet he has been in possession of Plot C20 for over 20 years and has a Certificate of title to that effect. He alleges that the suit was filed against his grandmother (2nd Defendant) after her death and that though paragraph 4 of the judgement indicates that the Plaintiffs withdrew the case against him on 18th July 2018, they never served him, yet he was in possession of said suit plot.
27. I note the Plaintiffs have not disputed the Death Certificate of the 2nd Defendant. Further, on perusal of the said Death Certificate, I note the 2nd Defendant passed away on the 28th February 2010 before this suit was even filed. The question we hence need to ponder is if the Plaintiffs claim to have served a deceased person, then was that ‘service’ regular. Further, upon obtaining exparte judgement against a deceased person without involving the estate, was the judgement regular. However, based on the facts before me especially the undisputed Death Certificate of the 2nd Defendant, while associating myself with the decisions cited, I find that the judgement entered against the 2nd Defendant was not regular. Further, I note the Plaintiffs have also not demonstrated whether after the 4th and 5th Defendants’ advocates ceased acting for them, if they served them directly. From the Court record, I opine that service upon the 4th and 5th Defendants after cessation of their Advocate was not clear or proper.
28. In the foregoing, I find that the Applicant Peter Njoroge Kimani including the 4th and 5th Defendants have provided sufficient cause to warrant the setting aside of the impugned judgement and I will proceed to do so and direct that the suit to commence de novo.
29. On joinder of Peter Njoroge Kimani, I wish to make reference to Order 1 Rule 10 (2) of the Civil Procedure Rules, which gives this Court discretion to join a party to proceeding.



30. The Court of Appeal stated as follows in *J.M.K v MWK & Another* [2015] eKLR:

“We would however agree with the Respondent that Order 1 Rule (10)(2) contemplates an application for amendment or joinder of parties where proceedings are still pending before the Court. Sarkar’s Code, (supra) quoting as authority, decisions of Indian Courts on the provision, expresses the view that an application for joinder of parties can be filed only in pending proceedings. In the same vein, the Court of Appeal of Tanzania, while considering the equivalent of Order 1 Rule 10(2) of our Civil Procedure Rules, in *Tang Gas Distributors Ltd v Said & Others* [2014] EA 448, stated that the power of the court to add a party to proceedings can be exercised at any stage of the proceedings; that a party can be joined even without applying; that the joinder may be done either before, or during the trial; that it can be done even after judgment where damages are yet to be assessed; that it is only when a suit or proceeding has been finally disposed of and there is nothing more to be done that the rule becomes inapplicable; and that a party can even be added at the appellate stage...”

31. I note the Plaintiffs have opposed the joinder insisting that the Applicant has come too late in the day and he should have sought for joinder as an Interested Party prior to the judgement.

32. In *Meme v. Republic* [2004] KLR, it was held that joinder of parties will be permissible:

“(i) Where the presence of the party will result in the complete settlement of all the questions involved in the proceedings; (ii) Where the joinder will provide protection for the rights of a party who would otherwise be adversely affected in law: and (iii) Where the joinder will prevent a likely course of proliferated litigation.”

33. From a reading of the legal provisions cited above, I note the Court may at any stage of the proceedings, order joinder of parties. From the facts before Court, I note the fulcrum of the dispute herein also revolves around Plot C24 and C20; Applicant claims plot C20 and insists he has a title and has been thereon for over 20 years and put up permanent structures.

34. Based on the facts before me while relying on the legal provisions cited including associating myself with decisions quoted and applying them to the circumstances at hand, I find that the Applicant Peter Njoroge Kimani has met the threshold for joinder as envisaged under Order 1 Rule 10(2) of the Civil Procedure Rules. Further, that since he also stakes ownership over one of the suit plots, he is a necessary party whose presence is required for effectual and complete adjudication of the issues herein. Further, this will also avoid multiplicity of suits.

35. On whether the 4th and 5th Defendant’s complaint that orders of 24th June 2025 committing them to civil jail for being in contempt of this Court’s orders were irregularly obtained and should be set aside. Since I have already set aside the impugned judgement, it is my considered view that the issue of contempt by the 4th and 5th Defendants hence cannot stand and I will decline to grant it.

36. The fourth issue concerns the Plaintiff’s prayer for a review of the orders of 24th June 2025 to the extent that they made reference to the “OCS Ruai Police Station” instead of “OCS Kamulu Police Station, where the suit plots are situate. This prayer was not opposed and it just seeks to make the Decree issued herein enforceable.

37. This Court has discretion to review its orders within the parameters provided under Order 45 of the Civil Procedure Rules, which are discovery of new and important matter or evidence that, after the exercise of due diligence, was not within one’s knowledge or could not be produced at the time when



the decree was passed , or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason.

38. The Court of Appeal stated as follows in Stephen Gathua Kimani v Nancy Wanjira Waruingi t/a Providence Auctioneers [2019] eKLR;

“....an order for review is restricted to parameters set out by the law..”

39. Since I have already made an Order setting aside the judgement dated 8th June, 2023 that seeks to be enforced, I opine that this Order can hence not issue as there is no longer a Decree to be enforced.

40. In the foregoing, I find the Applicant Peter Njoroge Kimani’s application dated 9th July 2025 and 4th and 5th Defendants’ application 25th July 2025 merited and will allow them. I however find the Plaintiffs’ application dated 21st July, 2025 unmerited and will disallow it. I proceed to make the following final Orders: That the judgement delivered on 8th June 2023 be and is hereby set aside. That the Orders issued on the 24th June, 2025 are hereby set aside. Peter Njoroge Kimani is hereby joined in this suit as a 7th Defendant. That the Plaintiffs are hereby ordered to serve the 7th Defendant herein with their pleadings within 14 days from the date hereof. Upon service the 7th Defendant is directed to file and serve his Defence in fourteen (14) days. Costs will be in the cause.

DATED SIGNED AND DELIVERED AT NAIROBI THIS 2ND DAY OF MARCH, 2026

CHRISTINE OCHIENG

JUDGE

In the presence of:

Ongwen for Plaintiffs

Chebets holding brief for Kinyanjui for 4th and 5th Defendants

Angaya for Mangere 1st Defendant

Nderitu for Applicant in application dated 9th July 2025

Court Assistant: Joan

