



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT THIKA**  
**ELC CIVIL SUIT NO. E112 OF 2024**

**DAVID GICHIA KINYITTA.....**  
**PLAINTIFF**

**VERSUS**

**CKK ESTATES [1973] LIMITED.....1<sup>ST</sup>**  
**DEFENDANT**

**DIRECTOR OF SURVEY.....2<sup>ND</sup>**  
**DEFENDANT**

**CHIEF LAND REGISTRAR.....3<sup>RD</sup>**  
**DEFENDANT**

**THE ATTORNEY GENERAL.....INTENDED 4<sup>TH</sup>**  
**DEFENDANT**

**KIFARU PROPERTIES LIMITED.....INTENDED 5<sup>TH</sup>**  
**DEFENDANT**

**RULING**

1. This Court has been called upon to determine an application filed by the 1<sup>st</sup> Defendant seeking several urgent orders, primarily focused on judicial recusal and asset preservation which include the following:

- 1) *Spent.*
- 2) *Spent.*

- 3) *That Hon. Lady Justice Mogeni recuse/disqualify herself from handling this suit or any related applications.*
  - 4) *An order for the Land Registrar to keep the property registers in respect of the Applicant's LR 134/8 and LR No. 245/4 under lock and key in a strong room.*
  - 5) *Further that the Court may order the 2<sup>nd</sup> Defendant to keep under lock and key or in the strong room the registers in respect of the Petitioner's LR 134/8 and LR No. 245/4 not to process any deed plans without written request from the 1<sup>st</sup> Defendant/Applicant.*
  - 6) *That injunctions to be issued against the Director of Survey and Chief Land Registrar to stop them from processing any deed plans, transfers, or leases regarding Petitioner's **LR. No. 134/8** and **LR. No. 245/4** or any portion of it described as LR No. 134/14, 13 and 12 or any other description until further orders of this Honourable Court.*
  - 7) *That this suit be merged with **Thika ELC Case No. E004 of 2025 (Njunu Farmers' Cooperative Society v CKK Estates).***
  - 8) *The Court to join the Attorney General and Kifaru Properties Limited as the 4<sup>th</sup> and 5<sup>th</sup> Defendants to this suit.*
  - 9) *Costs of this application be provided for.*
2. The grounds of the application are on the face of the application and supported by the Affidavit sworn by Samuel

Karuga Koinange a Director of the 1<sup>st</sup> Defendant who argues that the Court's impartiality has been compromised based on the following issues among others:

- a) The Applicant claims Justice Mogeni sat on appeal of her colleagues' Justice Eboso and Justice Kemei earlier orders. By striking out a previous **Petition E016 of 2022**, she effectively vacated injunctions that had previously protected the Applicant's land.
- b) In so doing she violated the doctrine of *stare decisis*. The Applicant contends the Judge ignored binding Court of Appeal precedents specifically **Mwai Kibaki Vs Daniel Toroitich Arap Moi [1999] eKLR** asserting that a Judge of coordinate jurisdiction cannot overrule another Judge's decision.
- c) The Applicant argues that the Judge's prior Ruling which suggested the Applicant had no enforceable rights shows she has already made up her mind on the ownership of the 305-acre tea and coffee farm.
- d) The Applicant maintains that the Plaintiff's title documents were disowned by the Chief Land Registrar as fraudulent on January 23, 2023, yet the Court is currently favoring the Plaintiff.
- e) The application invokes Article 50 which provides for the right to a Fair Hearing and Article 40 on protection of property, claiming these are being violated by the current Court proceedings.

3. In his Affidavit, Mr. Koinange reinforces the legal arguments and asserts that Justice Mogeni declined an application to commit the Plaintiff and Directors of Kifaru Properties to jail for disobeying previous Court orders.
4. He notes that the Applicant has already moved to the **Court of Appeal (Civil Application No. E162 of 2025)** to seek restoration of the orders discharged by Justice Mogeni.
5. He asserts that without the injunctions, there is nothing to stop the Plaintiff from selling or subdividing the Applicant's land (**LR. No. 134/8 and LR. No. 245/4**) to third parties like Kifaru Properties Ltd for sums as high as Kshs 210 million.
6. He maintains that the Company has a strong case, as previously recognized by Lady Justice Kemei, and that the current legal chaos on the suit property requires immediate intervention.
7. Apart from the Plaintiff no other party filed a response. The application is opposed, the Plaintiff filed a Replying Affidavit sworn by the Plaintiff, David Gichia Kinyitta, on 11/07/2025 in response to the 1<sup>st</sup> Defendant's application for recusal and injunctive orders.
8. The Plaintiff's core argument is that the 1<sup>st</sup> Defendant's application is frivolous, vexatious, and an abuse of the Court process. He maintains that he is the legitimate, registered owner of the property and that the 1<sup>st</sup> Defendant is

attempting to relitigate issues from a Petition that has already been legally struck out.

9. The Plaintiff asserts he purchased **LR. No. 134/8** measuring 242 acres and **LR. No. 245/5** measuring 63 acres on 18/09/1973, from Emma Krag and others for Kshs 1,209,969/=.
10. He relies on Section 26(1) of the Land Registration Act, arguing that his title is prima facie evidence of absolute ownership and is protected by Article 40 of the Constitution until declared a nullity by a Court.
11. He has attached official Search results as annexure **'DK-4'** from the Ministry of Lands confirming him as the registered owner.
12. The Plaintiff describes the allegations of bias against Lady Justice Mogeni as far-fetched and preposterous.
13. He argues that Justice Kemei only dealt with temporary injunctions, whereas Justice Mogeni dealt with the competence of the Petition itself. Striking out the Petition automatically vacated any prior interim orders.
14. Since the 1<sup>st</sup> Defendant has already appealed Justice Mogeni's Ruling to the Court of Appeal, the Plaintiff argues that is the proper forum for their grievances, not a recusal application in the lower Court.
15. The Plaintiff turns the accusation of fraud back onto the 1<sup>st</sup> Defendant CKK 1973 Estate Ltd, citing that the suit property was not listed as an asset in the Confirmed Grant of

- the late Charles Karuga Koinange **Succession Cause No. 998 of 2006** or in his Written Will which is annexure 'DK-3'.
16. He claims that the Applicant's documents are of dubious origin and lack evidence of a Sale Agreement or a proper Grant. He alleges the Applicant conspired with land officials to interfere with his records, which forced him to apply for a reconstruction of the register.
17. The Plaintiff argues that the Applicant cannot legally rely on pleadings from **Petition No. E016 of 2022**, as that suit was struck out and its contents are now nullified.
18. The Plaintiff notably has no objection to consolidating this suit with **Thika ELC No. E004 of 2025** (Njunu Farmers' Cooperative Society case).
19. In conclusion, the Plaintiff prays that the Court denies the disqualification of Lady Justice Mogeni, denies the restraining orders against the Land Registrar and Director of Survey and dismisses the entire application with costs to the Plaintiff.
20. The application was canvassed by way of written submissions the 1<sup>st</sup> Defendant/Applicant filed their submissions dated 14/07/2025 and the Plaintiff/Respondent filed theirs dated 10/11/2025.

### **Applicant's Submissions**

21. The primary goal of the 1<sup>st</sup> Defendant's submissions is to secure the recusal of Hon. Lady Justice Mogeni from the suit

and to obtain **restraining orders** to protect the disputed land parcels, **LR. No. 134/8** and **LR. No. 245/4**.

22.The Applicant submits that Justice Mogeni disqualifies herself from trying the suit due to apprehended bias. That the Land Registrar, 3<sup>rd</sup> Defendant and Director of Survey being the 2<sup>nd</sup> Defendant be ordered to keep all registers and records for the suit property under lock and key and be restrained from processing any transfers or deed plans.

23.Further that this suit be merged with **Thika ELC Case No. E004 of 2025, Njunu Farmers' Cooperative Society v. CKK Estates Ltd & Others**. Also, that the Attorney General and Kifaru Properties Limited be added as the 4<sup>th</sup> and 5<sup>th</sup> Defendants.

24.The Applicant argues that Justice Mogeni's prior conduct in a related matter, **Thika ELC Petition No. E016 of 2022** proves she has already pre-judged the ownership of the land thus there is reasonable apprehension of bias that would support grounds for recusal.

25.Further, the Applicant claims Justice Mogeni acted without jurisdiction by striking out their Petition on 27/02/2025, effectively vacating injunctions previously granted by **Justice Eboso** and **Lady Justice Kemei** and this is violation of Jurisdictional Boundaries.

26.Citing **Mwai Kibaki v. Daniel Arap Moi, [supra]** the Applicant argues that a Judge of coordinate jurisdiction

cannot overrule or flout the principles established by their peers or Superior Courts.

27. Additionally, the Applicant cites **Supreme Court Petition No. 16 of 2020; Kenya Hotel Properties Ltd Vs Attorney General And 5 Others** to argue that Superior Courts cannot arrogate to themselves jurisdiction to reopen or review decisions made by their peers.

28. They contend that by striking out the Petition, the Judge effectively decided the merits of the case favouring David Gichia Kinyitta before a full trial could occur. That Article 50(1) the Applicant asserts grants their right to an independent and impartial Tribunal.

29. **The "Fair-Minded Observer" Test:** Citing **Porter v Magill [2001] UKHL 67** and **Philip K. Tunoi & another v Judicial Service Commission & Another [2016] KECA 715 (KLR)**, the Applicant argues that a reasonable member of the public, knowing these facts, would conclude there is a real possibility of bias.

30. The Applicant relies on several landmark cases to support the standard for judicial recusal. In his conclusion, the Applicant submits that to ensure **"justice is not only done but seen to be done,"** Justice Mogeni should refer the application specifically prayers 4-12 and the main suit to the Presiding Judge for reallocation to a different Court.

### **Plaintiff/Respondent's Submissions**

31. In their submissions dated 10/11/2025, the Plaintiff submits that the application for an injunction and recusal is a meritless attempt to Judge-shop after losing a previous Petition.
32. The Plaintiff maintains he purchased the suit properties **LR. No. 134/8** and **LR. No. 245/5** in September 1973 for **Kshs. 1,209,969/=**. He relies on an **Indenture** annexure **'DK-1'** and a **Memorandum of Registration of Transfer** annexure **'DK-2'** dated 19/09/1973. That after the purchase he has been in actual possession since 1973, using the land for tea and coffee farming, which is his primary livelihood.
33. He invokes Section 26(1) of the Land Registration Act and Article 40 of the Constitution, stating his title is *prima facie* evidence of absolute ownership until a Court declares otherwise.
34. The Plaintiff argues the 1<sup>st</sup> Defendant fails the three-fold test established in **Giella v. Cassman Brown & Co. Ltd [1973] EA**. He submits that the 1<sup>st</sup> Defendant's claim is vanity and lacks evidence of a Sale Agreement or a Grant.
35. Further, that the Applicant has not demonstrated harm that cannot be compensated by damages and that the Plaintiff argues the balance tilts in his favor because he has lived on and worked the land for over 50 years since 1973, and an injunction would violate his established rights.
36. On the issue of recusal, the Plaintiff strongly opposes the recusal of Lady Justice Mogeni, raising issues that the 1<sup>st</sup>

Defendant is given to speculation and paranoia. Citing **Tuff Bitumen Limited v SBM Bank (Kenya) Limited & Another [2023] KEHC 3198** the Plaintiff argues that recusal cannot be based on sheer paranoia or a party's dissatisfaction with a Ruling.

37. He further submits that the Judge struck out the previous Petition (**E016 of 2022**) based on legal principles. This was a judicial act, not a sign of bias. That a Judge has a duty to hear a case unless there is a real conflict of interest. The Plaintiff argues the Applicant is trying to shop around for a more favorable Judge, a practice condemned in **Uhuru Highway Development Limited v Central Bank of Kenya & 2 Others [1996] KECA 102 (KLR)**.

38. The Plaintiff clarifies that when the previous Petition was struck out, any temporary injunctions like the one from Justice Kemei were automatically vacated. The Plaintiff identifies several fatal flaws in the 1<sup>st</sup> Defendant's claim to the land such that the fact that crucially, the suit property was not listed in the Will or the Confirmed Grant of the Estate of Charles Karuga Koinange (**Succession Cause No. 998 of 2006**).

39. The Plaintiff alleges that it is the Applicant who conspired to interfere with land records, which forced the Plaintiff to apply for a reconstruction of the register. The Plaintiff argues that the Applicant cannot rely on pleadings from a struck-out suit, as those documents are nullified.

## **Analysis and Determination**

40. Based on the pleadings, Affidavits, and submissions provided the Court is of the view that the key issues for determination are as follows:

- i. Whether the application has met the threshold for judicial recusal?***
- ii. Whether the Applicant has met the standard for grant of temporary injunction.***
- iii. Whether the prayer for joinder is merited.***
- iv. Who bears the cost of this application?***

41. The legal threshold for recusal is a reasonable apprehension of bias by a fair-minded observer or as is commonly known, a reasonable person. Dissatisfaction with a previous Ruling where the Court struck out **Petition E016 of 2022** does not constitute bias.

42. The Court in the case of **Uhuru Highway Development Ltd v. CBK [supra]** decided that a Judge has a duty to sit. Striking out an incompetent Petition is a legitimate exercise of judicial discretion. The Applicant's remedy lies in the already-filed Appeal.

43. The Black's Law Dictionary 8th Edition defines recusal as:

***“Removal of oneself as Judge or policy-maker in a particular matter, especially because of a conflict of interest.”***

44. It is not in doubt that there are various issues that need to be considered in a matter calling for the recusal of a Judge. It

is further not in doubt that the Applicant has a right to call for the recusal of a Judicial Officer, this Court or myself included, on apprehension of bias. However, that apprehension must be a reasonable one. See the case of **President of Republic of South Africa ...Vs... The South African Rugby Football Union & Others CASE CCT16/98**, where the Court relied on the case of **Committee for Justice and Liberty et al ....Vs... National Energy Board** and held that;

***“... the apprehension of bias must be reasonable one held by a reasonable and right-minded persons applying themselves to the question and obtaining thereon the required on formation ... The test is what would an informed person, viewing the matter realistically and practically and having thought the matter through conclude.”***

It was further stated;

***“An unfounded and an unreasonable apprehension concerning a Judicial officer is not a justifiable basis for such application. The apprehension of the reasonable person must be assessed in the light of the true facts as they emerge at the hearing of the Application.”***

45.The principles and grounds upon which a Judicial Officer may recuse himself or herself have been set out in many

decisions. In **Re Estate of Gitere Kahura (Deceased) Succession Cause No. 265 OF 2009 [2019] eKLR** Justice Onguto outlined grounds for recusal of a Judge as follows:

- 1) In matters of conflict of interest.**
- 2) If a Judge is biased or seen to favor one party.**
- 3) If a Judge handled the matter previously as a Lawyer in private practice.**
- 4) If there is ex parte communication between the Judge and one of the parties.**
- 5) When a Judge predicts that he or she may be impartial in a matter.**

46. In **Jasbir Singh Rai & 3 Others v Tarlochan Singh Rai & 4 Others (2013) eKLR**, the Supreme Court pronounced itself on recusal of a Judicial Officer in the following words:-

***“[7] From this definition, it is evident that the circumstances calling for recusal, for a Judge, are by no means cast in stone. Perception of fairness, of conviction, of moral authority to hear the matter, is the proper test of whether or not the nonparticipation of the judicial officer is called for. The object in view, in the recusal of a judicial officer, is that justice as between the parties be uncompromised; that the due process of law be realized, and be seen to have had its role; that the profile of the rule of law in the***

***matter in question, be seen to have remained uncompromised.”***

47. A Judge has the inherent power to strike out a suit at any stage if they find it is an abuse of process. Injunctions are interlocutory. They do not decide the case; they only hold the fort. A Judge always retains the power to look at the competence of the suit. From the decisions made I struck out the Petition as being an abuse of the Court process, in so deciding, the temporary orders collapsed.

48. From the above, it is the Court's considered view that even while trying to make a determination on whether or not to recuse myself, I am still forced to explain and defend the Judicial decision. It is evident that the reasons for the said decisions had been indicated in the Ruling. In this decision, I should only be called to respond to the question of whether there is evidence of apprehension of bias.

49. It is my view the 1<sup>st</sup> Defendant's remedy is in the Court of Appeal, where they can argue that Justice Mogeni erred in law by ignoring the findings of Justices Ebozo and Kemei.

50. In Kenyan Law, a Judge striking out a suit after other Judges granted temporary orders is generally not considered bias. It is considered an exercise of legal discretion rather than evidence of bias. Bias requires a personal interest or an extra-judicial reason for the decision. If a Judge believes a Petition is legally dead on arrival, they are duty-bound to strike it out to save the Court's time, regardless of what

interim orders were previously made. This is what I did for the instant Petition.

51. For the recusal to succeed, the Applicant must prove more than just a wrong Ruling and they must show that Judge Mogeni has a closed mind. This is because if every Judge who made a Ruling against a party was forced to recuse themselves, litigants would keep asking for new Judges until they found one who agreed with them a process known as Judge-Shopping.

52. As cited in **Uhuru Highway Development Ltd v. CBK**, (supra) if Judge Mogeni's Ruling was wrong, as already stated above the correct path is the Appeal (which the Applicant has already filed), not asking the Judge to step down from a new, consolidated suit.

53. The authorities above buttress the position that recusal must be based on sound principles and on an objective test of reasonable bias. I have carefully examined all the grounds raised by the 1<sup>st</sup> Defendant against the facts, applicable principles and law in this matter. I find that the 1<sup>st</sup> Defendant's apprehension of bias or partiality on the part of the Court does not meet the objective test of a reasonable, fair minded and informed observer.

54. On the prayer for temporary injunction, under the **Giella v. Cassman Brown** [supra] test, the Applicant failed to prove a prima facie case with a probability of success. The fact that the suit property was not listed in the Confirmed Grant or the

Will of Charles Karuga Koinange (**Succession Cause 998 of 2006**) creates a significant gap in the Applicant's claim.

55. The Plaintiff has demonstrated continuous possession and farming since 1973. An injunction would displace the person currently in possession, which contradicts the principle of maintaining the *status quo*.

56. On the issue of joinder, both parties agree that the issues in this suit are identical to those in **Thika ELC No. E004 of 2025**. To avoid a multiplicity of suits and the risk of conflicting judgments, the cases must be heard together since both suits involve the same land parcels and overlapping parties, consolidation serves the interest of judicial economy and prevents conflicting Rulings. Consequently, the **Attorney General** and **Kifaru Properties Limited** are joined to ensure all necessary parties are present for a final, conclusive determination of ownership.

### **Final Orders and Disposition**

57. Given the foregoing the orders commending themselves for issuance are as follows:

***a) The Prayer for Recusal of Hon. Lady Justice Mogeni is unmerited.***

***b) The Prayer for Temporary Injunction and orders to keep the land registers under "lock and key" is declined. The Plaintiff's title remains protected***

***under Section 26 of the Land Registration Act pending the full trial.***

***c) This suit is hereby consolidated with Thika ELC Case No. E004 of 2025. The lead file shall be the older of the two suits.***

***d) The Attorney General and Kifaru Properties Limited are hereby joined as the 4<sup>th</sup> and 5<sup>th</sup> Defendants respectively. Thus, they are granted 21 days from today to regularize their appearance.***

***e) For the avoidance of doubt, the status quo to be maintained is the current possession and occupation by the Plaintiff (David Gichia Kinyitta) until the determination of the consolidated suit.***

***f) The Plaintiffs in the older file to amend their Plaint and serve all parties within 14 days from today and the Respondents are similarly granted 14 days to amend and file their Statements of Defence and any other documents they will rely on at trial.***

***g) Pre-trial Conference before the Deputy Registrar will be on 18/05/2026.***

***h) Costs of this application shall be in the cause.***

It is so ordered

**DATED SIGNED AND DELIVERED VIRTUALLY AT THIKA VIA  
VIDEOLINK THIS 5<sup>TH</sup> DAY OF MARCH, 2026.**

.....  
**MOGENI J**  
**JUDGE**

**In the presence of: -**

.....for the 1<sup>st</sup> Defendant/Applicant  
.....,.....for the Plaintiff /Respondent  
.....for the 2<sup>nd</sup> Defendant  
.....for the 3<sup>rd</sup> Defendant  
.....for Intended 4<sup>th</sup> Defendant  
.....for Intended 5<sup>th</sup> Defendant  
Melita.....Court Assistant

.....  
**MOGENI J**  
**JUDGE**