

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ELCJR NO. E004 OF 2021

1. CHRISTOPHER MWANDEJE MWAZONGA
2. BI ASHA BAYA HAMISIEX PARTE
APPLICANTS

VERSUS

THE CHIEF LAND REGISTRAR & OTHERS
RESPONDENT

RULING

1. Two applications have come up for determination before this court. One is dated 25th August 2025 and the other is dated 1st October 2025. Sifuna Kinisu and Company Advocate is the applicant in the first application dated 25/8/25; Vipingo Development Limited, Vipingo Estate Limited, Vipingo Energy Ltd, Rea Vipingo Plantations Limited, Vipingo Development PLC Mombasa Cement Limited and the Chief Land Registrar are named as the interested parties. That application seeks the following orders:

- a.Spent**
- b.Spent**
- c. That pending the conclusion of the ongoing taxation proceedings between the parties in ELC Miscellaneous Application Number E022 of 2025 there be an order of stay of execution of the decree and or order of these Court issued on 2016 February 2025;**
- d. That the consent judgment entered into by the parties and recorded in court on 26th February 2025 together with all consequential orders emanating therefrom be varied, reviewed and or set aside in its entirety;**
- e. This court be pleased to declare that any outstanding dispute between the parties herein be determined through the said taxation process and that the outcome thereof be recorded in court as binding upon the parties for purposes**

- of settlement in accordance with the results of the said process;***
- f. That in the alternative, any sum found payable by the applicant pursuant to the taxation process be directed to be paid directly to the person's litigating under the respondents here in namely, Stephen Kalama Ziro Abisai Njeri Angondi, Jira Tembo, Mwandeje Mwazonga Bingo, Mlanda Mwazonga Bingo, Chilito Kai Bingo, Hannington Mwandeje, Gilbert Mwandeje, Boroko Kai Bingo, Alphonse Kai Rongoma, Kanze Kahindi Rasi, Peter Mwachangu Mwakai, Mwakai Donald Mwakai, Tunje Mwanyamba Tunje, Nyaro Mwachambi, Makai, And Chinsa Mwachiziwa Kai;***
- g. That the costs of this application be borne by the respondents.***

2. The application is supported by the grounds set out at the foot thereof. They are that garnishee proceedings were commenced against the applicant, an advocate of the High Court, effectively paralyzing his personal account as well as his client account; that the garnishee proceedings are irregular and replete with discrepancies apparent on the face of the record; that the consent of the parties recorded on 19th February 2025 contains an error apparent on the face of the record and does not reflect the intentions of the parties at the time of recording the same, and this necessitates that the same be reviewed varied and or set aside in its entirety in order to meet the ends of justice; that there is presently an ongoing taxation process arising from the dispute between the parties herein which, unless an order of stay of execution is granted, would be rendered nugatory; that the respondents herein have to date received from the applicant a total of Kenya Shillings 26,269,000/- but have failed refused and or neglected to remit the same or any part thereof to the persons on whose behalf they were litigating. The

application is also supported by the sworn affidavit of the applicant, also dated 25th of August 2025.

1st Respondent's Replying Affidavit Dated 3rd September 2025

3. The Notice of Motion is opposed by the respondents through the 1st respondent's Replying Affidavit dated 3rd September 2025. In that affidavit he depones that there is no error on the face of record; that the consent judgment recorded in court on 26th February 2025 is binding upon the parties unless it was obtained by fraud mistake illegality or misrepresentation which the applicant has failed to plead or demonstrate by evidence; that the court ruling of 23rd January 2025 correctly resolved the dispute; that there was no evidence of duress exerted on the applicant before or during the execution of the consent judgment; that the ongoing taxation proceedings have no bearing on the enforceability of the decree dated 26th February 2025 which is binding on the parties; that the taxation is restricted to the undisputed amount due and owing being Kenya Shillings 4,366,000/=; that the subjection to taxation of the sum of Kenya Shillings 4,115,000/- was provided for separately, away from the term regarding payment of this sum of Kenya Shillings 7,366,000/- and cannot impair the observance of the decree. It is stated that the applicant's main aim is to delay the execution of the decree.
4. The applicant filed a supplementary affidavit dated 11th September 2025 in response to the Replying Affidavit of the respondent. The gist of that affidavit is that execution against him is fatally flawed as he had not been

sued in his personal capacity; that the 7th respondent is a registered business name which has no attachable property capable of execution; that the ruling of the court delivered on 23rd January 2025 assessed his professional costs at Kenya Shillings 7,000,000/=; that in the final version of the consent jointly prepared between counsel for both sides, the sum of Kenya Shillings 1,000,000/= in the applicant's favour was deliberately omitted in an attempt to deprive him of his dues; that finalizing the claim on behalf of the respondents was a very demanding exercise involving subdivision of 1,000 acres of land to excise the 20 acres the respondents were entitled to, and the court should appreciate the scale, the intricacy, and the resource intensity of the professional engagement of the applicant; that the order issued on 4th September 2025 staying taxation proceedings ought to be vacated to allow the Deputy Registrar to discharge her duties freely especially since it covers work beyond the professional engagement in the Judicial Review proceedings; that the respondent has failed to provide any response or account with regard to the disbursement of funds received on behalf of all persons on whose behalf they were litigating; that those persons ought to have been reflected expressly in the impugned consent recorded on 19th February 2025.

SUBMISSIONS OF THE PARTIES

Applicants' Submissions Dated 11/9/25

5. The applicant filed submissions dated 11th September 2025. Citing *Flora and Wasike Versus Destimo Wamboko Civil Appeal Number 81 Of 1988* and *Kenya Commercial Bank Limited Versus Specialized Engineering Company Limited 1982 KLR 45*, he acknowledged that it is settled law that a consent judgment has contractual effect and may only be set aside on grounds that could justify rescission of a contract, namely, fraud, mistake, misrepresentation, undue influence or other sufficient cause. He also submitted that **Section 45** of the Advocates Act permits advocate and clients to enter into a written retainer agreement fixing remuneration; that such agreements are binding unless varied by consent or satisfied for questions or other vitiating factors; that the respondents are seeking to benefits from both the retainer agreement between them and the applicant and at the same time benefit from the taxation process which will amount to double enrichment. For this he cited the case of *Kipkorir Tito Kiara Advocates Versus Deposit Protection Fund Board 2005 KLR*. He submitted on the complexity of the brief that he had been conducting. It is submitted that the 1st Respondent has conspicuously failed to account for the funds received on behalf of the many beneficiaries of the litigation; that the said beneficiaries remain displaced and live in deplorable conditions; that the omission of their interests from the consent judgment carries grave legal and moral implications; that this Court, as a court of equity, is duty bound to intervene to prevent further prejudice to those vulnerable parties (who apparently are the applicants in the application

dated 1st October 2025). Counsel prayed that the consent judgment recorded on 19th February 2025, together with all consequential orders, be set aside.

Respondents' Submissions Dated 15/10/25

6. The respondent filed submissions dated 15th October 2025. The gist of those submissions is that the consent judgment dated 26th February 2025 should not be reviewed or set aside; that the applicant's fee of Kenya Shillings 7 000,000/= has been correctly assessed. The respondents reject the environment made into supporting affidavit that the applicant executed the consent under duress and panic for the sole purpose of protecting his legal practice from the orders of this court; that the claims of fraud are serious allegations and it is not enough to just level them against the respondent's counsel without cogent proof. *Gichinga Kibutha Versus Caroline Nduku 2018 KEELC 3981 KLR* was cited for the definition of fraud and it was pretty submitted that the applicant has not discharged the burden of proof so as to satisfy the elements of fraud as defined. Regarding error on the face of the record on the consent judgment it was argued that an error refers to a clear obvious mistake that does not require interpretation or argument e.g. a clerical mathematical or typographical mistake that is visible from the record itself and does not and compass a party's disagreement with a judicial finding or computation made by the court; that in any event the alleged error in the form of omission of Kenya Shillings 1,000,000/= was expressed the

addressed in the ruling delivered on 23rd January 2025 and therefore there exists no error apparent on the face of the record as claimed by the applicant.

7. Regarding the proposal to have the dispute determined through taxation proceedings it was submitted that the dispute before Court arose from receipt of settlement funds and failure to account for the same by the respondent; that the applicant does not deny owing the respondents the Kshs. 7,366,000/= which amount, after acknowledgement, was partially paid; that the taxation proceedings cannot be invoked to reopen or vary a final consent judgment; that the claim that the respondent is seeking double enrichment is unsupported by evidence.
8. It was stated that those other third parties mentioned by the applicant as beneficiaries are not parties to these proceedings and are not acknowledged anywhere in the original proceedings the subsequent judgment and the consent that followed. That you are not even acknowledged in the consent recorded on 4th July 2022 before hon Odeny J, or in the decree. It is stated that the applicant willingly and with open eyes entered into the consent judgment dated 26th February 2025, and that he performed the terms of the consent judgment for over 4 months until July 2025 when he unilaterally refused to perform the terms of the consent.

Analysis And Determination

9. The issues arising from the application dated 25th August 2025 are as follows.

- a. *Should the consent recorded on 26th February 2025 be reviewed and or set side?*
- b. *Who ought to pay the costs of the application?*

10. Regarding the first issue it is clear that what the applicant in the application dated 25th August 2025 is seeking is the setting aside of the consent he entered into between himself and the respondents on various grounds. These grounds relied on are that:

- a. *There is an error on the face of the record, fraud and misrepresentation;*
- b. *That that there is presently an ongoing taxation process arising from the dispute between the parties herein and unless an order of stay of execution is granted the said proceedings would be rendered nugatory;*
- c. *That the respondents herein have to date received from the applicant at total of Kenya Shillings 26,269,000/- but have failed refused and or neglected to remit the same or any part thereof to the persons on whose behalf they were litigating.*

11. Regarding the first ground, an examination of Order 45 Rule 1 of the Civil Procedure Rules shows that the provisions therein are as follows:

"1. Application for review of decree or order [Order 45, rule 1]

(1) Any person considering himself aggrieved—

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or

(b) by a decree or order from which no appeal is hereby allowed,

and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.

(2)A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case on which he applies for the review.”

12. It has been stated in previous decisions of court that an error on the face of the record must be self-evident and must not be that which requires to be demonstrated by way of lengthy elaboration. As recognized by the parties the court has power to set aside a consent judgment subject to principles. It is claimed that the garnishee proceedings undertaken earlier before the consent order was recorded are irregular and replete with discrepancies apparent on the face of the record; that the consent of the parties recorded on 19th February 2025 contains an error apparent on the face of the record and does not reflect the intentions of the parties at the time of recording the same, and this necessitates that the same be reviewed varied and or set aside in its entirety in order to meet the ends of justice.

13. However, the strictures surrounding setting aside proceedings on basis of error on the face of the record are in this case conflated with inhibitions relating to setting aside consents recorded before court by litigants to set an exceedingly challenging hurdle for the applicant to surpass.

14. In *Flora N. Wasike v Destimo Wamboko, Civil Appeal No. 81 of 1988*, the Court of Appeal held as follows:

"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... prima facie, any order made in the presence and with the consent of counsel is binding... and cannot be varied or discharged unless obtained by fraud, collusion, or given without sufficient material facts."

15. *Kenya Commercial Bank Ltd v Specialized Engineering Co. Ltd [2022]*

KECA 694 (KLR), held as follows:

"A consent order entered into by counsel is binding on all parties to the proceedings and cannot be set aside or varied unless it is proved that it was obtained by fraud or collusion or by an agreement contrary to the policy of the court or where the consent was given without material facts or in misapprehension or ignorance of such facts in general or a reason which would enable the court to set aside an agreement."

16. And what is the error that the applicant relies on? It is alleged that in its ruling of 23rd January 2025, this Court expressly assessed the Applicant's professional costs at Kshs. 7,000,000/=; that during subsequent proceedings on 19th February 2025, the Respondents' advocate, Mr. Amakobe, and the Applicant reduced this computation into writing for purposes of capturing the consent. However, in the final version of the consent filed, a sum of Kshs. 1,000,000/= in favour of the Applicant was omitted.
17. With due respect to the applicant, an error on the face of the record is that one that has been made by inadvertence on the part of the court, and not any other party to the proceedings and submitted and adopted for formalization by the court.
18. In the case described herein above the mistake or error, if any, was on the part of the parties and not the court. That the parties came to settle their dispute before this court by way of a written contract in the form of

the consent can not be denied. However, the premise that this court proceeds from in the present application is that their mutual consent document must have been properly scrutinized and willingly assented to by both sides before presentation. Also, the moment the parties unanimously asked the court to adopt that consent, a contract was created from which one party can not unilaterally retract. As long as the parties before it endorsed the consent *without any apparent fraud, duress, undue influence or misrepresentation patent on the face of the live proceedings taking place before it*, the court had no means of establishing that the consent sought to be recorded does not reflect the intentions of the parties at the time of recording the same. The signatories were all bound by the terms thereof. Error therefore, can not form the basis of setting aside the consent dated 26th February 2025.

19. The applicant's remedy lies more in whether he has established that there was any fraud, duress or misrepresentation. Regarding fraud, mere omission of a sum from the computations can not be automatically deemed to be fraud. Fraud has to be comprised of acts that demonstrate a devious state of mind and a deliberate effort at deceit. *Gichinga Kibutha v Caroline Nduku [2018] KEELC 3981 (KLR)*, held that: -

"The Black's Law Dictionary defines fraud thus: -

"Fraud consists of some deceitful practice or willful device, resorted to with intent to deprive another of his right, or in some manner to do him an injury. As distinguished from negligence, it is always positive, intentional. Fraud, as applied to contracts, is the cause of an error bearing on a material part of the contract, created or continued by artifice, with design to obtain some unjust advantage to the one party, or to cause an inconvenience

or loss to the other. Fraud, In the sense of a court of equity, properly includes all acts, omissions, and concealments which involve a breach of legal or equitable duty, trust, or confidence justly reposed, and are injurious to another, or by which an undue and unconscientious advantage is taken of another’.

20. In *Abdulkadir Shariff Abdirahim & another v Awo Shariff Mohammed T/A A. S. Mohammed Investments* [2014] eKLR it was held as follows:

*“As was stated in **R. G. Patel Vs Lalji Makanji (Supra)**, while allegations of fraud must be strictly proved, the standard of proof may not be so heavy as to require proof beyond reasonable doubt; what is required is something more than a mere balance of probabilities. In **Patel’s** case, the findings of the trial judge that were decried by the Court of Appeal were based on mere impression of witnesses without testing the impressions against the adduced evidence. In our view, in the present case there was sufficient evidence on record to justify the conclusion arrived at by the learned trial judge.”*

21. Fraud and misrepresentation are claims that lie in tort. That fact *per se* condemns the grounds of fraud and misrepresentation raised in an application. To establish fraud and misrepresentation, one has to sue for and establish just like all other causes of action; it would not be possible in the present case for the applicant to establish fraud and misrepresentation in proceedings commenced by way of his notice of motion. Nothing demonstrates that than the Court of appeal dicta in where it stated as follows:

“ 34.Decided cases are in agreement that allegations of fraud must be distinctly pleaded and strictly proved, requiring specific details and evidence of conscious and deliberate dishonesty. The pleadings must contain a distinct pleading alleging fraud and particulars constituting the alleged fraud. Simply put, claims of fraud must be clearly and specifically pleaded, providing details of the alleged fraudulent conduct, rather than vague or ambiguous language.

35. The standard of proof for fraud is higher than the ordinary civil standard of proof on a balance of probabilities, requiring evidence of especially high strength and quality. The burden of proving fraud rests on the claimant, meaning they must adduce sufficient evidence to establish the elements of fraud. Fraud involves conscious and deliberate dishonesty, and not merely negligence or recklessness, therefore, the evidence must establish this requirement. The dishonest conduct must be material to the alleged fraud. This Court in *Kuria Kiarie & 2 Others vs. Sammy Magera* [2018] eKLR, this Court addressing the issue of fraud stated:

“25....It is well established that fraud must be specifically pleaded and that particulars of the fraud alleged must be stated on the face of the pleading. The acts alleged to be fraudulent must, of course, be set out, and then it should be stated that these acts were done fraudulently. It is also settled law that fraudulent conduct must be distinctly alleged and distinctly proved, and it is not allowable to leave fraud to be inferred from the facts.”

36. Regarding the strict requirement that fraud must be strictly pleaded, we have considered the appellant’s plea dated 15th May, 2015. It is noteworthy that the first time the appellants make reference to the issue of fraud was in the prayers sought in their plea. In the body of their plea, there is no single averment citing fraud. In the prayers, it is stated:

“The current title deed in the names of the 1st defendant be cancelled as it was obtained fraudulently without following the due process in law, or involving all the beneficiaries of the former registered owner at the 2nd defendant’s records.”

37. Strictly speaking, the above prayer is not an averment. Conversely, prayers flow from the averments. The below cited excerpt from Bullen & Leake & Jacobs, Precedent of pleadings 13th Edition at page 427 is illuminating on the subject:

*“Where fraud is intended to be charged, there must be a clear and distinct allegation of fraud upon the pleadings, and though it is not necessary that the word fraud should be used, the facts must be so stated as to show distinctly that fraud is charged (*Wallingford v Mutual Society* (1880) 5 App. Cas. 685 at 697, 701, 709, *Garden Neptune V Occident* [1989] 1 Lloyd’s Rep. 305, 308).*

*The statement of claim must contain precise and full allegations of facts and circumstances leading to the reasonable inference that the fraud was the cause of the loss complained of (see *Lawrence V Lord Norreys* (1880) 15 App. Cas. 210 at 221). It is not allowable to leave fraud to be inferred from the facts pleaded and accordingly,*

fraudulent conduct must be distinctly alleged and as distinctly proved (|Davy V Garrett (1878) 7 Ch.D. 473 at 489). "General allegations, however strong may be the words in which they are stated, are insufficient to amount to an averment of fraud of which any court ought to take notice". (Emphasis added.)

38.It is evidently clear that no particulars of fraud were pleaded nor are the specific acts constituting fraud particularized anywhere in the plaint dated 15th May, 2015. Equally important, from our own evaluation of the evidence on record, we find that the trial Judge cannot be faulted for finding that fraud was not proved. The appellants simply alleged fraud but their evidence fell far short of what is required to prove fraud. In any event, having failed to plead fraud in their plaint, their claim fails on that test."

22. Regarding duress, I can not find even a scintilla of evidence by way of affidavit that the applicant was placed under duress to execute the consent that was placed before court. In this court's view, that duress had to be physical and palpable for it to qualify as a ground that can support the applicant's application. As there is no evidence presented to that effect, that ground must also fail.
23. The applicant also claimed that there is presently an ongoing taxation process arising from the dispute between the parties herein and unless an order of stay of execution is granted the said proceedings would be rendered nugatory.
24. It must be pointed out that in so far as the applicant has failed to convince the court that the consent was obtained by duress fraud and misrepresentation the applicant has failed to dislodge the consent order. If the consent had been successfully impugned in the present application, then this court may have had grounds upon which to issue a stay of

execution. As things stand, a stay would be futile. Also, any legal process, including the taxation proceedings, outside the purview of that consent order can not be therefore be interfered with at all since no illegality of the consent was established. The taxation proceedings, in the opinion of this court, would not be rendered nugatory but will be ruled upon on their merits by the taxing master since he has ability to consider all factors that go into a taxation, including remuneration agreements between advocate and client.

25. Lastly, the applicant claimed that the respondents herein have to date received from the applicant at total of Kenya Shillings 26,269,000/- but have failed refused and or neglected to remit the same or any part thereof to the persons on whose behalf they were litigating. The applicant appears to suggest that the respondents were litigating on behalf of certain persons, and these are the persons named in the application for joinder of interested parties dated 1st October 2025. I must therefore handle this ground alongside that application. The application dated 1/10/2025 seeks prayers as follows:

- 1) The Intended Interested Parties/Applicants be enjoined in these proceedings as Interested Parties;*
- 2) Upon such joinder, the so-enjoined Interested Parties be served forthwith with all pleadings; and proceedings filed by all parties herein to facilitate their meaningful participation;*
- 3) Pending the hearing and determination of this application, there be an interim order preserving and/or restraining the further disbursement, distribution or dissipation of any compensation monies payable or paid pursuant to the consent of 8th July 2022, save by further order of the Court;*

4) The 7th Respondent do, within fourteen (14) days, file and serve a full and accurate statement of account in respect of all decretal/compensation sums received in this matter, indicating receipts, disbursements, professional fees and any balances held to the order of the Court or parties;

5) The 1st and 2nd Applicants in the original pleadings do, within fourteen (14) days, render a satisfactory account of all monies received by them (whether directly or through the 7th Respondent) under the said consent, together with supporting documentation;

6) Upon consideration of the said accounts, the Court be pleased to apportion a fair and proportional share of the monies so far received, and of any monies to be received (if any), to the Intended Interested Parties and issue appropriate directions for payment;

7) Costs of this application be provided for.

26. In the case of *Maneno & 3 others v Ibrahim & 3 others (Environment and Land Case 30 of 2016) [2025] KEELC 18436 (KLR) (18 December 2025) (Judgment) Neutral citation: [2025] KEELC 18436 (KLR)* the court held as follows:

“ This court notes that the present matter is not a dispute between a decree holder and a judgment creditor but a struggle amongst the decree holders, where some are alleging fraud and breach of trust in the manner in which the others who were bestowed with leadership responsibilities are dealing with the fruits of their judgment. It also includes a claim against the Land Registrar for alleged breach of statutory duty. There are clearly solid causes of action independent from the cause of action in the former suit which are outlined in the plaint herein and which require to be dealt with by way of calling of evidence from the parties.

27. The dispute before this court in this suit is not a matter of mere enforcement of decree. A dispute relating to fraud and breach of statutory duty in connection with the sharing out of land obtained through a court decree can not be heard and determined in a dispute for enforcement. To buttress this point one only needs to, examine the wording of Section 34 as follows: “(1)All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be

determined by the court executing the decree and not by a separate suit."

27. In the *Maneno* case (supra) the court went on to further state as follows:

"30. There is no doubt that 127 persons were involved in the Mombasa Case Number 328 Of 2010 OS (hereinafter also referred to as "the Mombasa case") as applicants. It is not controverted that the 1st and 2nd defendants in this case prosecuted that case on behalf of all the members of the group that was claiming the land. They have indeed expressly admitted that fact during cross-examination in the present case. In the judgment in the Mombasa case the court stated as follows:

"Their claim to the suit land by way of adverse possession has been proved satisfactorily. I therefore do hereby issue a declaration in terms of prayer 1 of this originating summons and I find that the applicants are entitled therefore to be registered as proprietors to the suit land. I make no order on costs."

28. In the *Maneno* case (supra) this court was able to intervene when some of the plaintiffs tried to deprive some of their compatriots their share of the fruits of the judgment in that case. The situation is different in the present case because the applicants named in the application dated 1/10/2025 were not joined as claimants hence the present problem facing the court, as to whether they ought to be joined in this suit or not. But as can be seen from the dicta of the court in the *Maneno* case (supra), the chasm separating the present applicants and the respondents in the application dated 1st October 2025 is not a mere question of whether they should benefit from the execution against the 7th respondent, but a preliminary issue as to whether they were part of the main suit in the first

place. And the respondents to the application submitted clearly and loudly thus in their submissions:

*“The judgment and decree emanating from the original suit before the Court in ELC Case No. 71 of 2011 and the consent dated 4th July, 2022 recorded before the Hon. Lady Justice (DR.) M.A ODENY and adopted by the Court do not acknowledge these individuals nor did the Applicant have an issue or raise any objection or review proceedings of not including the said individuals in that consent. The consent recorded before Hon. Odeny only acknowledged the Respondents and it was executed as a consequence of the proceedings and eventual decree emanating from **ELC Case No. 71 of 2011.**”*

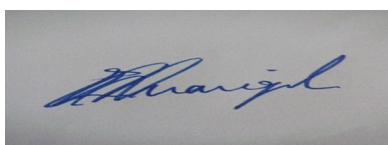
29. Having regard to Order 1 of the Civil Procedure Rules 2010, it is clear that joinder should be permitted of all parties in whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly or severally where, if such persons brought separate suits, any common question of law of fact would arise.
30. The difficulty that the applicants for joinder in the present proceedings must navigate is that this is not the main suit, at which they could have been easily joined, perchance the court found merit in their application, to agitate their claim alongside the respondents, for the eventual delivery of an outcome beneficial to them.
31. The main suit was a different case, **ELC Case No. 71 of 2011**. Joinder in that case would have automatically allowed them upon application to an order allowing them to participate in the current proceedings as persons who were entitled to the proceeds of the consent that was endorsed by the court and which brought to that case to an end.

32. This court can not allow the applicants to be joined to the present proceedings at the present stage when judgment has been obtained and partially executed. They can not be allowed at this juncture to claim that they were by then faceless parties to the case, for some unknown reason lurking in the shadows while the visible parties, who are now the respondents, pursued the matter to conclusion; this court finds that this case is not the proper forum. That fact alone disqualifies them from any joinder to the present proceedings. They are thus not entitled to any of the prayers in the application dated 1/10/2025 and the same is for dismissal. That finding therefore partially answers the issue raised by prayer no. **(f)** in the application dated 25/8/2025.

33. The upshot of the foregoing is that both the applications dated 25th August 2025 and 1st October 2025 respectively are lacking in merit and they are hereby dismissed with no orders as to costs.

It is so ordered.

Dated, signed and delivered at Malindi on this 4th day of March, 2026.

A rectangular box containing a handwritten signature in blue ink, which appears to read 'Mwangi Njoroge'.

**MWANGI NJOROGE,
JUDGE, ELC, MALINDI.**