



**Mayieka v Mogaka (Environmental and Land Originating Summons E007 of 2025) [2026] KEELC 1226 (KLR) (24 February 2026) (Ruling)**

Neutral citation: [2026] KEELC 1226 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISII  
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS E007 OF 2025**

**M SILA, J**

**FEBRUARY 24, 2026**

**BETWEEN**

**JOSIAH ACHIKAH MAYIEKA ..... APPLICANT**

**AND**

**ESTHER KEMUMA MOGAKA ..... RESPONDENT**

**RULING**

1. This suit was commenced by way of an Originating Summons dated 27 July 2025. The originating summons seeks the following orders (slightly paraphrased for brevity):
  - i. A declaration that the applicant (Josiah Achikah Mayieka) is the owner of LR No. Kisii Municipality/Block III/359 pursuant to the auction conducted on 18 July 2022.
  - ii. A vesting order be issued declaring that LR No. Kisii Municipality/Block III/359 be registered in the name of the applicant.
  - iii. The Land Registrar, Kisii be ordered to register LR No. Kisii Municipality/Block III/359 in the name of Josiah Achikah Mayieka.
  - iv. Any other necessary and consequential order the court may deem just and expedient to grant.
  - v. Costs of the suit be provided for.
2. The case of the applicant is that in the suit Kisii High Court Civil Suit No. 2 of 2018, *Zablon Mogambi Mogaka, Esther Kemuma Mogaka & Another vs Bank of Africa Limited*, the court entered judgment in favour of Bank of Africa Limited for the sum of Kshs. 22, 958,884.42/=. The bank then initiated execution proceedings and sold the suit land through Minmax Auctioneers. The applicant was the highest bidder in the auction conducted on 18 July 2022 wherein he purchased the suit property for Kshs. 10,037,000/=. The applicant now seeks the intervention of the court for a vesting order and have the Land Registrar issue a title deed to him and cancel the name of the respondent as proprietor.



3. The respondent filed a replying affidavit to oppose the Summons. She deposed that despite the applicant contending to have purchased the suit land, no money has been credited into her bank account as having been collected from such sale. She deposes that according to her bank statement, she still owes the bank the full amount. She contends that it will be unfair to have the property transferred to the applicant when the bank and the auctioneer have not accounted for the sale proceeds.
4. The respondent subsequently filed an application dated 12 October 2025 for leave to issue a third party notice to Bank of Africa Limited and Minmax Auctioneers. In my ruling delivered on 12 November 2025, I dismissed that application, *inter alia* on the basis that Section 34 of the [Civil Procedure Act](#), Cap 21, Laws of Kenya, directs that all questions relating to execution of a decree need to be settled in the suit where the decree was passed. In this instance the sale of the suit property was pursuant to the decree of the court in Kisii HCCC No. 2 of 2018. Having dismissed that application, I also directed the applicant to show cause why this court should entertain the suit, given the provisions of Section 34 of the [Civil Procedure Act](#).
5. The applicant's counsel filed submissions *inter alia* urging that it is this court which has jurisdiction over title to land and that the High Court is divested of jurisdiction. Counsel for the respondent on his part simply relied on Section 34 of the [Civil Procedure Act](#).
6. I have already mentioned that the claim for a vesting order arises from an auction that took place on 18 July 2022. That auction was not an auction in exercise of a chargee's statutory power of sale but was an auction in execution of the court decree issued in Kisii HCCC No.2 of 2018. Section 34 of the [Civil Procedure Act](#) provides as follows :
  34. Questions to be determined by court executing decree
    - (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.
    - (2) The court may, subject to any objection as to limitation or jurisdiction, treat a proceeding under this section as a suit, or a suit as a proceeding, and may, if necessary, order payment of any additional court fees.
    - (3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the court.  
Explanation. — For the purposes of this section, a plaintiff whose suit has been dismissed, and a defendant against whom a suit has been dismissed, are parties to the suit.
7. From the foregoing, it will be seen that all questions relating to execution or satisfaction of a decree are supposed to be determined by the court executing the decree and not through a separate suit. Indeed, execution of decrees is elaborated in Order 22 of the [Civil Procedure Rules](#), and it is the court that ordered execution of the decree by attachment and sale of immovable property, that is supposed to make orders relating to the such sale. As pointed out, Section 34 requires that the issues relating to execution of a decree be dealt with by the court which issued the decree, and this should be within the very suit where the execution of the decree was ordered. The filing of a separate suit to enforce a decree is not contemplated.
8. My holding herein should not be deemed as a ruling prescribing which court between the High Court and the Environment and Land Court have jurisdiction over land. This ruling should be seen in light



of the confines of Section 34 of the Civil Procedure Act, and Order 22 of the Civil Procedure Rules, on matters relating to execution of decrees.

9. I therefore find the filing of this Originating Summons to be misplaced and the same is hereby struck out.
10. I would have thought that given my ruling dismissing the third party application on the basis of Section 34 of the Civil Procedure Act, the applicant would take cue and withdraw this suit. Having failed to do so, the suit is struck out with costs to the respondent.
11. Orders accordingly.

**DATED AND DELIVERED THIS 24<sup>TH</sup> DAY OF FEBRUARY, 2026.**

**JUSTICE MUNYAO SILA**

**JUDGE**

**ENVIRONMENT AND LAND COURT AT KISII**

Delivered in the presence of :

Michael Oyuko – Court Assistant.

No appearance on the part of MOB Law Advocates for the applicant.

No appearance on the part of M/s Joseph Angwenyi & Co Advocates for the respondent.

