

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ELC CASE NO. 341 OF 2013

NAOMI WANGUI

KURIA.....PLAINTIFF/RESPONDENT

-VERSUS-

HARRISON KARANJA NJIHIA.....1ST
DEFENDANT/RESPONDENT

ONESMUS GACHUHI GITHINJI.....2ND
DEFENDANT/APPLICANT

ATTORNEY GENERAL.....3RD
DEFENDANT/RESPONDENT

GITHUNGURI CONSTITUENCY
RANCHING LIMITED 4TH
DEFENDANT/RESPONDENT

RULING

1. Before me is the notice of motion dated 13th June, 2025 filed by the 2nd defendant/applicant, and it is expressed to be brought under **Sections 26(1) (b) of the Land Registration Act, Section 1A, 1B and 3A of the Civil Procedure Act and Order 51 Rule 1 of the Civil Procedure Rules** seeking the following orders:-

1. *Spent.*

2. *That this honourable court be pleased to compel the Land Registrar Ruiru to correct the register in respect of LR No. Ruiru East Block 1/Githunguri 1350 to reflect the*

applicant as the legal and registered owner of the property.

3. That costs of this application be awarded to the applicant.

4. Any other order that this honourable court may deem fit and just to grant.

2. The application is premised on the grounds *inter alia* that the 2nd defendant/applicant has caused an official search to be conducted which shows that a fresh green card was opened in the year 2020.
3. The application was further supported by the affidavit of the 2nd defendant/applicant sworn on even date. He deposed that he was the registered proprietor of the parcel known as Ruiru East Block 1/ Githunguri 1350 the suit property herein having purchased the same from the 1st defendant.
4. He further deposed that on 4th February, 2025 he was summoned by DCI regarding a complaint by the plaintiff/respondent that his title had been fraudulently obtained contrary to Section 320 of the Penal Code. The 2nd defendant/applicant deposed he conducted a search that revealed that the plaintiff/respondent had been fraudulently registered as the owner of the suit property in 2020.

He urged the court to allow the application as he risked losing his land by virtue of a false record at the lands' registry.

5. The application was opposed vide the replying affidavit of Tabitha Muthoni the learned counsel for the plaintiff/respondent's estate which was sworn on 16th July, 2025. The learned counsel deposed that the plaintiff/respondent died on 19th July, 2024 and that her estate is yet to be administered.
6. The learned counsel further deposed that the main suit had been dismissed for want of prosecution on 10th March, 2021 and that to date, the 2nd defendant/applicant has neither applied nor obtained orders reinstating the suit. Further, that there is currently no suit upon which the instant notice of motion application can be anchored, and consequently the same is rendered nugatory.
7. In conclusion, it was deposed that the application is fatally defective and the orders sought are legally untenable. She urged the court to dismiss the application with costs.
8. The application was canvassed through written submissions. The 2nd defendant/applicant filed his written submissions dated 9th

September 2025, while the plaintiff/respondent's counsel filed the written submissions dated 5th September, 2025.

- 9.** I have considered the application, the replying affidavit thereof and the written submissions filed by the parties. The sole issue for determination is *whether the application merited.*
- 10.** Before I delve into merits or otherwise of the instant, application, there is need to address one fundamental issue that goes to the root of this application. The application as drafted is camouflaged in such a way to hoodwink this court into granting the orders sought to this extent. The 2nd defendant/applicant has sought to introduce a new party by the name of the Land Registrar Ruiru as the 2nd respondent. The amended plaint dated 28th January, 2014 does not include the Land Registrar as a party to this suit. The illegal introduction of this party alone in the instant application automatically reeks of mischief, besides the nature of the alleged claim. Besides that, the learned counsel for the estate of the plaintiff/respondent has indicated that the plaintiff/respondent died on 19th July, 2024.

- 11. Order 24 Rule 3(1)** of the **Civil Procedure Rules** provides that if a party is not substituted within 12 months the suit automatically abates.
- 12.** It is not in dispute that the plaintiff/respondent died on 19th July, 2024 as evidenced from the certificate of death dated 30th September, 2024. It is also not in dispute that the Plaintiff vide an application dated 13th April, 2021 sought to have the suit reinstated having been dismissed for non-prosecution. It is further not in dispute that this court vide its ruling delivered on 21st October, 2021 dismissed the same.
- 13.** From the above cited provision of the law, the suit abated on 19th July, 2025 since the plaintiff/respondent was never substituted upon her demise. Therefore, any subsequent dealing pegged on this suit cannot see the light of day in court until the proper procedure is followed if any party intends to revive the same. It is this court's view that in the circumstance, the present application is not proper before this court since the suit had already abated at the time of filing the instant application.
- 14.** The upshot of the foregoing is that the instant application is a gross abuse of the court process for the reasons stated above. The notice

of motion dated 13th June, 2025 is hereby struck out. Each party to bear its own costs.

It is so ordered.

**DATED, SIGNED & DELIVERED VIRTUALLY
THIS 22ND DAY OF JANUARY, 2026.**

**HON. MBOGO C.G.
JUDGE
22/01/2026.**

In the presence of:

Ms. Vena Aron - Court assistant

Mr. John Kaifa for the 1st Defendant /Applicant

Mr. Kanyi Kiruchi for the 4th Defendant /Respondent