



**Schiering v Said & 2 others (Environment and Land Case  
144 of 2021) [2026] KEELC 616 (KLR) (29 January 2026) (Ruling)**

Neutral citation: [2026] KEELC 616 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KWALE  
ENVIRONMENT AND LAND CASE 144 OF 2021  
LL NAIKUNI, J  
JANUARY 29, 2026**

**BETWEEN**

**THOMAS SCHIERING ..... PLAINTIFF**

**AND**

**NEREAH MICHAEL SAID ..... 1<sup>ST</sup> DEFENDANT**

**GERHARD HEIDUK ..... 2<sup>ND</sup> DEFENDANT**

**WOLFGANG GEORG JOHAN EHRGATNER ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

**I. Introduction**

1. What is before the Honourable Court for its determination is the Notice of Motion application dated 22<sup>nd</sup> April 2025. It is a fairly brief Ruling to that effect. The application was brought by Nereah Michael Said, the 1<sup>st</sup> Defendant/Applicant herein. The application was pursuant to the provisions of Article 159 (2) (d) and 50 (1) of *the Constitution* of Kenya, 2010, Sections 1A, 1B and 3A of the *Civil Procedure Act*, Cap. 21, Order 51 Rule 1 of the Civil Procedure Rules, 2010 and all other enabling provisions of the law. The same is dated 22<sup>nd</sup> April 2025.
2. Despite of the application having been served, it never elicited any responses whatsoever. In essence, it would be deemed as being unopposed. However, the Honourable Court shall proceed to deliver the Ruling on its own merit thereof.

**II. The Notice of Motion application by the 1<sup>st</sup> Defendant/Applicant.**

The 1<sup>st</sup> Defendant/Applicant sought for the following orders:-

- a. That the Honourable Court be pleased to clarify the exchange rate of Euro against Kenya Shillings applicable to the Judgement delivered on 12<sup>th</sup> April 2024.



- b. That the costs of this application be provided for.
3. The application is premised upon the grounds, testimonial facts and the averments made out in the 8 Paragraphed Supporting Affidavit dated 22<sup>nd</sup> April, 2025 and sworn by Nereah Michael Said, the Applicant herein. She averred as follows that:-
  - a. She was the 1<sup>st</sup> Defendant/Applicant herein and well conversant with the facts of this matter and hence competent to swear this affidavit.
  - b. On 12<sup>th</sup> April 2024, this Honourable Court delivered Judgement in this matter
  - c. Among other orders, the Judgement directed that she remit to the purchase price of foreign currency to wit Euros 122, 000 to the Plaintiff less 12% thereof at the applicable exchange rate at the time of the sale.
  - d. The said sale took place in the year 2015. However, the court never specified the specific exchange rate of Euro against the Kenya Shillings.
  - e. She wished to request the Court to clarify the exact applicable exchange rate and/or specify the exact figures to be applied so as to enable both parties understand the amounts involved.
  - f. It was in the interest of justice that the application be heard and orders sought be granted.

### **III. Further affidavit by the 1<sup>st</sup> Defendant/Applicant**

4. Subsequently, with the leave of Court, the 1<sup>st</sup> Defendant/Applicant herein filed a 4 Paragraphed Further Affidavit dated 11<sup>th</sup> August, 2025 stating as follows that:-
  - a. At the time the agreement for sale was signed regarding plot 2460 the CBK exchange rate was at average of 1 EURO to Kshs 108.
  - b. The Applicant urged the court to find that the applicable exchange rate ought to be 108.00 being the average rate for the period of the transaction as per CBK rates extracts which were attached.

### **IV. Submissions**

5. On 25<sup>th</sup> September 2025 while all the parties were present in Court, they were directed to have the application dated 22<sup>nd</sup> April 2025 be disposed of by way of written submissions. Pursuant to that, by the time of penning down this Ruling, it was only the 1<sup>st</sup> Defendant/Applicant who had obliged. Thus, a ruling date was reserved for 11<sup>th</sup> November 2025 but eventually delivered on 29<sup>th</sup> January 2026 accordingly.

### **V. The Written Submission by the 1<sup>st</sup> Defendant/Applicant**

6. The Law firm of Messrs. Abidha & Company Advocates filed their written submissions dated 15<sup>th</sup> August, 2025 on behalf of the 1<sup>st</sup> Defendant/Applicant herein. Mr. Abidha Nicholas Advocate commenced the submissions by providing the Honourable Court with a brief background of this matter upto the delivery of the Judgement on 12<sup>th</sup> April, 2024. He indicated that the Court ought to find and order that the applicable exchange rate was 1 Euro to Kshs, 108.00.
7. The Applicant identified one issue for determination and which was whether the court should clarify the exchange rate of Euro against the Kenya Shillings applicable to the Judgement delivered on 12<sup>th</sup> April, 2024 and or specify the exact figures to be applied.



8. It was submitted that the Applicant was not seeking a merit – based decisional – re – engagement with the Court but clarification on the issue of applicable exchange rate as per the determinations in the Judgement. The Learned Counsel averred that was the position taken in the cases of:- “Chacha Mwita Mosenda – Versus – Baya Tsuma Baya & 2 Others (2017) eKLR and Telkom Kenya Limited – Versus – John Ochanda (2014) eKLR” where the Court held that the doctrine of ”functus Officio” was not to be understood to bar any engagement by Court with a case that it had already decided or pronounced itself on. What it barred was a merit – based decisional re – engagement with the case once final Judgement had been entered therein.
9. The Learned Counsel further cited the case of “Raila Amolo Odinga & Another – Versus – Independent Electoral & Boundaries Commission Chairman (IEBC) & Another, Election Petition No. 1 of 2017 (2017) eKLR, the Supreme Court in a Ruling delivered on 17<sup>th</sup> October, 2017 on an application seeking a clarification of the Court’s Judgement held that:-
 

“ 58.....in exercise of the inherent powers of this Court, we shall therefore proceed to determine whether there is any matter to be clarified, and if so, to what extent. This assumption of jurisdiction, is all the more necessary, so as to avert the danger of an impression being created in the mind of the public, that there exists an ambiguity, in the Court’s Judgement, even where there might be none...”
10. Additionally, the Learned Counsel relied on the case of: “Siaya County Assembly Services Board & 2 Others – Versus – Olwero (Civil Appeal E077 of 2022 (2023) KECA 905 (KLR) (21 July, 2023) (Judgement) it was held that
 

“ 19.....The power of clarification can be invoked where the Judgement or ruling is ambiguous, unclear or otherwise confusing. The power is to be exercised to make such judgement or Ruling less confusing and more comprehensible. Its objective is to illuminate a hazy decision. Indubitably In providing clarity . the Court simply does so in a manner that the clarification conforms with the finding in the Judgement or the Ruling that is clarified”
11. The Learned Counsel asserted that the court in its Judgement the court ordered that the applicant shall remit the purchase price of Euros 122,000 to the Plaintiff less 12% at the applicable exchange rate at the time of the sale. That the order was ambiguous to the extent that the exchange rate was not defined. Thus, the instant application invited court to clarify the position based on the proposed exchange rate of Euro to Kenya shillings.
12. In conclusion he held that the clarification sought would remove ambiguity in the Judgement and the Applicant comply with the orders of the Court of Appeal issued in Court of Appeal Civil Case No. 076 of 2024.

## **VI. Analysis and Determination**

13. The Honourable Court has considered the pleadings on record as filed by the 1<sup>st</sup> Defendant/Applicant herein which includes the written submission, the cited authorities, the relevant provision of *the Constitution* of Kenya, 2010 and the Statutes.
14. To reach an informed, fair and rightful decision, the Honourable Court will be guided by two (2) issues for its determination. These are namely:
  - a. Whether a case has been made by the Applicant for granting of the orders sought.
  - b. Who bears the Costs of the application.



**Issue No. a). Whether a case has been made by the Applicant for granting of the orders sought.**

15. Under this Sub – heading the Honourable Court shall critically examine the merits of the reliefs sought by the Applicant herein. In so doing, the court has perused the record and noted that judgement of the court was rendered in this matter on 12<sup>th</sup> April, 2024, 2024. It is confirmed that indeed it was ordered that that the applicant shall remit the purchase price of Euros 122,000 to the Plaintiff less 12% at the applicable exchange rate at the time of the sale. From the annexure on the Applicant’s further affidavit sworn on 11<sup>th</sup> August 2025, the rate was at average 1EUR to Kshs 108/-. With this information in mind, the court finds no reason not to grant the orders sought in the instant application. In anything, the application is unopposed. Nevertheless, adequate evidence has been tendered as to the need to grant the orders sought in the terms outlined.

**ISSUE No. b). Who bears the costs of the application**

16. The issue of costs is at the discretion of the Court. Costs mean the award that a party is granted at the conclusion of any legal action or proceeding. The provision of Section 27 ( 1 ) of The Civil procedure Act, cap. 21 holds that costs follow the vent. By event it means the results or outcome of the legal action.

17. In the instant case, the 1<sup>st</sup> Defendant/Applicant has managed to establish its case successfully. Although she entitled to costs but taking that the application was never opposed, its fair and logical that each party bear their own costs hereof.

**VII. Conclusion and Final Disposition**

18. Consequently, based on the analysis on the framed issues herein, the Honourable Court specifically makes the following orders:-

- a). That the Notice of Motion application dated 22<sup>nd</sup> April 2025 by the 1<sup>st</sup> Defendant/Applicant herein be and is hereby found to be meritorious thus allowed.
- b). That the 1<sup>st</sup> Defendant/Applicant shall remit the purchase price of Euros 122,000 to the Plaintiff less 12% at the applicable exchange rate at the time of the sale and which was of 1 EURO to Kshs. 108 Within The Next Thirty (30) Days from the date of delivery of this Ruling.
- c). That each party to bear its own costs.

It Is Ordered Accordingly.

**RULING DELIVERED THROUGH THE MICRO – SOFT TEAMS VIRTUAL MEANS, SIGNED AND DATED AT KWALE THIS 29<sup>TH</sup> DAY OF JANUARY 2026**

.....

**HON. MR. JUSTICE L.L NAIKUNI,  
ENVIRONMENT & LAND COURT  
AT  
KWALE.**

Ruling delivered in the presence of: -

Mr. Daniel Disii, the Court Assistant.

Mr. Abidha Nicholus Advocate for the 1<sup>st</sup> Defendant/Applicant.



No appearance for the Plaintiff/Respondent, 2<sup>nd</sup> & 3<sup>rd</sup> Defendants.

