

REPUBLIC OF KENYA
IN THE ENVIRONMENTAL AND LAND COURT
AT KWALE
ELCLC NO. E032 OF 2024

- 1. ABDALLA JUMAA HASSAN**
- 2. MEJUMA JUMA DZAVERA**
- 3. MIWANAMKUU HASSAN MWANYERE**
- 4. MESAID IBRAHIM**
- 5. SIKUKUU ABDALLAH AMANI**
- 6. MOHAMMED MWAUNGA BAKARI**
- 7. MARIAM RASHID ISOPA**
- 8. MEALII HASSAN CHAKI**
- 9. HALIMA HEMED MWALII**
- 10. MWANAPAZIA SULEIMAN**
- 11. SAID SALIM TWENYE**
- 12. BINTI SUDI CHIMERA**
- 13. ZAINABU HAMII MWAKAPESA.....**

PLAINTIFFS

- VERSUS -

- 1. NATIONAL BANK OF KENYA LIMITED**
- 2. KEYSIAN AUCTIONEERS**

DEFENDANTS

RULING

I. Introduction

1. Before the Honourable Court is a ruling following an oral application made in Court on the 5th March 2026 by Mr. Rodgers Alinyo, the Learned Counsel for the Plaintiff herein. This matter was scheduled for full hearing – a date fixed on 29th October, 2025 and re - affirmed on diverse dates of 10th December, 2025 and 17th February, 2026.
2. When the case was called out by Court at 9.00am through the Micro - Soft Teams Virtual means, all the Learned Counsels indicated that they would be ready to proceed with the matter subject to being allocated appropriate time. Thus, it was allocated 11.00am.
3. Subsequently, it was later on that the Counsel for the Plaintiff became candid enough to admit he had been neither with the Plaintiff nor the witnesses to proceed on with the case as scheduled. Indeed, in the given circumstances, Mr. Aloyo made an oral application urging the court to invoke the provisions of Order 12 (1) of the

Civil Procedure Rules 2010. Mr. Wafula and Mr. Menezes for the 1st, 2nd and 3rd Defendants indicated that though they had been ready to proceed, they were not opposed to the application save to state that the Plaintiff should be estopped from filing a similar suit in future under the provision of Order 12 Rules 1, 2, 3 & 6 (1) & (2) of the Civil Procedure Rules, 2010.

4. I fully concurred with him that the suit belonged to the clients and not an advocate.
5. In order to extrapolate on it and provide a more comprehensive reflection and direction, rather than providing an instant ruling, the Honourable Court felt it wise to retire and back on 9th March, 2026. That is the gist of this short Ruling.
6. As a brief background, there are two similar suits instituted by the Plaintiffs against some of the Defendants herein revolving around the same subject matter. Although, these suits were not consolidated, but they have been running concurrently for avoidance of causing any conflicts or having embarrassing outcome in future. These were ***“the Civil Suit No. ELC No. E052 of 2025 - ABDALLA***

JUMAA HASSAN and others -vs- National Bank of Kenya Limited and two others. (Referred as “The ELC No. E052/2025”) and **“ELC No. 032/2024 - MESALIMU BADI MOHAMMED AND OTHERS - Versus - NASSARO BWANAULE NGUVU AND OTHERS”** (Hereinafter referred to as **“032 of 2024”**). The E052 of 2025 was instituted vide a Plaint dated 4th June, 2024. From this suit they sought for:

a. An order of permanent injunction restraining the Defendants from dealing with all that parcel of land Reference number 851/9 (CR 26610) - Bongwe - Gombato area of Ukunda Msambweni Sub-County, Kwale County.

b. A declaration be and is hereby issued declaring that the plaintiffs was the bona fide proprietors of all that parcel of land known as LR No. 851/9/ CR - 26610) Bongwe -Gombato area of Ukunda Msambweni Sub-County Kwale County.

7. Upon service the 1st and 2nd Defendants on 12th June, 2024 the 1st and 2nd Defendants filed Memorandum of Appearance and on 25th June, 2024 Statement of Defence while on 8th September, 2025 the 3rd Defendant filed and served their memorandum of appearance on 11th September, 2024 they filed their Statement of Defence.

8. On 14th October, 2025 the final pre-trial conference was held and matter fixed for hearing on 29th October, 2025. However, court was informed that parties were exploring out of court negotiation and were granted several occasions. In the meantime, the matter was fixed for hearing on 5th March, 2026.
9. On 5th March, 2026, as the intended out of court of negotiation had become a cropper and hence it was set for full trial - on 5th March, 2026.
10. The second civil suit being **“ELC No. 053/2025 - MESALIMU BADI MOHAMMED AND OTHERS - Versus - NASSARO BWANAULE NGUVU AND OTHERS”** instituted vide a plaint dated 10th June 2025. The plaintiff sought for the following reliefs against the Defendants: -
- a. **Permanent injunction against Defendants from dealing with all that parcel of land known as LR No. 8517/9 (CR 26610) - Bongwe Gombato area of Ukunda Msambweni Sub-County Kwale.**
 - b. **A declaration that the Plaintiffs were the bona fide proprietors of all that parcel No. LR No. 8517/9 (CR 26610) - Bongwe Gombato area of Ukunda Msambweni Sub-County Kwale County.**

11. On 27th July 2025, the 1st and 2nd Defendants entered appearance and filed their Statement of Defence whilst the 3rd defendant filed their defence on 11th September 2025. It was resolved that these two matters be handled alongside each other - ***“Mutatis Mutandis”***.

II. Analysis & Determination

12. I have keenly assessed the unopposed oral application made by the Learned Counsel for the Plaintiff herein. It was made under the provision of Order 12 Rules 1, 2, 3 & 6 (1) & (3) of the Civil Procedure Rules, 2010. Therefore, it is imperative that the Honourable Court critically extrapolate the legal rationale and efficacy of this provision.

13. The provision of Order 12 (1) and (2) of the Court Procedure Rules 2010 provides as follows: - **entitled “Hearing and consequences of Non-Attendance”**

12 (1): - If on the day fixed for hearing, after the suit has been called on for hearing outside the court neither party attends the court may dismiss the suit”.

12 (3): - If on the day fixed for hearing, after the suit has been called on for hearing outside the court, only the Defendant attends and he admits

no part of the claim, the suit shall be dismissed except for good cause to be recorded by the court”

14. It is based on this provision and the old application made by the Learned Counsel for the Plaintiff that the court wishes to deal with it in depth. Where there is no attendance by the Plaintiffs or the Defendant when the matter was called out outside the Court, the Honourable Court has discretion to dismiss a suit for non-attendance by any of the parties. While arriving at this decision, I seek legal solance from the decisions of: -

a. **“Universal Bank Limited - Versus - Paraminder Singh Viridi and Another (2006) 2554 (KLR) Court held: -**

“I take the following view of the matter under Section 2 of the Civil Procedure Act “Suit” means all Civil Procedures commenced in any manner prescribed _ _ _ the suit was dismissed for non-attendance.

b. In the case of **“ELC No. 23/2016 - Wendano Matuu Company Limited - Versus - Stephen Ndambuki Muli and others”**

“The suit was dismissed on the premised-on grounds that the Plaintiffs were in non-attendance”.

15. In this case and on admission by the Learned Counsel, the non-attendance was by the Plaintiffs - I take cognizance of the fact that the 1st, 2nd and 3rd Defendants were present and ready to proceed.

III. The Findings

16. Therefore, based on the foregoing I use my discretion and the strength bestowed on me under the Provision of Articles 159 (1) and (2) of Civil Procedure Rules 2010; Sections 3 and 13 of the ELC Act No. 19 of 2011; Section 101 of the Land Registration Act, No. 3 of 2022 and Section 150 of the Land Act, No. 6 of 2012 I proceed to direct as follows: -

a. THAT the ELC No. E032 of 2024 and ELC E053 of 2025 be and are hereby dismissed for non-attendance by the Plaintiffs herein during the hearing date, 5th March, 2026 pursuant to the provision of Order 12 Rules 1, 3 and 6 Sub - Rules (1) & (2) of the Court Procedure Rules 2010.

b. THAT costs to be awarded to the 1st, 2nd and 3rd Defendants to be borne by the Plaintiffs from the two suits - ELC No. E032 of 2024 and ELC No. E053 of 2025 jointly and severally thereof.

c. **THAT** the matter to be deemed as settled and the files **CLOSED** thereof.

IT IS SO ORDERED ACCORDINGLY.

RULING DELIVERED THROUGH MICROSOFT TEAM VIRTUAL MEANS, SIGNED AND DATED AT KWALE THIS..... 9THDAY OFMARCH.....2026.

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

Ruling delivered in the presence of:

- (a) Mr. Daniel Disii, the Court Assistant.
- (b) Mr. Alinyo Rodgers for the Plaintiff.
- (c) Mr. Wafula Advocate for the 1st & 2nd Defendants.
- (d) Mr. Otieno holding brief Menezes for the 3rd Defendant.