



# THE JUDICIARY



## REPUBLIC OF KENYA

### IN THE ENVIRONMENT AND LAND COURT AT NAROK

#### ELCLOS CASE NO. E001 OF 2023

**RICHARD K. LANGAT.....**

**PLAINTIFF/RESPONDENT**

**VERSUS**

**OLAKERI-LOLASHO GROUP**

**RANCH.....1<sup>ST</sup>**

**DEFENDANT/APPLICANT**

**JOSEPH OLE SHUNKUR..... 2<sup>ND</sup>**

**DEFENDANT/APPLICANT**

**LEMERDIK OLE KORIATA..... 3<sup>RD</sup>**

**DEFENDANT/APPLICANT**

**RUKUTI OLE KORIATA..... 4<sup>TH</sup>**

**DEFENDANT/APPLICANT**

**SABAYA OLE NKONGONI..... 5<sup>TH</sup>**

**DEFENDANT/APPLICANT**

**STANLEY NGENO SIGILAI..... 6<sup>TH</sup>**

**DEFENDANT/APPLICANT**

**KITITA OLE SAAYOI..... 7<sup>TH</sup>**

**DEFENDANT/APPLICANT**

**ROBERT N KINGIS SHUNKUR..... 8<sup>TH</sup>**

**DEFENDANT/APPLICANT**

## RULING

1. The Defendants/Applicants filed a **Notice of Motion Application** dated **20<sup>th</sup> June 2025**, brought under **Order 51, Rules 1 & 3** of the **Civil Procedure Rules, Sections 1A, 3, 3A** and **63e** and **95, Order 36 Rule 7** of the **Civil Procedure Act, Cap 21** seeking for orders that: -

**a) This court be pleased to grant leave to the Applicants to file statements of defence and or responses to Originating Summons in this case dated 1<sup>st</sup> August 2023 out of time.**

**b) Once leave is granted the Statement of defence /Replying Affidavit annexed to the Supporting Affidavit herein be adopted as the defence on record.**

**c) This court be pleased to set aside evidence tendered by Plaintiffs on 12<sup>th</sup> May 2025 and or recall all witnesses who already testified.**

**d) That costs of this application be cost in the cause.**

**e) Any other or further relief(s) that the court may deem fit and just to grant**

2. The Application is premised on the following grounds; that the matter came up in court on **12<sup>th</sup> May 2025**, wherein the Plaintiff's witnesses were heard exparte; the advocate who held brief for the Law Firm of **Mungai, Kemei & Associates advocates** did not update the said Law Firm of the developments of **12<sup>th</sup> May 2025**; That the delay was caused by lack of further instructions by the Applicants

herein to their advocates on record, as they could not be reached.

3. The Application is also supported by the Affidavit of **Kolesh Pere, Chairman of the 1<sup>st</sup> Defendant/Applicant**, who averred that there was communication breakdown with their advocate on record, and they could not be reached on their last known contacts. He urged the court to allow the Defendants to file their responses to the **Originating Summons** out of time, and their **Draft Defence** be deemed property filed upon payment of the requisite court fees, and the matter be heard afresh; Further, that no prejudice or injustice will be occasioned to the Plaintiff/Respondent if this application is allowed.
4. The Application is vehemently opposed by the Plaintiff/Respondent **Richard K. Langat**, vide his Replying Affidavit sworn on **25<sup>th</sup> September 2025**, who averred that the Applicants' counsel participated throughout the proceedings and even requested for time to comply with **Pre-trial directions** after the Ruling on **Preliminary Objection** that he had filed. He also averred that when the matter came up for hearing on **12<sup>th</sup> March, 2025**, the Defendants/ Applicants' counsel was present, but the parties were not ready to proceed and another date was taken by consent of both counsels.
5. The Plaintiff/Respondent further averred that the instant application seeks to obstruct the cause of justice. That allowing the application would be repugnant to **good practice** and timely administration of justice, since no valid grounds nor sufficient explanation has been offered for

failing to attend court and/or filing Defence, since the Applicants' counsel has always attended court.

6. The Application was canvassed by way of written submissions. The Defendants/Applicants filed their written submissions dated **13<sup>th</sup> November 2025**, through **Muigai, Kemei & Associates Advocates**, and urged the court to allow the instant application. It was their submissions that they were never represented during the hearing of the Plaintiff's case, which was an ex parte hearing on **12<sup>th</sup> May, 2025**.
7. It was further submitted that **Mr. Duncan Kiprono Advocate**, their advocate on record neglected his duty of representing the Defendants/Applicants from the onset, and this is clearly demonstrated on the second ground in the application.
8. The Defendants/Applicants urged the court to find merit in their application in order for rule of natural justice to be served. Reliance was sought in the case of **Republic vs Nairobi City County, Ibrahim (Ex parte Applicant) (Environment and Land Judicial Review case No. 4 of 2023[2025] KEELC 48(KLR))**.
9. The Defendants/Applicants also relied on **Sections 1A, 3 and 3A** of the **Civil Procedure Act**, which enjoins this court to facilitate **Overriding Objective** of the Act, and also to issue orders that are necessary for the end of justice to be met.

10. On his part, the Plaintiff/Respondent filed his written submissions dated **7<sup>th</sup> November 2025**, through **Mitey & Associates Advocates**, and raised the following issues for determination;
- i) Whether the Defendants/Applicants have established sufficient cause warranting this court to exercise its discretion to set aside the Plaintiff's evidence.*
  - ii) Whether the Defendants/Applicants have made out a case for reopening of the Plaintiff's case.*
  - iii) Who should bear the costs?*
11. ***On whether the Defendants/Applicants have established sufficient cause warranting this court to exercise its discretion to set aside the Plaintiff's evidence***, the Plaintiff/Respondent submitted that the application was not made in good faith since the Defendants/Applicants were all along represented by an advocate of their choice, but they failed to put in their Defence to the **Originating Summons** despite taking hearing date by consent of the advocates.
12. The Plaintiff/ Respondent further submitted that it was only after the Plaintiff had closed his case that the Defendants/Applicants attempted to reopen the case without giving justifiable reasons on why they intended to reopen.

13. For the above submissions, reliance was sought in various decided cases among them; ***Gladys Njeri Kirugumi vs Lengata Development Co. Ltd & another [2016] ekr;*** ***Wachira Karani vs Bildad Wachira [2016] ekr.***
14. ***On whether the Defendants/Applicants have made out a case for reopening of the Plaintiff's case,*** the Plaintiff/Respondent submitted that the application ***lacks merit*** and ***ought to be dismissed*** with costs. Further, that the Defendants/ applicants have not demonstrated why the court should exercise its discretion and reopen the case in their favour. He argued that the counsel on record for the applicants has admitted that the applicants lost contact with their advocate, but did not indicate at what point they resumed the communications. He relied in the case of ***Joseph Ndungu Kamau vs John Njihia (2017) ekr and Shah vs Mbogo & another (1967) EA 116.***
15. On costs, the Plaintiff/Respondent submitted that costs follow the event and relied on the case of ***R vs Rosemary Wairimu Munene, Exparte Applicant vs Ihururu Dairy Farmers Cooperative.*** It was his submissions that he attended court for the hearing of this case together with his witness, testified and closed their case. that the Defendants/Applicants were aware of the hearing date, and they failed to attend court, thus the Plaintiff/Respondent incurred expenses, and therefore the Defendants/Applicants should be condemned to pay costs of this application.
16. The above are the grounds for and against the instant application, which this court has carefully considered

together with the rival written submissions, and the cited authorities. The court too has considered the relevant provisions of law and renders itself as below; -

17. It is evident that the Plaintiff/Respondent filed this **Originating Summons** on **8<sup>th</sup> August 2023**, and sought for determination of a number of questions; among them being; whether the Plaintiff is entitled to **200 acres** out of land parcel No **Cis Mara/ Ololulunga /156**, formerly **Ololeri Lalasha Group Ranch**, by virtue of **adverse possession**, having been in open, quiet and peaceful occupation of the said parcel of land for over **13 years**.
18. Though the Defendants/Applicants have sought to be allowed to file Defence out of time, it is evident from the court record that on **4<sup>th</sup> October 2023**, **Lemerdik Ole Koriata**, the 4<sup>th</sup> Defendant herein filed a **Replying Affidavit**, and averred that he is one of the Original Member of **Olakeri-Lolasha Group Ranch**, which group Ranch is no Longer in existence because the adjudication section was closed.
19. He also claimed that nine members of the Group Ranch were allocated a portion of the suit land after the survey work was done. He contended that the Plaintiff had filed other similar cases before, which were determined by courts of competent jurisdiction, and therefore a claim of **adverse possession** cannot accrue.
20. The Deponent had urged the court to issue an eviction order against the Plaintiff herein for being a trespasser, to enable

the Defendants/Applicants enjoy quiet and peaceful occupation of their respective parcels of land.

21. Further, the Defendants raised a **Preliminary Objection** based on Paragraph 4 of the Replying Affidavit of the 4<sup>th</sup> Defendant to the effect that the suit was **Res judicata**. The court determined that Preliminary Objection on **26<sup>th</sup> September 2024**, and dismissed the same, and directed the matter to proceed for hearing.
22. From the court record, after the Ruling, the matter was mentioned several times in the absence of the parties. However, on **19<sup>th</sup> February 2025**, the matter was mentioned before the Deputy Registrar of this Court, wherein **Ms Chirchir** for the Plaintiff was present, but there was no representation for the Defendants. **Ms Chirchir** informed the court that the Plaintiff had complied with **Order 11** of the **Civil Procedure Act**, and for that reasons, the Deputy Registrar set down the matter for hearing on **25<sup>th</sup> March 2025**, before the Judge. The Plaintiff was directed to serve the Defendants with a **Hearing Notice**.
23. On **25<sup>th</sup> March 2025**, **Mr Kiprono** was present for the Defendants and he informed the court that he had not been able to reach his clients. He never mentioned compliance with **Order 11**. **Ms Chirchir** informed the Court that her client was unwell and sought to take the matter out of the day's cause list.
24. The court allowed a **last adjournment** and fixed the matter for hearing on **12<sup>th</sup> May 2025**, in the presence of counsels

for the Plaintiff and Defendants. However, it is clear that by **25<sup>th</sup> March 2025**, the Defendants had not complied with **Order 11**. The court directed the parties to share adjournment fees.

25. Come **12<sup>th</sup> May 2025**, the Plaintiff was represented by **Ms Chirchir**, but the Defendants and their advocate were absent. It is not clear whether **Ms Chirchir** for the Plaintiff paid the adjournment fees, but the court directed the matter to proceed *ex parte* since the date was taken by consent. Consequently, the Plaintiff gave evidence for himself and called one more witness to support his case. Thereafter, the court directed the Plaintiff/Respondent to file written submissions with a mention date for **16<sup>th</sup> June 2025** to confirm compliance, and take a Judgment date.
26. However, before the matter could be set down for Judgment, the Defendants/Applicants filed this application dated **20<sup>th</sup> June 2025**, and sought grant of the three main prayers. As noted earlier, the Defendants did file a Reply to the **Originating Summons** through the 4<sup>th</sup> Defendant, and prayer **No. 2** and **3** are overtaken by event, unless they are seeking for leave to file a Further Affidavit.
27. The main prayer therefore is the one for **setting aside** the proceedings of **12<sup>th</sup> May 2025**, **recall** the witnesses already testified and have the matter heard inter-parties.
28. The application is anchored under **Sections 1A, 3, 3A** and **63 (e)** of the Civil Procedure Act. **Section 1A** of the Act deal with the **Overriding Objective** of the Act, which is to

facilitate the just, expeditious and proportionate determination of the matter before court.

29. **Section 3A** grants the court inherent power to make such orders that are necessary for the end of justice and to prevent abuse of the court process. Further, **Section 63(e)** of the said Act, mandates the court to make such orders that may appear to the court to be just and convenient in order to prevent the end of justice from being defeated.
30. With the above provisions of law in mind, the court will consider the instant application alongside the opposition to the same, and the rival written submissions, to come up with a determination on whether the applicants are deserving of the orders sought.
31. The Defendants/Applicants averred that the Advocates who held brief for the **Law Firm of Muigai, Kemei Advocates** did not inform the said Firm on what transpired in court on **12<sup>th</sup> May 2025**, and the Defendants did not have audience on this particular date because adjournment fees had not been paid.
32. That is indeed not **a plausible reason** for failing to appear in court, since the Plaintiff too had not complied by paying the adjournment fees, but the advocate for the Plaintiff still appeared in court together with the client, and **inadvertently**, the matter proceeded for hearing without payment of adjournment fees.

33. The Defendants/Applicants should have instead contended that after **25<sup>th</sup> March 2025**, the Counsel holding brief did not inform the Law Firm that the matter was fixed for hearing on **12<sup>th</sup> May 2025**, instead of alleging that they had no audience before the court for failure to pay adjournment fees. In fact, the Defendants never addressed court, and then the court denied them audience!
34. Having considered the court record and the instant application, and the relevant provisions of law, the court will allow the said application due to the following reasons;
- i) The suit was fixed for hearing 19<sup>th</sup> February 2025, when the Plaintiff appeared before the Deputy Registrar, before the Defendants had complied with Order 11. The matter was therefore not ready for hearing;***
  - ii) On 25<sup>th</sup> March 2025, when the matter was adjourned, the court directed the parties to share adjournment fees. On 12<sup>th</sup> May 2025, though the Defendants were absent, the Plaintiff did not pay adjournment fees, and the matter inadvertently proceeded exparte, before the Plaintiff could comply with the court order;***
  - iii) The Defendants contended that the advocate who held brief on 25<sup>th</sup> March 2025, did not inform their advocate of the hearing date of 12<sup>th</sup> May 2025; therefore, the Defendants should not suffer due to the***

***mistakes of a counsel. See the case of Philip Chemwolo & Another vs Augustine Kubende [1982-1988]KLR 103,***

35. Being guided by **Sections 3A** and **63e** of the **Civil Procedure Act**, the court finds that the end of justice shall be served if the proceedings of **12<sup>th</sup> May 2025**, which were ex parte are set aside and the Defendants applicants be directed to comply with **Order 11** of the **Civil Procedure Act** within a period of **14 days** from the date hereof. In default, the orders issued herein will lapse automatically.
36. Further, the Defendants/Applicants are ordered to pay a throw away costs of **ksh 10, 000/=** to the Plaintiff/Respondent before the next hearing date. As directed by the court, the parties herein to share and pay the adjournment fees of **25<sup>th</sup> March 2025**, before they can have the audience of the court on the next hearing date. Prayers No. 2 and 3 are overtaken by events.
37. This is a **2023** matter, and as provided by **Sections 1A and 1B** of the **Civil Procedure Act**, the matter should be heard expeditiously, as it is already a backlog.
38. For the above reasons, the **Notice of Motion Application** dated **20<sup>th</sup> June 2025**, is allowed entirely, in terms of **prayer No 4**, with **costs** to the **Plaintiff/Respondent**. Further, the Defendants/Applicants are condemned to pay a throw away costs of **ksh 10,000/=** to the Plaintiff/Respondent before the next hearing date.

39. However, leave is granted to the Defendants /Applicants to file Further Affidavit since the Defendants had already filed a Reply to the Originating Summons through the Affidavit of 4<sup>th</sup> Defendant **Lemerdick Ole Koriata** dated **27<sup>th</sup> September 2023**.

40. The Plaintiff is granted correspondence leave to file Supplementary Affidavit if need be.

***It is so ordered.***

***Dated, signed, and delivered virtually at Narok this 19<sup>th</sup> Day of March 2026***

***L. Gacheru  
Judge***

***Delivered online in the presence of***

***Elijah Meyoki - Court Assistant***

***N/A for Plaintiff/Respondents***

***Ms Mary Muigai for Defendants/Applicants.***

***L. Gacheru  
Judge***