

REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CIVIL SUIT NO. 88 OF 2007

KIMAIYO KIPROTICH (DECEASED).....1ST
PLAINTIFF/APPLICANT

MARY JEMUTAI KIMAIYO.....2ND
PLAINTIFF/APPLICANT

VERSUS

SIRIKWA MOTORS LIMITED.....1ST
DEFENDANT/RESPONDENT

MOSES KIPLAGAT CHANGWONY.....2ND
DEFENDANT/RESPONDENT

Coram: Before Justice R. Nyakundi
M/s Kigen W.J & Co Advocates
M/s Z.K Yego & Co Advocates
Sirikwa Motors Limited

RULING

1. Before this court is a Notice of Motion Application dated 14th January 2026 brought under sections 3, 3A, 28 and 63(e) of the Civil Procedure Rules 2010(Cap. 21), section 16 of the Land Registration Act, 2012, sections 33 of the Land Registration Act, Chapter 300 (Repealed), the Land Registration (General) Regulations, 2017, Order 51 of the Civil Procedure Rules, and all other enabling provisions of law. The applicant moved this court seeking the following orders:
 - a. *Spent*
 - b. *That this Honourable Court be pleased to find and declare that the original Certificate of Lease for title number Eldoret Municipality Block 9/1233, which was deposited in this court on or about 6th November 1996 as security pursuant to the consent letter dated 19th*

December 1996, cannot be traced from the court record notwithstanding diligent search and enquiries made by the parties, their advocates, and the court registry staff.

- c. That the Deputy Registrar of this Honourable Court be and is hereby directed to issue a Certificate of Loss confirming that the said original Certificate of Lease for Eldoret Municipality Block 9/1233 was deposited in court as security and is now missing, for purposes of section 33 of the Land Registration Act, Chapter 300 (Repealed) and the Land Registration(General) Regulations, 2017.*
- d. That the Chief Land Registrar and/or the County Land Registrar, Uasin Gishu County, be and are hereby directed, authorized and mandated to register the executed Transfer of Lease in favour of Mary Jemutai Kimaiyo for title number Eldoret Municipality Block9/1233 and, upon such registration, to issue a new Certificate of Lease in her name, without insisting on production of the missing original Certificate of Lease.*
- e. That in the alternative, and only if the Land Registrar finds it legally necessary to do so, the said Registrar be at liberty to publish statutory notice of the loss of the said. Certificate of Lease and thereafter issue a new Certificate of Lease in the name of Mary Jemutai Kimaiyo in accordance with section 33 of the Land Registration Act, Chapter 300 and the Land Registration (General) Regulations, 2017, all costs of such replacement to be borne by the Defendants jointly and severally*
- f. That pending registration, any dealings or transfers affecting title number Eldoret Municipality Block 9/1233 (save and except transfer to Mary Jemutai Kimaiyo) be suspended or frozen until such time as registration in her name is completed.*
- g. That the costs of this application be provided for.*

2. The application is made on the following grounds on the face of it among others: -
- a. On 28th March 2022, this Honourable Court delivered judgment in **Civil Suit No. 88 of 2007**, ordering the Defendants to pay to the Plaintiffs/Applicants jointly and severally the sum of Kshs. 520,000/= being the cost of purchase of a motor vehicle (Toyota Hiace, registration KWK 426), the same sum as general damages for breach of contract, and interest thereon. The judgment further provided that in default of payment within 60 days, the security deposited by the 1st Defendant (title to Eldoret Municipality Block 9/1233, valued at Kshs. 2,865,000/=) shall pass to the Plaintiffs/Applicants.
 - b. The Original Certificate of Lease for title Eldoret Municipality Block 9/1233 was deposited in this court as security by the 1st Defendant's director, Abraham Kiptanui, by consent letter dated 19th December 1996 and was held in the court's custody for over 25 years pending the conclusion of the suit.
 - c. The Defendants failed to pay the judgment sum within the stipulated 60 days, and by operation of the judgment order (para 44(e)), the security title vested in the Plaintiffs/Applicants with effect from the date of judgment or shortly thereafter
 - d. By a consent dated 15th June 2023, the court authorized the Deputy Registrar to sign transfer documents in respect of the land parcel in favour of Mary Jemutai Kimaiyo, and the matter was marked as settled by consent.
 - e. The 1st Defendant's director, through the Deputy Registrar, and the 2nd Plaintiff/Applicant duly executed a Transfer of Lease on the prescribed form (Form LRA-33) dated 23rd July 2023 June 2023, and the executed transfer was lodged at the Lands Registry, Eldoret, on or about 13th June 2023.

- f. Despite the valid consent order and the executed transfer instruments, the Lands Registry has been unable to complete registration in the name of Mary Jemutai Kimaiyo because the original Certificate of Lease (required for completion) cannot be traced from the court record.
 - g. My advocates have sent various communications and follow-up letters to the registry staff which have been received. Hence, despite diligent searches of the court files, the security title deposited in 1996 cannot be located.
 - h. It is now over 3 years since the judgment and over 30 months since the consent order and transfer, yet the 2nd Plaintiff/Applicant remains unable to register the land and exercise her proprietary rights, thereby suffering irreparable prejudice.
 - i. The Applicant has also been prevented from: Dealing with the property (lease, mortgage, or sale); Receiving the full benefit and enjoyment of her ownership; Obtaining credit facilities or development finance secured on the property; Planning or executing development on the land and Exercising her rights as a registered proprietor under the Land Registration Act.
 - j. The missing of the original title is not the fault of the Applicant, but rather is attributable to inadequate filing and retrieval systems within the court, and possibly loss or misplacement of court documents over the 25-year period of custody.
3. In support of the application is the supporting affidavit of Mary Jemutai Kimaiyo who deponed as follows: -
- 1. *That I am a female adult of sound mind and age, and I am fully competent and duly authorized to swear this affidavit on my own behalf and on behalf of the estate of the 1st Plaintiff (my late husband, Kimaiyo Kiprotich, who passed away on 28th May 2000 as evidenced by Certificate of Death No. 575176.*

2. *That I have personal knowledge of the facts herein set out, save where otherwise stated, in which case I am informed by reliable sources and verily believe the same to be true.*
3. *That I am the 2nd Plaintiff/Applicant in the above-captioned suit, and my late husband, Kimaiyo Kiprotich, was the 1st Plaintiff. Together, we sued the Defendants for breach of contract in connection with the purchase of a motor vehicle (Toyota Hiace, registration KWK 426) in 1995.*
4. *That the suit was originally filed in the High Court of Kenya at Eldoret on 4th September 1996 as Civil Sit No. 167 of 1996 and was later transferred and renumbered as Civil Suit No. 88 of 2007. The suit proceeded for over 25 years before final judgment was delivered.*
5. *That on 28th March 2022, this Honourable Court delivered judgment in our favour, ordering the Defendants to pay to us the sum of Kshs. 520,000/= being the cost of the motor vehicle, a further sum of Kshs. 520,000/= as general damages for breach of contract, and interest thereon from the date of filing of the suit to the date of judgment and thereafter at court rates until payment in full.*
6. *That the judgment further provided that in the event the Defendants failed to pay the above sums within 60 days from the date of judgment, the security deposited by the 1st Defendant through his director, Abraham Kiptanui, being title to land parcel Eldoret Municipality Block 9/1233 (valued at Kshs. 2,865,000/=), would pass to myself and my late husband as security for the judgment.*
7. *That the said title had been deposited in court as security for the case back in November 1996, nearly 25 years before the judgment was delivered. This was done pursuant to a consent order and security letter dated 19th December 1996, signed by the parties and their then-advocates.*

8. *That the original Certificate of Lease for title Eldoret Municipality Block 9/1233 was deposited in this court's custody by Abraham Kiptanui (the 1st Defendant's director) on or about 6th November 1996, as security for the defendant's good conduct and to ensure compliance with any orders of the court*
9. *That for over 25 years, this Certificate of Lease was held in the court's custody as part of the court's record and security for the litigation.*
10. *That the Defendants were ordered by the judgment to pay the sum of Kshs. 520,000/= within 60 days from 28th March 2022. That period would have expired on or about 27th May 2022.*
11. *That to the best of my knowledge and information, the Defendants did not pay the said sum within the stipulated 60 days, and no payment has been made to date-now over 3 years after the judgment.*
12. *That by virtue of the judgment order and the failure to pay, the security title (Eldoret Municipality Block 9/1233) vested in myself as the surviving beneficiary of the judgment (in respect of the 1st Plaintiff's share, I act in my capacity as a beneficiary of his estate, and in my own right as 2nd Plaintiff).*
13. *That on 13th June 2023, I was approached by the Defendants' advocates indicating their willingness to settle the matter and to transfer the security title in my favour.*
14. *That pursuant to negotiations and in the interest of finality, all parties agreed to a Consent Order dated 13th June 2023, under which the Deputy Registrar of this court was authorized to sign the necessary transfer documents on behalf of the registered proprietor (Abraham Kiptanui) and transfer the land to my name.*

15. That following the Consent Order, the Deputy Registrar and I executed a Transfer of Lease (Form LRA-33) dated 12th July 2023 in prescribed form.
16. That the executed transfer was lodged at the Lands Registry (Eldoret office) on or about 13th June 2023, with all requisite supporting documents and fees, and with a request for registration in my name.
17. That I obtained an Official Search of the title, which confirms that Abraham Kiptanui remains the registered proprietor and that the transfer has not yet been registered.
18. That the Lands Registry has informed us (through informal communications and subsequent enquiries) that they cannot proceed with registration of the transfer in my name without sight of the original Certificate of Lease deposited in court.
19. That Upon this discovery, I instructed our advocates to write to the Deputy Registrar requesting the release and delivery of the original Certificate of Lease so that it could be handed to the Lands Registry for purposes of completing the registration.
20. That a copy of our letter dated 21st August 2023 addressed to the Deputy Registrar, Eldoret High Court, requesting release of the title.
21. That my advocates wrote another letter dated 17th October 2023 addressed to the Deputy Registrar, Eldoret High Court, requesting release of the title.
22. That despite multiple follow-up letters and telephone enquiries over a period of more than 30 months (from June 2023 to January 2026), the court registry staff have been unable to locate the original Certificate of Lease.
23. That The registry staff have, in telephone conversations and informal communications, confirmed that despite diligent search of the court files and security store, the Certificate of Lease deposited in 1996 cannot be found. The documents appear to have been misplaced,

lost, or misfiled over the 25-30-year period during which they were held in court custody.

24. *That as a result of the non-availability of the original title, and the consequent inability to complete registration, I have been severely prejudiced as I am unable to deal with the property or exercise any of the proprietary rights of a registered proprietor under the Land Registration Act and I remain at risk of the Defendants or their successors claiming or interfering with the property, given that registration in my name has not been completed, thus unable to realize the fruits of my judgment.*
25. *That the loss of the original title is wholly attributable to the inadequate record management and storage systems of the court, and is in no way attributable to any fault or delay on my part. I have, at all times, complied with all court orders and statutory requirements, and I have executed the transfer documents as required.*
26. *That It is grossly unjust and inequitable that, having obtained judgment and having complied with all requirements for transfer and registration, I should be denied the benefit of my judgment and the registration of my title, merely because a court-held document has been lost through no fault of my own.*
27. *That section 33 of the Land Registration Act, Chapter 300 (Repealed) provides procedures for dealing with lost or missing titles, and the Land Registration (General) Regulations, 2017 prescribe the mechanism for issuance of replacement or new certificates when the original is lost.*
28. *That The Land Registrar has the power and authority to issue a new Certificate of Lease once satisfied that: The original title is lost or cannot be traced; Statutory notice has been published (if required);*

The applicant has clear legal or beneficial interest in the land; and All prescribed formalities have been observed.

29. That in the present case, all these conditions have been satisfied.

30. That Further, this Honourable Court has inherent jurisdiction (undersection 16 of the Land Registration Act, 2012 and Order 1 of the Civil Procedure Rules) to make orders to enforce its own judgments and to prevent an abuse of process or an unjust result.

31. That in the premises, and having exhausted all reasonable efforts to locate the original Certificate of Lease, I humbly pray that this Honourable Court be pleased to make the orders sought in the Notice of Motion, namely:

a. A declaration that the Certificate of Lease for Eldoret Municipality Block 9/1233 is missing.

b. An order directing the Deputy Registrar to issue a Certificate of Loss.

c. An order directing the Land Registrar to register the executed transfer in my name and to issue a new Certificate of Lease

d. In the alternative, an order permitting the Registrar to publish statutory notice and thereafter issue a new certificate

e. An order freezing any dealings in the property (save transfer to myself) pending registration.

f. An order for costs.

32. That this application has been brought promptly, in good faith, and in the interests of justice to ensure that I am no longer deprived of the fruits of the judgment due to loss of a court document beyond my control.

Replying Affidavit

4. A look at the court record and the Case Tracking System (CTS) indicates that the Notice of Motion Application was not responded to by the Respondents despite service by the Applicants. There was an affidavit of

service dated 22nd January 2026 which shows that service was properly done. I will however determine the Notice of Motion Application on its own merits.

Analysis and Determination

5. From the material placed before the Court, the background of the dispute is largely uncontested. The Applicant together with her late husband Kimaiyo Kiprotich instituted this suit against the Defendants in 1996 seeking relief arising from breach of contract relating to the purchase of a motor vehicle. In the course of the proceedings, the 1st Defendant deposited the original Certificate of Lease for Eldoret Municipality Block 9/1233 in court on or about 6th November 1996 as security pursuant to a consent letter dated 19th December 1996.
6. The suit remained pending for a prolonged period and was eventually determined by this Honourable Court on 28th March 2022, when judgment was entered in favour of the Plaintiffs. In particular, this Honourable Court stated as follows in paragraph 44: -
 - a. *Kshs. 520,000/= being the cost of the purchase of the motor vehicle.*
 - b. *General damages for breach of contract assessed at the value of the said motor vehicle thus Kshs. 520,000/=.*
 - c. *Interests on (a) above from the date of filing the suit.*
 - d. *Interest on (b) above from the date of this judgement.*
 - e. *That the above shall be paid to the Plaintiffs within 60 days of this judgement and in default thereof, the security deposited by the 1st Defendant through its director Abraham Kiptanui shall pass herein to the Plaintiffs.*
7. Crucially, the judgment further ordered in default of payment within sixty (60) days, the security deposited by the 1st Defendant, namely **Title No. Eldoret Municipality Block 9/1233** would pass to the Plaintiffs.

8. Subsequently, on 13th June 2023, the parties recorded a consent allowing the Deputy Registrar to execute transfer documents on behalf of the registered proprietor to facilitate transfer of the property to the Applicant. A **Transfer of Lease (Form LRA 33)** was thereafter executed and presented to the Lands Registry. However, registration of the transfer could not be completed because the original Certificate of Lease deposited in court cannot be traced. Despite numerous follow-ups and searches conducted within the court registry, the document has not been recovered. It is this predicament that has necessitated the present application.
9. The starting point is that courts possess inherent jurisdiction to enforce their judgments and prevent injustice. This authority is anchored in sections 3 and 3A of the Civil Procedure Act, which preserve the Court's inherent power to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court. The Court of Appeal in **Rose Njoki King'au & Another Vs Shaba Trustees Limited & Another [2018] eKLR** stated thus;

*“Also cited was Section 3A of the Civil Procedure Act which enshrines the inherent power of the Court to make such orders as may be necessary for ends of justice or to prevent abuse of the process of the Court. In **Equity Bank Ltd Vs West Link Mbo Limited [2013], eKLR, Musinga, JA** stated, inter alia, that, by “inherent power” it means that “Courts of law exist to administer justice and in so doing, they must of necessity balance between competing rights and interests of different parties but within the confines of law, to ensure that the ends of justice are met. Inherent power is the authority possessed by a Court implicitly without its being derived from the Constitution or statute. Such power enables the judiciary to deliver on their constitutional mandate.... inherent power is therefore the natural*

or essential power conferred upon the court irrespective of any conferment of discretion.”

10. The Supreme Court went a step further in the case of **Board of Governors, Moi High School Kabarak and another Vs Malcolm Bell [2013] eKLR**, to add the following: -

“Inherent powers are endowments to the court as will enable it to remain standing as a constitutional authority and to ensure its internal mechanisms are functional. It includes such powers as enable the Court to regulate its intended conduct, to safeguard itself against contemplation or descriptive intrusion from elsewhere and to ensure that its mode of disclosure or duty is consumable, fair and just.” (sic)

11. Similarly, section 63(e) of the Civil Procedure Act empowers the Court to issue interlocutory orders where it is just and convenient to do so. In the present case, the judgment of this Court awarded the Plaintiffs the security property upon failure by the Defendants to pay the decretal amount. Failure to facilitate the transfer merely because a document kept in the custody of the court has gone missing would defeat the very judgment of the court. Courts must guard against situations where procedural technicalities or administrative lapses undermine substantive justice.

12. The land title deposited with the Court cannot be traced. This places the owner of property rights under Article 40 of the Constitution under the risk of deprivation of his rights which already had crystalized. There is therefore compelling evidence for the Land Registrar particularly after a lost title to have it replaced which calls upon this Court to issue an appropriate order for cancellation of title. The key principles in the already decided cases on cancellation of title include the following:

- **Registrar Lacks Jurisdiction for Cancellation:** Courts have consistently ruled that the Land Registrar acts *ultra vires* (exceeds powers) by attempting to revoke or cancel titles. The power to cancel a

title, due to fraud or illegality, rests solely with the Environment and Land Court (ELC).

- **Replacement Does Not Affect Rights:** Replacing a lost title under Section 33 of the Land Registration Act, 2012, is an administrative procedure to issue a duplicate. It does not diminish the rights of the registered proprietor.
- **Found Titles Must Be Surrendered:** If a "lost" title is later found after a replacement (provisional) title has been issued, the law requires that the original title be surrendered to the registrar for cancellation.
- **Due Process Requirement:** Cancellation of a title, even if irregular, must follow fair administrative action. The registered proprietor must be given notice and a chance to be heard before any revocation.

Important Decided Cases & Citations:

- a) **Mwareri v Land Registrar (Naivasha) & 3 others [2023] eKLR:** The court held that the Land Registrar did not have jurisdiction to cancel a title. The registrar only has the authority to place a restriction (caveat) against the land pending a court determination of ownership.
- b) **Super Nova Properties Limited & another v District Land Registrar Mombasa & 2 others [2018] eKLR:** The Court of Appeal affirmed that the only institution with the mandate to cancel a land title based on fraud or illegality is a court of law.
- c) **Republic v District Land Registrar, Mombasa & 5 others Ex-Parte [2016] eKLR:** The court ruled that a registrar cannot revoke a title by a Gazette Notice as this is an arbitrary acquisition of property without compensation and breach of natural justice.
- d) **Kamonye (Exparte Applicant) (Judicial Review E001 of 2023) [2024] eKLR:** The court quashed a decision to revoke a title deed and

directed the Land Registrar to restore the land register as it was before the wrongful cancellation.

e) **Republic v Chief Land Registrar; Kitonga (Interested Party)**

[2024] eKLR: The court held that the registrar acted beyond his powers by trying to resolve a ownership dispute via a letter of cancellation instead of allowing Court process.

13. The Applicant has demonstrated through affidavit evidence that: the title was deposited in court custody in 1996, the document has remained in court custody for over 25 years and multiple attempts have been made to trace it without success. The Court takes judicial notice of the fact that litigation files spanning several decades sometimes suffer from loss or misplacement of documents due to administrative challenges in archival systems. In this particular case, the litigation began in the year 1996 until when the judgement was delivered by this Honourable Court on 28th day of March 2022, which is over 25 years in the corridors of justice. No evidence has been placed before the Court to suggest that the Applicant contributed to the loss of the title. In my view, the Applicant has established on a balance of probabilities that the certificate of lease cannot be traced and is therefore deemed lost.
14. The law governing lost or destroyed title documents is clear. Section 33 of the Land Registration Act, 2012 provides that where a certificate of title or certificate of lease is lost or destroyed, the proprietor may apply to the Registrar for the issue of a replacement certificate upon providing sufficient evidence of the loss. The Registrar must then publish a notice in the Kenya Gazette and in at least two newspapers of nationwide circulation and upon expiry of sixty days without objection, may issue a replacement certificate. These provisions are substantially similar to those that existed under section 33 of the repealed Registration of Lands Act (Cap 300). The purpose of the statutory procedure is to ensure that the

integrity of the land registration system is preserved while protecting genuine proprietors whose titles have been lost.

15. Consequently, the Notice of Motion Application is merited and the following orders shall abide: -

- a. *That a declaration is hereby issued that the original Certificate of Lease for Title No. Eldoret Municipality Block 9/1233 deposited in this Court on or about 6th November 1996 cannot be traced and is deemed lost.*
- b. *That the Deputy Registrar of this Court is hereby directed to issue a Certificate of Loss confirming that the said Certificate of Lease was deposited in court custody and is now missing.*
- c. *That the Chief Land Registrar and/or the County Land Registrar, Uasin Gishu County, is hereby authorized and directed to register the executed Transfer of Lease in favour of Mary Jemutai Kimaiyo for Title No. Eldoret Municipality Block 9/1233 without requiring production of the missing original Certificate of Lease.*
- d. *That where the Land Registrar deems it necessary under Section 33 of the Land Registration Act, the Registrar shall publish the requisite statutory notice and thereafter issue a replacement Certificate of Lease in the name of the Applicant.*
- e. *That pending completion of the registration process, any dealings with Title No. Eldoret Municipality Block 9/1233 are hereby prohibited except for purposes of effecting transfer to the Applicant.*
- f. *That the import of all these is that an order be and is hereby issued directed at the Land Registrar Uasin Gishu to move as the custodian of the record to remove and rectify any entries so presumed to have been held in favour of the Applicant by cancelling the entire title and a new one be reissued within the provisions of the Land's Act 2012 and the Land Registration Act 2012 forthwith.*
- g. *That the costs shall be in the cause.*

h. It is so ordered.

**DATED, SIGNED AND DELIVERED VIA CTS AT ELDORET THIS 13TH DAY
OF MARCH 2026**

.....
**R. NYAKUNDI
JUDGE**