



Miti Limited & 2 others v Suleiman & 5 others (Environment and Land Case 134 of 2017 & 24 (MERU) of 2025 (Consolidated)) [2025] KEELC 5768 (KLR) (28 July 2025) (Judgment)

Neutral citation: [2025] KEELC 5768 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ISIOLO
ENVIRONMENT AND LAND CASE 134 OF 2017 & 24 (MERU) OF 2025 (CONSOLIDATED)**

**JO MBOYA, J
JULY 28, 2025**

BETWEEN

MITI LIMITED PLAINTIFF

AND

ABDI AZIZ SULEIMAN 1ST DEFENDANT

BISHAR SULEMAN 2ND DEFENDANT

**NYARA YOUTH GROUP SUED THRO' ITS CHAIRMAN, WAAAIA
NYARA 3RD DEFENDANT**

THE SECRETARY LANDS, MINISTRY OF LANDS 4TH DEFENDANT

THE HON ATTORNEY GENERAL 5TH DEFENDANT

AS CONSOLIDATED WITH

ENVIRONMENT AND LAND CASE 24 (MERU) OF 2025

BETWEEN

ABDI AZIZ SULEIMAN 1ST PLAINTIFF

BISHR SULEIMAN 2ND PLAINTIFF

AND

**NYARA YOUTH GROUP (SUING THROUGH ITS MANAGEMENT
OFFICIALS, CHAIRMAN, SECRETARY AND TREASURER) DEFENDANT**



JUDGMENT

1. The Plaintiff herein filed the Complaint dated 25th April 2017; and wherein same [Plaintiff] sought the following reliefs:
 - i. A declaration that the Plaintiff is the legal owner of property known as Isiolo Township Block 5/11
 - ii. An order directing the 4th Defendant to issue the plaintiff's lease expeditiously.
 - iii. An order of permanent injunction restraining the 1st, 2nd and 3rd defendants, their joint and several agents, servants or beneficiaries from entering upon, / trespassing, constructing or conducting business on the plaintiff's property known as Isiolo Township Block 5/11.
 - iv. An order of Eviction against the 1st, 2nd, and 3rd Defendants, their joint and several agents, servants or beneficiaries from entering upon, trespassing, constructing or conducting business on the plaintiff's property known as Isiolo Township Block 5/11.
 - v. Costs of the suit with interest at court rates.
2. The 1st and 2nd Defendants do not appear to have entered appearance and or filed any statement of defence. Nevertheless, it is instructive to highlight that the 1st and 2nd Defendants had also filed their own suit namely; Meru ELC No. 24 of 2015. The suit under reference was subsequently transferred to Isiolo Environment and Land court and same was consolidated with the instant suit.
3. Vide Meru ELC No. 24 of 2015, which was ultimately transferred to Isiolo and consolidated to the instant matter, the 1st and 2nd defendant [who were the Plaintiffs in the said suit] sought the following relief:
 - a. A declaration that the Plaintiffs are the registered owners of plot number un-surveyed light industrial plot block 5/11- Isiolo.
 - b. An order of Eviction against the defendant jointly and severally requiring the defendant to vacate plot number un-surveyed light industrial plot block 5/11- Isiolo forthwith and in default thereof the officer commanding Isiolo police station do provide security to facilitate the defendant's forceful eviction from the suit land.
 - c. An order of Permanent injunction restraining the Defendants jointly and severally, their agents, relatives, employees and anybody else whomsoever acting on their behalf from entering, remaining on, building, cultivating and or howsoever else interfering with the plaintiff's quiet possession, user and or enjoyment of land parcel number un-surveyed light industrial plot block 5/11- Isiolo.
 - d. General damages.
 - e. Cost of the suit.
4. The 3rd defendant duly entered appearance and thereafter filed a statement of defence dated 6th March 2018 and wherein the 3rd defendant denied the claims by and on behalf of the Plaintiff. Furthermore, the statement of defence on behalf of the 3rd defendant was subsequently amended culminating into the amended statement of defence and counterclaim vide Originating Summons[OS]. The counterclaim vide originating summons has sought the following reliefs:



- i. The Plaintiff has been in exclusive, open and uninterrupted occupation of Isiolo Township/ Block 5/11 from time immemorial.
 - ii. The Applicants have extensively developed the suit land.
 - iii. That the Defendants' claim of title to and of the title documents was fraudulent and unprocedural.
5. The 4th and 5th Defendants, through the Honourable Attorney General duly entered appearance and filed a statement of defence dated 27th April 2023; and wherein the said defendants denied the claims on behalf of the Plaintiff. Furthermore, the 4th and 5th Defendants contended that same are neither involved in the preparation of the Part Development Plan and or issuance of the letter of allotment. In any event, the named defendants contended that the Plaintiff's suit did not disclose any reasonable cause of action as against the 4th and 5th defendants.
6. The suit beforehand came up for the usual case conference on 18th December 2023; whereupon the advocates for the parties confirmed that same had filed and exchanged the requisite list and bundle of documents, list of witnesses and the witness statement. To this end, the suit was confirmed as being ready for hearing.
7. The Plaintiff's case is premised on the evidence of one witness, namely; David Ndungú Muchai. Same testified as PW1.
8. It was the testimony of the witness [PW1] that same is the Estate Manager of the Plaintiff company. Furthermore, the witness averred that same has been authorized and mandated by the Plaintiff company to attend court and testify on behalf of the Plaintiff. In addition, the witness averred that same has since recorded a witness statement dated 29th November 2023 and which witness statement the witness sought to adopt and rely on as his evidence in chief. Suffice it to state that the witness statement under reference was duly adopted and constituted as the evidence in chief of the witness.
9. Moreover, the witness adverted to the list and bundle of documents dated the 25th April 2017 and same sought to tender and produce the documents as exhibits before the court. There being no objection to the production of the documents, same were duly produced and admitted as exhibits before the court.
10. Additionally, the witness referenced the list and bundle of documents dated 3rd June 2024 and thereafter sought to tender and produce the documents as further exhibit[s] before the court. There being no objection to the production of the documents, same were duly tendered and admitted as exhibits on behalf of the Plaintiff.
11. Furthermore, the witness referenced the Plaint dated 25th April 2017; and the Verifying affidavit thereto; and thereafter sought to adopt and rely on the contents thereof. Besides, the witness invited the court to grant the reliefs sought thereunder.
12. On cross-examination by learned counsel for the 3rd defendant, the witness averred that same is the Estate Manager of the Plaintiff company. Besides, the witness testified that by virtue of being the Estate Manager, same [witness] is therefore conversant with the facts of the matter beforehand.
13. It was the further testimony of the witness that same has worked with the Plaintiff company ever since 2014. In addition, the witness averred that same had previously visited the suit property. In this regard, the witness averred that same visited the suit property in 2015. Moreover, the witness testified that when he [witness] visited the suit property, there were a few structures standing thereon.



14. It was the further testimony of the witness that the suit property measures approximately 1.5 Ha. [3 acres]. Nevertheless, the witness averred that the suit property was acquired vide purchase from one Major C.N. Ndiffu.
15. To this end, the witness adverted to the sale agreement that was entered into and executed between the Plaintiff and Major C.N. Ndiffu, was the previous allottee.
16. While still under cross-examination, the witness averred that Waia Nyara was the chairman of Nyara Youth Group. Furthermore, the witness testified that Nyara Youth Group is a self-help group.
17. It was the further testimony of the witness that the Plaintiff herein has since been issued with a certificate of lease in respect of LR No. Isiolo Township/ Block 5/11. Furthermore, the witness testified that the Plaintiff was issued with the certificate of lease on 30th April 2021. In addition, the witness confirmed that the certificate of lease was issued while the suit was pending before the court.
18. On further cross-examination, the witness testified that the Plaintiff herein was not the original allottee. Nevertheless, the witness averred that the Plaintiff bought the land from the previous allottee. Besides, it was the testimony of the witness that the suit property currently has various developments thereon.
19. Furthermore, the witness averred that the 3rd defendant entered onto and trespassed onto the suit property in 2017. In any event, the witness averred that by the year 2017, there were no permanent structures that had been built on the suit property. Additionally, the witness averred that the Plaintiff procured and obtained approval from the County Government of Isiolo for the purposes of erecting a perimeter wall.
20. On cross-examination by learned counsel for the 4th and 5th defendants, the witness averred that the Plaintiff company has two [2] directors. Moreover, the witness testified that same has been authorized by the two [2] directors of the company to attend court and testify. However, the witness contended that same has neither tendered nor produced a copy of the Letter of authority before the court.
21. While still under cross-examination, the witness testified that same is also not aware whether the Plaintiff's company generated any resolutions to facilitate the filing of the suit. Be that as it may, the witness confirmed that the suit had been filed with the authority and sanction of the Plaintiff company.
22. On re-examination, the witness averred that the suit property was bought and purchased from the previous allottee. Furthermore, the witness added that the previous allottee thereafter executed a transfer of the property to the Plaintiff. In addition, the witness testified that the transfer of the property was approved by the Commissioner of lands[now defunct].
23. While still under re-examination, the witness averred that the Plaintiff has since been issued with a certificate of lease over the suit property. To this end, the witness reiterated that the Plaintiff is the lawful and legitimate proprietor of the suit property. Besides, the witness testified that the Plaintiff had previously procured and obtained an order of temporary injunction against the 3rd defendant. Nevertheless, the witness testified that the 3rd defendant disregarded the terms of the orders of temporary injunction. In this regard, the witness averred that it is the 3rd defendant who is currently in occupation of the suit property.
24. It was the further testimony of the witness that the 3rd defendant and its members entered upon the suit property in 2017. Moreover, the witness averred that the 3rd defendant's entry into the suit property was forceful and illegal.
25. With the foregoing testimony, the Plaintiff's case was close.



26. The 1st and 2nd defendants [who are the Plaintiffs in respect of Meru ELC 24 of 2015] and which matter was consolidated with the instant suit did not attend court and or tender any evidence. Furthermore, the case for the 1st and 2nd defendants was closed without any evidence being adduced before the court.
27. The 3rd Defendant's case is premised on the evidence of one witness namely; John Kirimi Lukunga. Same testified as DW1.
28. It was the testimony of the witness [DW1] that same is a member of the 3rd defendant. Moreover, the witness averred that same is conversant with the affairs of the 3rd defendant. However, the witness clarified that same has never been an official of the 3rd defendant.
29. The witness averred that same has since recorded a witness statement dated 27th July 2021; and which witness statement the witness sought to adopt and rely on as his evidence in chief. To this end, the witness statement under reference was duly adopted and constituted as the evidence in chief of the witness.
30. On cross-examination by Learned counsel for the Plaintiff, the witness averred that the 3rd defendant is a self- help group. Furthermore, the witness testified that the self -help group was duly registered; however, the witness added that same is not aware of the date/ year when the 3rd defendant was registered. Moreover, the witness averred that same has not produced a copy of the certificate of registration of the 3rd defendant before the court.
31. While still under cross-examination, the witness testified that the suit property lawfully belongs to the 3rd defendant. Besides, the witness averred that same [witness] came to reside on the land because the land belonged to his father. Nevertheless, the witness testified that same has not produced any document to show that the land belongs to his father.
32. It was the further testimony of the witness that the land in question also belongs to the 3rd defendant. Nevertheless, the witness acknowledged that same [witness] has not tendered any document to show that the land in question belongs to the 3rd defendant. Furthermore, the witness conceded that same has not tendered any document to demonstrate that the 3rd defendant and its members are the ones in occupation of the suit property.
33. Additionally, the witness testified that the 3rd defendant and its members entered onto the suit property in 2012. Moreover, the witness averred that the 3rd defendant has since developed the suit property. To this end, the witness testified that the 3rd defendant has erected a storey building on the suit property.
34. While still under cross-examination by learned counsel for the Plaintiff, the witness testified that the land in question belongs to the County Government of Isiolo. Further and in any event, the witness added that the land is located within the municipality of Isiolo. Furthermore, the witness testified that the 3rd defendant has never applied to be issued with a lease over and in respect of the suit property.
35. On re-examination by learned counsel for the 3rd defendant, the witness testified that the 3rd defendant is not a land grabber. Furthermore, the witness averred that the 3rd defendant is lawfully in occupation of the suit plot. Additionally, the witness testified that the suit property is fully developed. In any event, the witness testified that there is a storey building constructed on the suit property by the 3rd defendant.
36. With the foregoing testimony, the 3rd defendant's case was duly closed. On the other hand, the 3rd defendant also proceeded to and withdraw the counterclaim vide originating summons. For good measure, the counterclaim was duly marked as withdrawn.



37. The 4th and 5th defendants did not call any witnesses. For coherence, the 4th and 5th defendants' case was closed without any evidence being tendered and or adduced.
38. Upon the close of the hearing, the advocates for the parties sought time to file and exchange written submissions. To this end, the court proceeded to and granted timeline[s] for the filing and exchange of written submissions.
39. The Plaintiff filed written submissions dated 30th June 2025; and wherein the Plaintiff has canvassed two [2] salient issues, namely; that the Plaintiff is the lawful and legitimate proprietor of the suit property; and that the defendants [1st, 2nd and 3rd defendant] have no lawful basis to enter upon and or remain on the suit property. Furthermore, the Plaintiff has contended that the actions by and on behalf of the 3rd defendant have been perpetrated on the face of an existing order of temporary injunction. To this end, the Plaintiff has implored the court to find and hold that the Plaintiff's claim is merited.
40. The 3rd defendant filed written submissions dated 2nd July 2025 and wherein same has highlighted and canvassed three [3] salient issues, namely; that the suit against the 3rd defendant is premature and legally untenable; that the Plaintiff herein has neither tendered any credible evidence nor justified the validity of the Certificate of lease held over the suit property; thirdly that the Plaintiff is not entitled to the reliefs sought at the foot of the Plaintiff.
41. The 4th and 5th defendant [the Honourable Attorney General] do not appear to have filed any written submissions. For good measure, no such submissions are traceable to or obtainable from the court tracking system. [the e-platform].
42. Having reviewed the pleadings, the evidence tendered [both oral and documentary,] and upon consideration of the written submissions filed, I come to the conclusion that the determination of the instant matter turns on four [4] key issues, namely; whether the suit against the 3rd defendant is premature and legally untenable or otherwise; whether the Plaintiff has placed before the court plausible and credible evidence to demonstrate ownership of the suit property or otherwise; whether the 3rd defendant has any lawful rights to and in respect of the suit property or otherwise; and what reliefs [if any] ought to be granted.
43. Regarding the first issue, it is worthy to recall that learned counsel for the 3rd defendant has contended that the 3rd defendant is a self-help group and not a corporate body. Furthermore, it has been submitted that by virtue of being a self-help group, the 3rd defendant cannot be sued in its own name. On the contrary, it has been submitted that the 3rd defendant can only be sued through its officials. To this end, learned counsel for the 3rd defendant has posited that the suit as against the 3rd defendant is misconceived, pre-mature and legally untenable.
44. Additionally, learned counsel for the 3rd defendant has submitted that same filed a notice of preliminary objection dated 5th February 2024; and wherein the 3rd defendant sought to strike out the suit as against itself.
45. Whereas the Plaintiff has confirmed and acknowledged that the 3rd defendant is a youth group in terms of paragraph 3 of the plaintiff, it is worthy to recall and reiterate that the issue as pertains to the competence of the suit was taken and canvassed by the 3rd defendant before the court [differently constituted]. The court [differently constituted] thereafter proceeded to and rendered a ruling on the preliminary objection that had been raised and canvassed by the 3rd defendant. For good measure, the ruling is dated 18th March 2024 and wherein the learned judge proceeded to and dismissed the preliminary objection dated 5th February 2024.



46. The 3rd defendant herein does not appear to have filed any notice of appeal and or appeal against the decision of the court [differently constituted]. To this end, the raising of the same issue before this court constitutes an attempt to invite this court to sit on appeal on the decision of a court of concurrent/ coordinate jurisdiction.
47. I am afraid that the invitation by the 3rd defendant constitutes an abuse of the due process of the court. Instructively, if the 3rd defendant was aggrieved by the ruling rendered on 18th March 2024, the only avenue under the law was to mount an appeal; and not to wait for another Judge, and re-visit the same issue.
48. To the extent that no appeal was ever filed and or mounted against the ruling rendered on 18th March 2024, the same issue cannot now be re-visited by learned counsel for the 3rd defendant. Further and in any event, this court is prohibited by the doctrine of *functus officio* from re-engaging with the issue of the competence of the suit as against the 3rd defendant.
49. Before concluding on this issue, it is imperative to take cognisance of the dictum of the Supreme Court of Kenya [the apex Court] in the case of Kenya Hotel Properties Limited *v Attorney General & 5 others* (*Petition 16 of 2020*) [2022] KESC 62 (KLR) (7 October 2022) (Judgment)
55. We need to emphasize and reiterate that Mutunga CJ did not in any way state that the High Court may in any way, purport to overturn or order final decisions issued by higher courts than itself to start *de novo*, especially on appeals that have been finally concluded by the highest court at the time. Furthermore, the concurrence by Mutunga SCJ cannot override the judgment by the majority, despite what the appellant chooses to submit. As was thus rightly noted by the High Court and the Court of Appeal, the rule of thumb is that superior courts cannot grant orders to reopen or review decisions of their peers of equal and competent jurisdiction much less those court higher than themselves.
50. Furthermore, the Honorable Court of Appeal has also addressed the legal position that a court of law cannot purport to upset and or sit on appeal on the decision of a court of a concurrent jurisdiction. In the case of *Wakhungu & 2 others v Republic* (Criminal Appeal E039 of 2022 & 077 & 078 of 2023 (Consolidated)) [2024] KECA 1426 (KLR) (11 October 2024) (Judgment) the court stated and observed thus;
52. As we pen off, we wish to restate that if the Judiciary is to perform its duties and functions effectively and remain true to the spirit with which it is sacredly entrusted, it must uphold the dictate that when the courts higher in the hierarchy make decisions, the decisions bind the lower courts. Further, a court cannot sit on appeal over the decision of other courts of concurrent jurisdiction. If we allow situations where despite orders of the courts of higher hierarchy being alive, a party is allowed to move to another court implicitly challenging those orders albeit invoking a criminal jurisdiction as opposed to civil and obtain a different judgment, then the very cornerstone of our courts' architecture will give way, and with it, will disappear the rule of law and certainty in the administration of justice. Judgments of courts remain final and binding on all courts below them. They must be deferred to notwithstanding any misgivings that other judges and judicial officers may have, and quite irrespective of the noble aims that may tempt them to do otherwise.
51. In my humble view, learned counsel for the 3rd defendant cannot disingenuously re-visit the purport of the preliminary objection dated the 5th February 2024, by side wind. In this regard, I find and hold that the arguments touching on the competence of the suit are mistaken; and constitutes an abuse of the Court process.



52. Turning to the second issues, namely; whether the Plaintiff herein placed before the court plausible and credible evidence to demonstrate its ownership of the suit property, it is imperative to underscore that the Plaintiff tendered and produced before the court assorted documents underpinning its entitlement to the suit property. In particular, the Plaintiff tendered and produced before the court a copy of the letter of allotment that was issued in favor of Major C.N Ndiffu and the consequential documentation underpinning the transfer of the property to and in favor of the Plaintiff. Furthermore, the Plaintiff also tendered a copy of the approval by the Commissioner of lands [now defunct] sanctioning the transfer of the allotment in favor of the plaintiff. [See approval dated 3rd April 1992].
53. Additionally, the Plaintiff tendered and produced before the court evidence that upon compliance with the terms of the letter of allotment and the consequential processes, the suit property, which was previously un-surveyed, was duly surveyed. Moreover, the Plaintiff also placed before the court evidence of the amendment of the registry index map [RIM] underpinning the issuance of the new grant. Finally, the Plaintiff also tendered and produced a copy of the Certificate of Lease issued in respect of the suit property.
54. I beg to state that the documentation that were tendered and produced by the Plaintiff herein were neither challenged nor controverted. Furthermore, there is no gainsaying that the Certificate of title in favor of the Plaintiff has not been impeached and or impugned. To this end, it suffice it to underscore that the certificate of tile vests in the Plaintiff Company lawful rights to and in respect of the suit property. [See the holding in the case of Embakasi Properties Limited vs the Commissioners of Land [2019] eKLR; Elizabeth Wambui Githinji and 29 others vs Kenya Urban Road Authority [2019] eKLR; Moya Drift Farm Limited vs Theuri [1973] EA p.114; Mohanson Kenya Limited v the Registrar of Titles [2017] eKLR Waas Enterprise Limited v Nairobi City Council [2014] eKLR, respectively].
55. Additionally, it is also worthy to recall that in the course of the hearing of the subject matter, the parties agreed to have the dispute pertaining to and concerning ownership of the suit property, namely; Isiolo Township block 5/11 to be referred to National Land Commission, with a view to determining the rightful allottee of the suit property. To this end, the court [differently constituted] made an order on 10 December 2018, referring the matter to the National Land Commission.
56. The terms of the order made by the Honourable Judge on 10th December 2018 are pertinent. In this regard, it suffices to reproduce the said terms. Same are reproduced as hereunder;
- i. The National Land Commission to file a report showing who is the rightful allottee of the suit plot, namely un-surveyed Industrial Plot Isiolo township block 5/11 within 45 days of the order.
 - ii. The Plaintiff to serve this order.
 - iii. Mention on 27th February 2019.
57. It is worth recalling that the order of reference was duly served upon National Land Commission, who thereafter transmitted the order to the Directorate of Land Administration, for further action and preparation of a report.
58. The Directorate of Land Administration indeed complied with the order of the court and filed a report dated 9th March 2020 and wherein it was confirmed that the suit plot was lawfully allocated to and in favour of one Major C.N Diffu vide letter of allotment issued on 1st November 1991. Furthermore, it was confirmed that the allottee thereafter sought for and obtained the approval of the commissioner of lands [now defunct] to transfer the plot to and in favour of the Plaintiff. For good measure, it was



clarified that the approval was duly granted and the suit plot was transferred to and in favour of the Plaintiff.

59. Moreover, the directorate of Land Administration confirmed that the process leading to the survey and preparation of the cadastral plan and map was undertaken, culminating into the issuance of a Lease. In any event, it was confirmed that the suit plot belongs to the Plaintiff.
60. It is instructive to underscore that the report under reference was prepared and filed pursuant to a consent order entered into by the parties. Moreover, the report under reference was never challenged by either of the parties. To this end, it is common ground that the contents of the report vindicate the Plaintiff's claim and or ownership of the suit property.
61. From the totality of the evidence on record, including the report dated 9th March 2020, albeit filed in court on the 11th March 2020, I come to the conclusion that the Plaintiff herein has proved and established that same is the lawful and legitimate owner of the suit property.
62. To this end, the Plaintiff is enjoined to partake of and benefit from the ownership of the suit property until and unless its title is impeached in accordance with the due process of the law. [See Article 40(3) of *the Constitution* 2010] [see also the decision in the case of Isaac Wanjohi Gathango v Registrar of titles [2011] eKLR and Kuria Greens limited v Registrar of titles and another [2012] eKLR respectively].
63. Next is the issue as to whether the 3rd defendant has any lawful rights over and in respect of the suit property. It is worthy to recall that DW1 [who testified on behalf of the 3rd defendant] contended that the 3rd defendant is lawfully in occupation of the suit property. Furthermore, the said witness also averred that the suit property lawfully belongs to the 3rd defendant. In addition, the witness testified that the 3rd defendant has developed the suit property. In particular, the witness highlighted the existence of a storey building on the suit property.
64. Nevertheless, it is not lost on me that DW1 conceded that same [DW1] has neither tendered nor produced any document to underpin the claim on behalf of the 3rd defendant.
65. For good measure, it is worthy to reproduce the salient aspect of the testimony by DW1 while under cross-examination by learned counsel of the plaintiff.
66. Same stated as hereunder:

" I do confirm that the land belongs to us. The land belongs to the 3rd defendant. however, I wish to state that I have not produced any document to show that the land belongs tot eh 3rd defendant. I also wish to state that we have not applied for a lease over and in respect of the suit property."

67. From the exerpt reproduced in terms of the preceding paragraph, there is no gainsaying that the 3rd defendant has neither tendered nor produced any document to underpin its claim to the sued property. Furthermore, DW1 has conceded that 3rd defendant has never applied for a lease over the suit property.
68. To my mind, there is no foundation upon which the 3rd defendant can stake a claim to the suit property. In any event, it is common knowledge that ownership of land can only be premised and or predicated on legal documents known to law. In respect of the suit property, one would have expected the 3rd defendant to tender and produce, if any, an application for allotment of land, the minutes of the county council of Isiolo [if any] recommending allotment; a letter of allotment and consequential documentation underpinning compliance with the terms of the letter of allotment. In addition, it would also have been incumbent upon the 3rd defendant to produce a Certificate of lease, if any. [See



the holding in *Dr. Joseph N.K Arap Ngok vs Moiyo Ole Keiwua* [1997] eKLR and *Wreck Motors Enterprises Limited v the Commissioner of Lands and another* [1997] eKLR, respectively.].

69. In my considered view, the 3rd defendant has not established any claim to and in respect of the suit property. Moreover, it is not lost on me that the counterclaim vide originating summons, which had been filed by the 3rd defendant, was withdrawn. Suffice it to state that the withdrawal of the counterclaim by way of originating summons extinguished any claims [if at all] that the 3rd defendant could propagate over the suit property.
70. Before concluding on this issue, there is one more perspective which merits mention and a short consideration as pertains to the claims by the 3rd defendant. Suffice it to posit that the 3rd defendant herein had been sued vide Meru ELC No. 24 of 2015, which suit was consolidated with the subject suit. In addition, there was an application dated 15th April 2015 which had been filed by the 1st and 2nd defendants herein [who are the Plaintiffs in the said suit].
71. The application under reference was heard and disposed of vide ruling dated 5th November 2015 by Hon. Justice Muchoki Njoroge, Judge [now retired]. In the course of the ruling, the learned judge reviewed the various documents that had been filed by the current 3rd defendant and found that the 3rd defendant had been propagating fraudulent documents in its endeavour to claim the suit property.
72. Paragraph 12 of the ruling of the learned judge is instructive. It suffices to reproduce same.
73. The same paragraph states thus;
- The National Land Commission in a letter dated 22nd May 2015 and addressed to the county chief officer, land, physical planning and urban development-Isiolo County, categorically denied the authenticity of the defendant's document and laconically termed them a forgery. The writer also unequivocally also stated that his signature had been forged.
74. To my mind, the statement by the learned judge [details in terms of the preceding paragraph] depicts the 3rd defendant herein as a bunch of persons hellbent on propagating fraud and forgery. Quite clearly, the 3rd defendant cannot be allowed to propagate such kind of criminal conduct in an endeavour to acquire the suit land.
75. Turning to the last issue, namely; what reliefs, if any, ought to be granted, it is important to underscore that the subject matter involves two suits which were consolidated for purposes of hearing and determination. Furthermore, the various parties sought diverse reliefs at the foot of their pleadings.
76. In the premises, I beg to start with the reliefs that were sought at the foot of Meru ELC No. 24 of 2015. The suit herein was filed by the 1st and 2nd defendants and same sought to be declared as the lawful owners of the suit property. Nevertheless, it is common ground that the said 1st and 2nd defendants [Plaintiffs in the suit] did not testify in support of their claim. In this respect, the suit in respect of Meru ELC No. 24 of 2015 was never prosecuted. To this end, the said suit be and is hereby dismissed.
77. Next is the originating summons that was filed by and on behalf of the 3rd defendant. Suffice it to state that the 3rd defendant had sought a declaration that same had since acquired the suit property by way of adverse possession. However, on the 4th June 2025, the counterclaim vide originating summons [OS] was withdrawn at the instance of the 3rd defendants. To this end, there is no gainsaying that the counterclaim stood withdrawn.
78. With regard to the claim by the Plaintiff, it is worthy to recall that the Plaintiff herein sought various reliefs, including a declaration that the Plaintiff is the lawful proprietor of the suit property. While discussing issue number two [2] hereof, the court has come to the conclusion that the Plaintiff has



laid before the court credible evidence to demonstrate ownership of the suit property. Moreover, the director of land administration filed a report in court confirming that the Plaintiff is the lawful owner of the suit property.

79. Premised on the findings in terms of issue number two [2], I come to the conclusion that the Plaintiff herein is entitled to the declaration of ownership of the suit property. To this end, I do declare that the Plaintiff is the lawful proprietor of the suit property.
80. The other relief that has been sought by the Plaintiff relates to an order of permanent injunction, to restrain and or prohibit the defendants and more particularly, the 1st, 2nd and 3rd defendants from interfering with the Plaintiff's right to the suit property. It is pertinent to state that an order of permanent injunction is intended to protect and vindicate the rights of the registered owner of a designated property.
81. As pertains to landed property, the issuance of an order of permanent injunction goes a long way in protecting the rights to exclusive ownership, possession and use.
82. I beg to underscore that unless an order of permanent injunction is issued, there is a likelihood that the plaintiff herein will not partake of and or benefit from ownership of the suit property. In this regard, a failure to grant an order of permanent injunction shall negate the property rights of the Plaintiff. [See Sections 24 and 25 of the [Land Registration Act](#)].
83. In short, I find and hold that the Plaintiff is indeed entitled to an order of permanent injunction. In this regard, I proceed to and do hereby grant the orders as sought.
84. Turning to eviction, I beg to underscore that the 3rd defendants herein, who are currently in occupation of the suit property, do not have any lawful rights thereto. To the extent that the 3rd defendant has no lawful rights to the suit property, the same cannot be allowed to remain in situ. Suffice it to underscore that the 3rd defendant and its members must vacate the suit property and allow the lawful owner to take charge.
85. To facilitate the removal of the 3rd defendant and its members from the suit property, an order of eviction suffices. Consequently, I come to the conclusion that the Plaintiff herein has established a basis to warrant the issuance of an order of eviction.

FINAL DISPOSITION

86. Flowing from the analysis contained in the body of the Judgment, it must have become apparent that the Plaintiff herein has proved and or established its case to the requisite standard. Quite clearly, the Plaintiff has demonstrated entitlement to and ownership of the suit property.
87. Conversely, the 1st, 2nd and 3rd defendants have not shown any lawful cause and or basis to warrant the remainder on and occupation of the suit property. Simply put, the said defendants have no stake and or claim to the suit property.
88. Consequently, and in the premises, the final orders that commend themselves to the court are as hereunder;
 - I. Judgment be and is hereby entered in favour of the Plaintiff in terms of prayers (a), (c) & (d) of the Plaint dated 25th April 2017.
 - II. In particular, a declaration be and is hereby issued that the Plaintiff is the lawful owner of the suit property, namely, Isiolo Township Block 5/11.



- III. An order of Permanent injunction be and is hereby issued to restrain the 1st, 2nd and 3rd Defendants, either by themselves, agents, servants, employees and or anyone claiming under them, from entering upon and or interfering with the plaintiff's rights thereto.
- IV. The 1st, 2nd and 3rd Defendants be and are hereby ordered to vacate and hand over vacant possession of the suit property within 90 days from the date hereof.
- V. In default by the 1st, 2nd and 3rd Defendants to vacate and hand over vacant possession of the suit property in line with clause (IV) hereof, the Defendants shall be evicted from the suit property; and in this regard, an order of eviction shall issue.
- VI. In the event of Eviction of the Defendants in terms of clause (V) hereof, the costs and expenses of eviction and consequential demolition shall be certified by the Deputy Registrar and thereafter be borne by the 1st, 2nd and 3rd Defendants jointly and or severally.
- VII. The 1st and 2nd Defendants' suit vide Meru ELC 24 of 2015 [which was consolidated with the subject matter] be and is hereby dismissed with no orders as to costs.
- VIII. That Costs of the suit be and is hereby awarded to the plaintiff and same shall be borne by the 1st, 2nd and 3rd Defendants only.
- IX. Any other relief not expressly granted is hereby declined.

89. It is so ordered.

DATED, SIGNED AND DELIVERED AT ISIOLO THIS 28TH DAY OF JULY 2025

OGUTTU MBOYA, FCI Arb; CPM [MTI-EA].

JUDGE

In the presence of:

Mutuma/Hussein – Court Assistant

Mr. Mutunga for the Plaintiff

Mr. Mokuia for the 3rd Defendant

Mr. Kimathi [Principal Litigation Counsel] for the 4th and 5th Defendants

No appearance for the 1st & 2nd Defendants

