

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ELCOS CASE NO. E010 OF 2021

GWAKA WA UThERI MWITIKIRIA INVESTMENTS UTAWALA LIMITED (FORMERLY MWITIKIRIA INVESTMENTS COMPANY)::PLAINTIFF

AND

DAVID NGANGA & 2 OTHERS::DEFENDANT/APPLICANT

(Suing as the legal Representatives of the Estates of Ndinguri Karugia-Deceased)

AND

NJOROGE HERMAN::4TH DEFENDANT

AND

SIMON NGIGI KAMAU & 14OTHERS::INTERESTED PARTIES

AND

JOHN NGUGI KIMANI::INTENDED INTERESTED PARTY

RULING

The application is dated 15th September 2025 and is brought under Article 40 of the Constitution, Section 1A,1B,3A,63E of the Civil Procedure Act, Order 1 Rule 10, Order 51 Rule 1 of the Civil Procedure Rules seeking the following orders;

1. That pending the inter parte hearing of this Application, this Honourable Court be pleased to correct an omission in the Orders issued in the Ruling

dated 9th December 2024 and clarify that the OCS Muungano Police Station in Utawala is responsible in ensuring strict compliance with said Orders.

2. That this honourable court issue order stopping the Plaintiff from selling plots curved out of the suit property.
3. That the court orders members of the Plaintiff to stop further interference with the topography of the suit property as directed in the ruling dated 9th December 2024.
4. That cost of the Application be provided for.

It is supported by the annexed affidavit of David Ng'an'ga and is based on the following grounds that in the ruling of this court on the application dated 27th August 2025, the court directed that the matter was not urgent and further directed inter party hearing on the 19th November,2025. That the said application had sought a clarification on the specific police station responsible to oversee compliance with orders dated 9th December 2024 by Hon. C.A Ochieng which had omitted the name of the police station. That in the ruling on the said application, the court set inter party hearing of the application on the 19th November,2025. That the Applicant felt that date given for the inter party hearing was prejudicial to him considering 2024 by Hon C.A. Ochieng which had stated that the police to ensure compliance to status quo but omitted the name of the specific police station to do the enforcement. That he subsequently filed application dated 15th September 2025

which was certified as urgent and the matter was set for inter party hearing on 25th September 2025.

That during the said interparty hearing, the Advocate for the plaintiff Company informed the court that his clients, the two sole directors of the company had since passed on and that they were in the process of appointment of their substitutions. That the court directed parties to the reply and submissions and mention date was fixed for 27th November 2025. That during the mention of the 27th November 2025, the Advocate for the Plaintiff requested the court for extension of time to allow them conclude the appointment of the deceased directors and a further mention date was fixed for 28th 2025. That on the 15th December, 2025, the Administrator Mr. David Nganga visited the suit land and found construction were on going in a number of plots. That he reported the matter at Muungano Police Station and thereafter accompanied by three police officers from the station visited the land and confirmed that construction were indeed going on. That some of the construction workers on seeing him accompanied by the police officers, they fled but one person by the name Datche Onyango Peter explained to them that he had bought the plot and showed them a receipt that indicated he had paid Kshs. 300,000 on 31st October 2025. That the police officers said they could not arrest him because the order dated 9th December,2024 did not specify the police station mandated to enforce the status quo order. That the topography of the land has

continued to be interfered with contrary to the orders of this Court dated 9th December, 2025 evidenced by notable change in topography in the photographs in the application dated 27th August, 2025 that were taken on 20th August 2025 and the same captured in photographs taken on the 15th December, 2025. That since it is very clear that there are persons purporting to be officials of the Plaintiff company selling plots to un-suspecting members of the public. They urge the court to stamp its authority and direct the OCS Muungano Police Station to ensure strict compliance with orders dated 9th December, 2024. That by the time the matter comes up for the mention on the 28th April, 2026 more people will have been conned to buy plots hence need for urgent intervention now that the Directors of the Plaintiff company are reported to be deceased.

I have considered the application and the supporting affidavit. On perusal of the court file I find that the status quo orders were entered into by the consent of the parties on the 30th September 2021 after compromising the application dated 8th March 2021. The issue of involvement of the police was raised and determined in the ruling dated 19th February 2024 and another ruling dated 26th February 2025. I find this application is an abuse of the court process as the issues raised herein were heard and determined in the previous rulings. I find this application is not merited and is dismissed with costs.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 24TH DAY OF
MARCH 2026.**

N.A. MATHEKA

JUDGE

ORIGINAL