

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT OF KENYA**  
**AT NAKURU**  
**ELC APPEAL NO. 7 OF 2019**

**CECILIA NJOKI MAINA.....1<sup>ST</sup> APPELLANT**  
**IBRAHIM KING'ORI NJOKI.....2<sup>ND</sup> APPELLANT**

**VERSUS**

**JANE WAMBUI WAHOME.....**  
**RESPONDENT**

**R U L I N G**

1. This ruling in respect of the Notice of Motions dated 11<sup>th</sup> December 2025, 3<sup>rd</sup> December 2025 and 5<sup>th</sup> December 2025.
2. The Notice of Motion dated 1<sup>st</sup> December 2025 is brought under **Order 2 rule 5, Section 3A of Civil Procedure Act CAP 21 Laws of Kenya, and all other enabling provisions of the law)**
3. It seeks orders:-
  - (a) Spent
  - (b) That this honorable Court be pleased to enjoin Ibrahim King'ori Njoki to be 2<sup>nd</sup> Appellant herein.
  - (c) That Ibrahim King'ori Njoki is the one who bought the disputed plot from Jane Wambui Wahome and Wahome Gichachi at a price of Kshs.280,000/= in year 1996.
  - (d) That the Honorable Court be pleased to hear that despite that the sale agreement was filed before the

Subordinate Court. The 2<sup>nd</sup> applicant herein did not participate during the litigation.

(e) That the Respondent Jane Wambui Wahome has threatened and even hired strangers who are endangering to destroy the life of Appellants and properties.

(f) That the Appellants filed the Suit No. E031 of 2025 in Nyahururu Magistrate Court to stop Respondents from endangering her life and property. The respondent declined to follow up with the said court and instead they moved another court of same jurisdiction with an application to be allowed to execute a premature Court decree of year 2011.

(g) That Honorable Court to be pleased to peruse the documents annexed herein for more confirmation and grant the appellants order that will protect the rights and fundamental freedoms that are being violated by the Respondent and is contrary to constitution of Kenya

4. The application is supported by the affidavit of Cecilia Njoki Maina, the Appellant herein, sworn on the 1<sup>st</sup> December 2025.
5. The Notice of Motion dated 3<sup>rd</sup> March 2025 is brought under **Order 40 Rule 1, Order 45 Rule 1 and 2, Order 22 Rule 25 and 52, Section 3A of Civil Procedure Act and all enabling Laws.**

6. It seeks orders:-
  - (1) Spent
  - (2) That the Court be pleased to stop the respondent from destroying her property.
  - (3) That the Court to order injunction restraining the defendant, agent, and servant from entering the disputed plot No.28.
  - (4) That the court order that we rebuild a house to live.
  - (5) That what is being done in Nyahururu Magistrate Court is inhuman and contrary to Law.
  - (6) The Court to order OCS Nyahururu to maintain the status quo.
  - (7) That we attach the orders pertaining this event.
  - (8) That we attach the pictures of the site of the disputed place.
7. The Application is supported by the affidavit of Cecilia Njoki Maina; the Appellant herein, sworn on the 3<sup>rd</sup> December 2025.
8. The Notice of Motion dated 5<sup>th</sup> December is brought under **order 2 Rule 5, Section 3A of Civil Procedure Act and all enabling laws.**
9. It seeks orders :-
  - a) Spent
  - b) That the honorable Court Order dated 4<sup>th</sup> December 2024 was taken to the Inspector of Police in charge of

- Nyahururu Police station and he said that they cannot act upon the order because they are not mentioned therein.
- c) That the honorable Court be pleased to issue a direct order to the OCS Nyahururu Police station to enforce this honorable Court Order dated 4<sup>th</sup> December 2025.
  - d) That Dishon Wahome and Alex Wahome intentionally disobeyed the Court Order and proceeded to cut down the fruit trees and other vegetables while the old lady (appellant) here in looked at them helplessly.
  - e) That the old lady (appellant herein) who is approaching 87 years of age tried to seek alternative from Nyahururu High Court and unfortunately, she was told that the Honorable Court duty Judge had officially gone out of court and will resume next week.
  - f) That the court order must be heard.
  - g) That Court must be honored
  - h) That the court order must be obeyed
  - i) Dishon Wahome and Alex Wahome are guilty of contempt of the court and this court if it pleased, let the cause of action arise within the jurisdiction of this Honorable Court against the above mentioned parties to enable that law and order is maintained accordingly.
  - j) That the old lady spends the night at cold and the land that was bought by her son Ibrahim Kingori Njoki from the defendant in year 1996 at a price of Kshs280,000/= is now in danger.

10. The application is supported by the affidavit of Cecilia Njoki Maina, the appellant herein, sworn on the 5<sup>th</sup> December 2025.
11. In response, the Respondent filed the Replying Affidavit dated 16<sup>th</sup> December 2025.
12. It is the Respondents case that the Appellant seeks an order of stay of execution six (6) years after the judgment of this court was delivered.
13. Further that there is known plot known as plot No.28 as the same was first introduced into these proceedings vide the Notice of Motion dated 3<sup>rd</sup> December 2025.
14. The Notice of Motions were canvassed by way of written submission.
15. It is the Appellant's submission that she was not served before the eviction was be undertaken.
16. It is the further submitted that plot No.28 Nyahururu Go down existed in the year 1990 and that she had put up building on the said plot. That she is entitled to the same by way of adverse possession.

17. It is further submitted that the plot is not on a road reserve. She prays that the applications be allowed.
18. It is the Respondent's submissions that the Applications are an abuse of the court process and an attempt to resurrect issues that were conclusively determined over a decade ago.
19. It is further submitted that the Respondent has never been served with the three applications. That the affidavit of service alleging service upon a nephew called Alex Wahome is false as she has no such nephew.
20. It is submitted that the orders sought cannot be granted as they would be enforceable, as execution has already been carried out. Reliance placed on the case of ***Republic -vs- Kenya National Examinations Council Exparte Gathenji & others (1997) eKLR.***
21. It is submitted that the orders validly granted had already been lawfully executed by the time these applications were filed. Further that contempt proceedings are quasi criminal and strictly comply with the law hence contempt must be proved to a standard higher than a balance of probabilities and requires personal service of the order, a penal notice and proof of willful disobedience.

It is submitted that none of these elements were satisfied. Reliance is placed on the case of ***North Tetu Farmers Co. Ltd Vrs Joseph Nderitu (2013) eKLR***

22. It is the Respondent's submission that the application seeking to enjoin, Ibrahim King'ori Njoki as a party is legally untenable, procedurally misconceived and fatally late. That there is no pending memorandum of appeal, no subsisting dispute for determination and no undecided question upon which this court may exercise appellate jurisdiction. That in the absence of a live appeal there is nothing upon which the joinder can attach.

23. It is also submitted that the application for joinder is a clear abuse of the court process, calculated to re-open a dispute that has long been settled and to circumvent the doctrine of finality in litigation.

24. The respondent also submitted that the Applicant has filed multiple proceedings seeking similar reliefs over the same matter.

Further that the applicant is guilty of laches as she took no steps to challenge the judgment of this court which was delivered six (6) years ago. No appeal is pending in the Court of appeal. The Respondent prays that the Notice of Motions be dismissed with costs.

25. I have considered the Notice of Motions, the affidavits in support, the responses thereto, the rival submissions and the authorities cited. The issues for determination are: -

**(i) Whether the three (3) Notice of Motions are merited.**

**(ii) Whether they are an abuse of the court process.**

**(iii) Who should bear costs?**

26. It is not in dispute that the Appellant's appeal was dismissed by this Honorable Court on the 28<sup>th</sup> November 2019. The said judgment is about six (6) years old. There is no appeal pending in the Court of Appeal.

27. It is also not in dispute that execution has already taken place. There is nothing pending in this court or the court of Appeal.

28. I agree with the Respondent's submission that there is no pending Memorandum of appeal or subsisting dispute for determination before this court.

29. It is not possible to enjoin Mr. Ibrahim King'ori Njoki at this point because he was not a party to the original suit. The alleged sale was not pleaded in the original suit.

30. It is also not possible to grant the orders sought from the Notice of Motion dated 5<sup>th</sup> December 2025 because execution had already taken place when the alleged orders were issued.

31. In my view, the Appellant is trying to resurrect issues that were conclusively determined over a decade ago.

32. I find no merit in the three notice of motions. The same are found to be an abuse of the court process and the same are dismissed with costs to the Respondent.

**Ruling dated signed and delivered virtually at Nakuru this 19<sup>th</sup> day of March 2026.**

**L KOMINGOI**

**JUDGE**

**In presence of :-**

No appearance for the Appellant

Mr. Ibrahim King'ori Applicant

Mr Waichungo for the Respondent

Court Assistant: Nelima