



**delivered on 28<sup>th</sup> January 2026, the decree issued on 2<sup>nd</sup> March 2016 and all consequential orders including eviction.**

**2. That pending the hearing and determination of this suit, an order be issued restraining the plaintiff, his agents, servants, hirelings or any persons from evicting, demolishing structures or in any other way interfering with the applicant's quiet possession of L.R No. LAIKIPIA/KALALU/56.**

**3. That the interlocutory judgment entered on 18<sup>th</sup> October 2013 and the final judgment delivered on 28<sup>th</sup> January 2016 be set aside *ex debito justitiae*.**

**4. That the applicant be granted unconditional leave to enter appearance and file a defence, annexed hereto and the matter be heard on merit.**

**5. That the costs of this application be in the cause”.**

**2.** The application is premised on grounds on the face of the application and the supporting affidavit of the applicant. She contends that she is the 2<sup>nd</sup> defendant herein and the widow of James Wachira Mihunyo who is the registered owner of the suit parcel no. LAIKIPIA/KALALU/56 and that she stays on the said land. She avers that she is not known as Lucy Wanjiru Wachira and that herself and the land Registrar have never been served with any suit documents. She further avers that her husband lawfully acquired the suit land, thus it is his estate which ought to have been sued, adding that her draft defence raises triable issues. She contends that on 20.1.2026, hired goons descended on her homestead and demolished her house without any lawful eviction orders.

**3.** The application was served but no response has been filed hence the application is unopposed. In the Supreme Court of Kenya case of **Gideon Sitelu Konchellah v**

## **Julius Lekakeny Ole Sunkuli & 2 others [2018]**

**eKLR**, the court stated that;

**“Be that as it may, as a court of Law, we have a duty in principle to look at what the application is about and what it seeks. It is not automatic that for any unopposed application, the court will as a matter of course grant the sought orders. It behooves the Court to be satisfied that prima facie, with no objection, the application is meritorious and the prayers may be granted”.**

- 4.** Thus the court will consider the merits of the application and determine if the prayers sought are merited.
- 5.** The applicant contends that she is not Lucy, she is Ruth and that she was never served with the suit documents. The court has unlimited discretion to set aside or vary a judgment entered in default of appearance upon such terms as are just in the light of all facts and circumstances both prior and subsequent and of the

respective merits of the parties, See **Philip Kiptoo Chemwolo and Mumias Sugar Company Ltd V Augustine Kubede (1982-1988) KAR page 1036.**

The main concern of the court is to do justice to the parties, See **Patel V EA Cargo Handling Services Ltd (1974) EA 75.**

6. In **Frigonken Ltd v. Value Pak Food Ltd, HCCC NO. 424 of 2010**, cited in **James Kanyiita Nderitu & another v Marios Philotas Ghikas & another [2016] eKLR**, it was held that;

**“If there is no proper or any service of summons to enter appearance to the suit, the resulting default judgment is an irregular judgment liable to be set aside by the court ex debito justitiae. Such a judgment is not set a side in the exercise of discretion but as a matter of judicial duty in order to uphold the integrity of the judicial process.”**

- 7.** I have perused the affidavit of service of summons upon the defendants filed in this court on **17.9.2013**, whereby the process server contends that he was accompanied by the plaintiff to the home of the applicant on 29.4.2013 and he says *“I met an aged lady who told me that she is Lucy Wanjiru Wachira and when I told her my purpose of going there, she called one of her sons who read to her the contents inside those documents”*.
- 8.** The only variance in the description of the 2<sup>nd</sup> defendant is in the name of Lucy and Ruth, but the applicant fits the rest of the description, Wanjiru Wachira, an old lady. I find no material contradiction on the affidavit of service.
- 9.** Secondly, I find that the applicant contends that the eviction was done without a lawful court order. However, judgment was delivered in this matter way back in year 2016, of which orders of eviction were issued on 7.5.2025 and further revised on 10.12.2025.
- 10.** Finally, I find that the applicant contends that her draft defence raised triable issues. A perusal of the documents

availed during the trial reveals that John Chege Muchehu, the father of the plaintiff died on 13.8.2000, as per the death certificate, yet he was apparently transferring the land to the spouse of the applicant 10 or so years later. No amount of defence can sanctify the transfer of land by a deceased person. It is simply not logical.

**11.** In the end, I find that the application dated 26.1.2026 is not merited, the same is hereby dismissed with no orders as to costs.

**DATED, SIGNED AND DELIVERED AT NANYUKI THIS 25<sup>TH</sup> DAY OF MARCH 2026 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA  
JUDGE**

**In the presence of:**

Parties absent

Nancy Mwangi – Court Assistant