

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT
NANYUKI
ELC NO. 9 OF 2021

JAMES MITHAMO KAMAU.....
.....PLAINTIFF

VERSUS

RICHARD KURIA MWANIKIKI.....1ST
DEFENDANT

BILLY NGANGA MAINA.....2ND
DEFENDANT

REGISTRAR OF LAND, LAIKIPIA.....3RD
DEFENDANT

RULING

1. As a follow up of the rulings delivered on 7.5.2025 and 22.10.2025, this ruling relates to the applications dated 6.11.2024, 16.1.2025 and 14.7.2025. It is noted that the ruling in the application of 6.11.2024 was only put on hold awaiting the delivery of a ruling in a related matter,

that is Elc 9 of 2023, of which the said ruling has since been delivered. For the application dated 14.7.2025, the same seeks the dismissal of the application dated 6.11.2024, thus the same will be treated as a response to the application of 6.11.2024.

2. I have considered all the issues raised in the various applications including the further affidavit of the plaintiff, the record as well as the submissions of the parties. It is noted that the history of the dispute is captured in the ruling delivered on 7.5.2025 and I need not recapture the same.

3. It is also on record that a related matter Elc 9 of 2023 is pending, while judgment in Elc 9 of 2021 was delivered on 20.8.2024. The issues falling for determination are whether, the aforementioned judgment should be set aside, whether the two files should be consolidated and whether the Interested Party, one Moran Re-loaded Lounge and Grill should be joined in these proceedings.

4. The court notes that in its ruling of 7.5.2025, the court found that the subject matter in the two files ELC 9 of

2023 and ELC 9 of 2021 is the same. It is noted that the plaintiff had made an application dated 18.10.2023 in Elc 9 of 2023 for the transfer of the said file from Nyeri to Nanyuki Elc and for consolidation of the two files. On 31.10.2023, plaintiffs counsel in this matter informed the court that the aforementioned application was coming up on 9.11.2023. The fate of the said application was not brought to the attention of the court as at the time this matter proceeded for hearing on 23.1.2024 and there is no ruling availed in that respect.

5. Another observation is that the two related matters were filed in Nyeri, where Elc 9 of 2021 was formerly Elc 54 of 2017, while Elc 9 of 2023 was formerly Nyeri Elc 30 of 2018. It is quite apparent that the two files did not move from Nyeri to Nanyuki together or at the same time. As far back as 28.9.2021, this file was already in Nanyuki Elc, while Elc 9 of 2023 was still in Nyeri more than two years later on 9.11.2023. This disconnect of the two files certainly contributed to the problem in which one file was determined without the other.

6. On abatement of the case Elc 9 of 2023, I have perused the records and the first time a deceased is mentioned in this file (ELC 9 of 2021) was on 11.10.2023 when Mr. Kebuka Wachira indicated he was for 1st defendant stated that “ *1st defendant died and was not substituted*”. No orders on that issue were made by the court. Few days later on 31.10.2023, Mr Kebuka Wachira indicated that he was for the 2nd defendant. The court made a note “*no appearance for 1st defendant, said to be dead*”. Then Mr Wachira stated that “*I seek a hearing date . The plaintiff in the Nyeri matter died and the suit abated*”. The court then made orders as follows; “*Hearing of the suit on 23.1.2024*”.

7. From these proceedings, it is clear that the court did not pronounce itself on the fate of the Nyeri suit (Now Elc 9 of 2023). As it were, this court has since made a finding that the said suit be reinstated.

8. Death is a grave matter and having reinstated the other suit, the logical trend is to give the representatives of the deceased an opportunity to prosecute their case.

That is however not possible if the judgment delivered herein remains intact. Courts of Law exist to do justice, See; **Patel V EA Cargo Handling Services Ltd (1974) EA 75, Jomo Kenyatta University of Agriculture and Technology V Musa Ezekiel Oebal (2014) e KLR.** In the case at hand, I find that there is sufficient cause to warrant the issuance of the orders sought; See **Wacira Karani v Bildad Wachira (2016) eklr.**

9. On the issue of joinder, I find that the applicant in the application dated 16.1.2025 has averred that it is the one using the suit property, but a demand was made by the plaintiff to halt any payments to the owners of the land as a judgment had been delivered. The court has set aside the said judgment. This far, I find no good reasons to deny the applicant an opportunity to be joined in these proceedings. Thus the said application is found to be merited.

10. In the end, both the application dated 6.11.2024 and 16.1.2025 are allowed while the one dated 14.7.2025 is

dismissed. Each party is to bear their own costs of the applications.

**DATED, SIGNED AND DELIVERED AT NANYUKI THIS
18TH DAY OF MARCH 2026 THROUGH MICROSOFT
TEAMS.**

**LUCY N. MBUGUA
JUDGE**

In the presence of:

Gachuhi for plaintiff.

Ms. Maina holding brief for Kebuka Wachira for 2nd defendant.

Ms. Onsare for proposed Interested Party.

Mirii for Proposed 4th defendant.

Nancy Mwangi – Court Assistant.