



**Chepkurui (Suing on Behalf of the Estate of the Late Christopher Lagat) v Ngeno & 7 others  
(Environment and Land Case 207 of 2019) [2026] KEMC 5 (KLR) (26 January 2026) (Ruling)**

Neutral citation: [2026] KEMC 5 (KLR)

**REPUBLIC OF KENYA  
IN THE NAKURU LAW COURTS  
ENVIRONMENT AND LAND CASE 207 OF 2019  
PA NDEGE, SPM  
JANUARY 26, 2026**

**BETWEEN**

**CHRISTINE CHEPKURUI (SUING ON BEHALF OF THE ESTATE OF THE  
LATE CHRISTOPHER LAGAT) ..... PLAINTIFF**

**AND**

**LUCINA CHEPKOSGEI NGENO ..... 1<sup>ST</sup> DEFENDANT  
MATHEW K. CHESARO ..... 2<sup>ND</sup> DEFENDANT  
SAMUEL NJOROGE WANYOIKE ..... 3<sup>RD</sup> DEFENDANT  
JOSEPH KIARIE MUGO ..... 4<sup>TH</sup> DEFENDANT  
PETER KIARIE KITAKA ..... 5<sup>TH</sup> DEFENDANT  
PAUL MAINA MACHARIA ..... 6<sup>TH</sup> DEFENDANT  
TERESIA MURINGI WACHIRA ..... 7<sup>TH</sup> DEFENDANT  
ESTHER NJIHIA KIHKA ..... 8<sup>TH</sup> DEFENDANT**

**RULING**

1. Before me is a Notice of Motion application dated 21/11/2026, pursuant to the provisions of sections 1A, 1B, 3A & 63(e) of the *Civil Procedure Act*, Orders 21 & 22 of the Civil Procedure Rules, *Auctioneers Act* No. 5 of 1996, Rule 55 of the Auctioneers Rules, and 'all enabling provisions of law'. In the application, the plaintiff/applicant is seeking for the following substantive orders: -
  - a. The taxation of the Bill of Costs dated 19/04/2024 and the resulting Certificate of Costs dated 28/02/2025 be set aside for want of service of the Bill of Costs and Notice of Taxation upon the applicant.



- b. The excessive auctioneer's charges of Kshs. 89,900/- demanded by Bama Auctioneers dated 12/08/2025 be struck out in accordance with Rule 55 and the 4<sup>th</sup> Schedule of the Auctioneers Rules.
  - c. Execution by Boma Auctioneers on 12/08/2025 be declared irregular and unlawful; in view of the re-issued warrants to Sanjomu Auctioneers.
  - d. The warrants of attachment, proclamations, and all consequential execution steps be lifted, stayed or set aside forthwith.
  - e. Costs of the application.
2. The application is based on the following grounds on the face of its: -
- a. Judgment was delivered on 18/04/2024 awarding costs to the Respondents, later purportedly taxed at Kshs. 80,500/-.
  - b. The respondents filed a Bill of Costs but never served the Applicant with the Bill or Notice of Taxation, denying the Applicant a fair hearing.
  - c. The taxation proceeded ex parte, contrary to Paragraph 13 A of the Advocates Remuneration Order and Article 50(1) of *the Constitution*.
  - d. The decree-holder's auctioneer has demanded Kshs. 89,900, exceeding the taxed costs and contrary to the *Auctioneers Act* and Auctioneer Rules, which require charges to be proportionate and court-approved.
  - e. On 23/07/2025, the Respondent requested re-issuance of warrants to Sanjomu Auctioneers.
  - f. Despite that, as at 12/08/2025, Bama Auctioneers continued to act and proclaimed the Applicant's property. Execution by Bama is therefore unauthorized, irregular and null, as *auctioneers act* strictly under valid court-issued warrants.
  - g. Unless this Honorable Court intervenes, the Applicant risks unlawful sale, double execution, and substantial prejudice.
  - h. It is in the interest of justice that taxation and certificate of costs be set aside, auctioneer's bill be struck out or taxed and execution by Bama Auctioneers be stayed and warrants lifted.
3. A similar application dated 29/08/2025 was dismissed by this court with orders that each party bears his own costs. The dismissal was on account of lack of evidence to support the application, after the court finding the affidavit supporting it to be incompetent.
4. The application herein is however supported by the Affidavit of Christine Ngerich, the Plaintiff/ Applicant herein sworn at Nakuru on 21/11/2025. In the affidavit, the applicant conceded that she is aware of the previous application which sought similar orders herein, but which was dismissed not on merit, but solely on a technical procedural ground concerning the commissioning of a supporting affidavit. That this honorable court made no determination on the substance of her application regarding the lack of service, the unlawful taxation, the excessive charges or the unauthorized execution. That she has now rectified the stated defect by swearing this present Affidavit in strict compliance with the *Oaths and Statutory Declarations Act*.
5. In response, via a Replying Affidavit of the 2<sup>nd</sup> Defendant/ Respondent, sworn at Nakuru on 05/12/2025, the Defendants/ Respondents aver that the application herein is baseless, misconceived, lacks merit, is an abuse of the Court process and ought to be struck out. That the application is



a clear case of ‘cut and paste’ as it is strikingly similar in content and form to the earlier dismissed application. That the application herein is therefore res judicata as the application was heard on merit by the trial court and upon consideration of the preliminary issues and the facts, the court dismissed the application with orders that each party bears his own cost. That the application was therefore dismissed and not struck out and the only remaining avenue available for the applicant was thus to either apply for review or file an appeal against the said ruling and not to file a similar application before the court.

6. I have gone through the application and the issues raised therein. The application dated 29/08/2025 is a replica of the present application. In my ruling dated 13/11/2025, I dismissed the application for want of evidence after having struck out the evidence in the incompetent affidavit that accompanied it. It is therefore true, as averred by the defendants/ respondents that the application itself was not struck out. It was dismissed for lack of evidence, and when a matter is being dismissed for lack of evidence, it cannot be said that it was dismissed on a technicality.
7. The distinction between the terms ‘dismissal and striking out’ was considered by the court in *Mbaraka Issa Kombo v Independent Electoral and Boundaries Commission & 3 others* (2017) eKLR as follows:  
-

The two terms, ‘dismissal and striking out’ must therefore be differentiated for their true meaning and import and cannot be used interchangeably nor confused with each other. I hold the view that striking out is a summary procedure that investigates no merit of the dispute but looks at the propriety of the matter as presented and how it sits with the law. Therefore a suit would be struck out on account of facts including; lack of jurisdiction, failure to meet the thresholds of statutory requirement like not revealing a genuine and justiciable cause or for being an abuse of the court process like where it is res judicata or merely calculated to achieve a vexation of the defendant. To the contrary dismissal of a cause would follow scrutiny of the merits of the dispute as articulated and after consideration of the facts and evidence grounding the cause.

8. In *Raila Odinga & 5 Others Vrs Independent Electoral & Boundaries Commission & 3 Others* [2013] eKLR, the Supreme Court struck out the 1<sup>st</sup> Petitioner’s 900 paged affidavit evidence on a technicality, mainly on the basis that it amounted to new evidence, and hence inadmissible, and then proceeded to find the Petition as unproved, thereby dismissing it. I similarly found in the previous application that having struck out the evidence adduced to prove the application for the reason that it had been incompetently adduced, I was left with no evidence to consider and that therefore led to the dismissal of the application. The applicant cannot therefore come back with the same application so as to afford him another round to present his evidence, evidence that he ought to have properly adduced in the earlier dismissed application. One is not allowed to present his evidence in piece-meal for if that is allowed, the litigation shall not come to an end. It is therefore my finding that the application herein is an abuse of the court process, misconceived, lacks merit, and an abuse of the Court process. The same is dismissed with costs to the defendants/respondents.

**DELIVERED, DATED AND SIGNED THIS 26TH DAY OF JANUARY , 2026**

**ALOYCE-PETER-NDEGE**

**SENIOR PRINCIPAL MAGISTRATE**

Appearances

Okumu..... instructed by plaintiff/applicant.

Mukundi h/b Langat..... instructed by defendants/Respondents



Okumu: Praying for a certified copy of the ruling.

CT: Certified copy of the ruling be supplied to the counsel upon payment of the necessary costs/ fee.

