



**Chepkurui (Suing on Behalf of the Estate of the Late Christopher Lagat) v Ngeno & 7 others (Environment and Land Case 207 of 2019) [2025] KEMC 339 (KLR) (13 November 2025) (Ruling)**

Neutral citation: [2025] KEMC 339 (KLR)

**REPUBLIC OF KENYA  
IN THE NAKURU LAW COURTS  
ENVIRONMENT AND LAND CASE 207 OF 2019  
PA NDEGE, SPM  
NOVEMBER 13, 2025**

**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 29/08/2025, 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. There is a Supporting Affidavit of the applicant which is however undated. Section 5 of the Oaths and Statutory Declaration Act Cap 15 of the Laws of Kenya provides as follows:
- Every commissioner for oaths before whom any oath or affidavit is taken or made under this Act shall state truly on the jurat or attestation at what place and on what date the oath or affidavit is taken or made.
4. The admissibility or otherwise of an undated affidavit and the consequence of noncompliance with the provisions Section 5 of the Act were considered by the court in the case of Charles Muturi Mwangi v Invesco Assurance Co. Limited Cause No. 128 of 2011 as follows: -
- These are mandatory provisions. There is no discretion for this court to vary these provision as these are statutory provisions with regard to what constitutes a valid disposition to matters before court. The omission to indicate the date of swearing of the affidavit attached to the application before the court renders the same defective.... The defect on the affidavit is not a



mere technicality that can be addressed as under Article 159 of the Constitution. The undated affidavit violates a statutory mandatory provision and thus the striking out.

5. Further, I seek to rely on the authority of Nicholas Kiptoo arap Kenga Salat vs Independent Electoral and Boundaries Commission and 6 Others, 2013 eKLR where it was held that such defects in affidavits are not technicalities but noncompliance with the law. That Article 159 cannot be relied on to oust rules of procedure.
6. Again, on striking out the affidavit, the application herein remains bare and incurably defective<sup>1</sup>. This is because it is trite law and process that such an application shall be accompanied and supported by a valid affidavit in such support. In the instant case, the validity of the affidavit in support is dubious for want of veracity in its commissioning. This application does not stand the test of law and process. The affidavit in its support is inadmissible for want of form and compliance with the law. It must be struck out. I am therefore inclined to dismiss the application with orders that each party bears their costs of this application.

**DELIVERED, DATED AND SIGNED THIS 13TH DAY OF NOVEMBER, 2025**

**ALOYCE-PETER-NDEGE**

**SENIOR PRINCIPAL MAGISTRATE**

Appearances

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

Langat.....instructed by defendants/respondents

<sup>1</sup> See also Justice Njagi Marete in Justus Achinga Kebari & 21 others vs The Attorney General (ELRC at Kericho Pet. No. 2 of 2017)

