



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA AT  
THIKA**

**ELCLC CASE NO. E111 OF 2024**

**WILLY KIHARA NJOKI KANYOTU.....  
PLAINTIFF**

**VERSUS**

**KANGAITA COFFEE ESTATE LIMITED.....  
.....DEFENDANT**

**TOPAZ INVESTMENT LIMITED...PROPOSED 2<sup>ND</sup>  
DEFENDANT/APPLICANT**

**CHIEF LAND REGISTRAR ..... 3<sup>RD</sup>  
DEFENDANT**

**HON. ATTORNEY GENERAL ..... 4<sup>TH</sup>  
DEFENDANT**

**RULING**

1. The Notice of Motion Application dated 2/07/2025 under Articles 48, 50 (1) and 159 of the Constitution, Sections 3, 2A of the Civil Procedure Act, Order 12 Rule 7, Order 22 Rule 22, Order 45 Rule 1, Order 51 Rule 1 all of the Civil Procedure Rules, Section 13 of the Land AND Environment and Land Court Act and the enabling provisions of the law.
2. The Application is brought by the proposed 2<sup>nd</sup> Defendant seeking the following orders:

**1) Spent**

**2) THAT pending the hearing and determination of this Application inter partes, and save for the hearing of this application, there be a stay of execution of the Judgment and Decree made on 5<sup>th</sup> December 2024 by and any; further and or ensuing dealings and enforcement proceedings or transactions, with respect to the suit property LR No. 8261(IR 9480/1) pursuant to the said Decree made on 5<sup>th</sup> December 2024 and issued on 19<sup>th</sup> December 2024.**

**3) THAT this Honorable Court be pleased to review, vacate and/or set aside, *ex debit justitiae*, the Consent, ruling and Judgment and the RESULTANT Decree made on 5<sup>th</sup> December 2024 and the Decree issued on 19<sup>th</sup> December 2024 pursuant to the Consent Letter dated 1<sup>st</sup> August 2024 herein and further revoke and or cancel all subsequent enforcement proceedings and or ensuing dealings or transactions, with respect to the suit property LR No. 8261 (IR 9480/1) pursuant to the said Decree**

**4) THAT this Honorable Court be pleased to grant leave to the Applicant/Topaz Investment Limited to be enjoined onto these proceedings as a 2<sup>nd</sup> Defendant.**

- 5) THAT this Honorable Court be pleased to order that the Chief Land Registrar as well as the Honorable Attorney General be enjoined to this suit as the 3<sup>rd</sup> and 4<sup>th</sup> Defendants respectively.**
- 6) THAT this Honorable Court be pleased to direct the Plaintiff to effect service of all Court pleadings, i.e. Plaint and Summons to enter appearance and any other pleadings and Court process, upon the Applicant/proposed 2<sup>nd</sup> Defendant, the Chief Land Registrar as well as the Honorable Attorney General**
- 7) THAT the Applicant/Proposed 2<sup>nd</sup> Defendant be granted unconditional leave to file its Memorandum of Appearance and Defence and documents in this suit.**
- 8) THAT the costs of this Application be borne by the Plaintiff and the 1<sup>st</sup> Defendant.**
3. The Application is based on the grounds on the face of the Application and supported by the annexed Affidavit of Sureshchandra Raichand Shah the Applicant's Director.
4. The Applicant submits that its Draft Defence raises cogent and triable issues that go to the heart of the controversy. By enjoining the Applicant, the Chief Land Registrar, and the Attorney General, the Court will avoid a multiplicity of suits and ensure that the sanctity of the land register is upheld

through a full trial on the merits rather than a summary compromise between colluding parties.

5. The Application is opposed by the Plaintiff and the 3<sup>rd</sup> and 4<sup>th</sup> Defendants both of whom filed Grounds of Opposition. The Plaintiff's Grounds of Opposition are dated 23/07/2024 (but I suspect that it must be 23/07/2025 since the application is dated 2/07/2025) and a Replying Affidavit sworn by the Plaintiff on 9/02/2026. The 4<sup>th</sup> Defendant's Grounds of Opposition is dated 13/02/2026. At the same time the Defendant swore a Replying Affidavit dated 9/02/2026.
6. In the Grounds of Opposition, the Plaintiff/Respondent is asserting that the said application constitutes a gross abuse of the Court process. The primary contention is that the suit has already been heard and determined to its logical conclusion through the Consent Judgment adopted by this Honourable Court on 5/12/2024. Consequently, the Plaintiff maintains that this Court is now *functus officio*, having exhausted its jurisdiction over the subject matter, and is therefore legally precluded from entertaining or re-opening the settled issues raised in the new application.
7. Furthermore, the Plaintiff raises a fundamental objection regarding the Applicant's locus standi, arguing that the Applicant is a complete stranger to the proceedings with no recognizable legal interest or standing to institute such an application. The Plaintiff deposes that the Applicant is merely meddling in the private legal affairs and settled proprietary

interests of the Plaintiff and the Defendant without any color of right or justifiable grounds. To reinforce these objections, the Plaintiff/Respondent signaled his intention to file a comprehensive Replying Affidavit (which he did) to substantively debunk the claims made in the Applicant's Motion.

8. So as the Plaintiff through the Replying Affidavit referred to above, avers that they are well-apprised of the facts of this matter in opposition to the Applicant's application dated 2/07/2025. The Plaintiff states that on 1/08/2024, the parties entered into an amicable settlement via a Consent, which was subsequently adopted as a Judgment of this Honourable Court on 5/12/2024.
9. The Plaintiff maintains that the suit property, L.R No. 8261 (I.R 9480), is registered in the name of the Defendant, who consented to the transfer of the same to the Plaintiff, and asserts that the proposed 2<sup>nd</sup> Defendant/Applicant is a stranger to the title, seeking to claim the property fraudulently and without any color of right.
10. The Plaintiff further deposes that there exists no legitimate or reasonable ground to set aside the Consent Judgment of 5/12/2024. In response to the Applicant's claim of having purchased the property from a Company known as Artaxerxes Limited, which allegedly bought it from the Defendant, the Plaintiff clarifies that the Defendant has categorically denied such a transaction. Specifically, Mary

Wanjiku Kanyotu, whose signature is alleged to be on the sale and transfer documents, has denied any involvement with Artaxerxes Limited or the signing of any such instruments, a fact supported by her statement to the Police marked as Exhibit **“WKNK1”**. Furthermore, the Plaintiff provides evidence via a Police report marked Exhibit **“WKNK2”** that the purported signatories, Mary Wanjiku Kanyotu and John Kariuki Kanyotu, were not Directors of the Defendant Company in 2010 when the alleged transaction occurred.

11. Critically, the Plaintiff relies on a Forensic Report which is Exhibit **“WKNK3”** which confirms that the signatures on the alleged sale agreement and transfer forms are forgeries and do not belong to Mary Wanjiku Kanyotu. Additionally, the Advocate mentioned by the Applicant, **O.T.M. Adala**, has through a letter to the DCI as Exhibit **“WKNK4”**, denied any knowledge of Artaxerxes Limited or acting for them in any capacity regarding the suit property. The Plaintiff further highlights that forensic investigations by the Police, as evidenced in Exhibit **“WKNK5”**, have established that the Land Control Board (LCB) Consents for Ruiru, which the Applicant relies upon, are forged and were never executed by the official LCB authorities.

12. The Plaintiff concludes by stating that the Applicant is a ghost entity with no traceable office or Directors, leading to a criminal investigation by the DCI for fraud and forgery. The

delay in responding to the application is attributed to the time required for the Police to conclude these complex forensic investigations. Consequently, the Plaintiff urges this Honourable Court to find that the application is an abuse of the Court process founded on fabricated documents and prays that the same be dismissed with costs.

13. On their part the 3<sup>rd</sup> and 4<sup>th</sup> Defendants in their Grounds of Opposition have contended that the application by the Applicant has not satisfied the criteria under Order 1 Rule 3 and Order 1 Rule 10(2) of the Civil Procedure Rules for joinder. In their grounds they have referred to several cases; The Court of Appeal in **Civicon Limited vs Kivuwatt Limited & 2 Others [2015]eKLR**, **Meme vs Republic [2004]KLR 637**, **Pravin Bowry vs John Ward & Another [2015]eKLR**, **Trusted Society of Human Rights Alliance vs Mumo Matemo & 5Others [2014]eKLR**, among others.
14. The bottom-line of the opposition by the 3<sup>rd</sup> and 4<sup>th</sup> Defendants is that the application is unprocedural and lacks merit and should be dismissed with costs.
15. A brief history of this case is that the Plaintiff, a businessman resident within Kiambu and Nairobi Counties, moved this Honourable Court by way of a Plaint dated 27/06/2024 against the Defendant, a Limited Liability Company duly incorporated under the Companies Act, Laws of Kenya. The Plaintiff's cause of action is predicated on the

assertion that he is the son of the late James Kanyotu, who was the majority shareholder of the Defendant Company, holding an overwhelming 99.9% stake. It is the Plaintiff's case that on or about 15/12/2003, his late father gifted him a residential house and the parcel of land known as L.R No. 8261 (I.R 9480) situated at Mukuyu, Ruiru, for his occupation and use.

16. The Plaintiff deposes that although he took possession of and settled on the suit property in 2003, the legal title remains registered in the name of the Defendant. While the Plaintiff's father had commenced the process of regularizing and transferring the title into the Plaintiff's name, he unfortunately passed away in February 2008 before the formalization was complete. Despite the Plaintiff's persistent efforts over several years to have the Defendant effect the transfer, the Defendant has failed, neglected, or refused to do so, an omission the Plaintiff characterizes as highly prejudicial and likely to cause him irreparable loss and damage.

17. The Plaintiff further maintains that he has issued a formal demand and notice of intention to sue, which have gone unheeded. Confirming that there are no other suits pending between the parties regarding this subject matter, the Plaintiff seeks several reliefs from this Court. Chief among these are a declaratory order that the suit property belongs to him and an order compelling the Defendant to

execute the necessary transfer instruments. In the event of the Defendant's continued non-compliance, the Plaintiff prays that the Deputy Registrar of this Honourable Court be authorized to execute all requisite transfer documents to facilitate the registration of the land in the Plaintiff's name, together with the costs of the suit.

18. The Defendant Deponent, Margaret Nyakinyua Murigu, deposes in her capacity as a widow of the late James Kanyotu and a Court-appointed administratrix of his estate, further confirming her status as an interim Director of the Defendant Company, Kangaita Coffee Estate Limited. She clarifies that her appointment was sanctioned by the High Court in **Succession Cause Number 1239 of 2008**, and supports this averment with a **CR12** form marked as Exhibit **"MNM1"**, establishing the late James Kanyotu as the majority shareholder and the legal basis for her authority to swear the Affidavit.
19. The Defendant maintains that it remains the lawful registered proprietor of the suit property, L.R No. 8261 (I.R 9480), a fact corroborated by an official search conducted in 2019 and marked as Exhibit **"MNM2"**. The Deponent confirms that the Defendant entered into a Consent dated 1/08/2024 to transfer the said property to the Plaintiff, which was subsequently adopted as a Judgment of this Honourable Court on 5/12/2024. Consequently, she contends that the

Applicant's Motion is devoid of merit and represents an attempt to undermine a settled judicial finding.

20. In a categorical denial of the Applicant's claims, the Deponent states that the Defendant has never sold or transferred the suit property to Artaxerxes Limited or any other third party. She further corroborates the testimony of her co-administratrix, Mary Wanjiku Kanyotu, who has officially denied any dealings with the said Company and has disowned the forged signatures appearing on the purported sale agreement and transfer forms. The Deponent notes that these forgeries have been confirmed by Police investigations. Following the Applicant's fraudulent claims, the Defendant has lodged a formal complaint with the DCI, as evidenced by the Police statement annexed as Exhibit **"MNM3"**, and thus prays for the dismissal of the application with costs.

21. The parties negotiated out of Court and recorded a consent which they filed in Court. The parties, acting through their respective Advocates, have mutually agreed to settle and compromise the entire matter on the terms of a Consent Judgment. By this agreement, the parties have moved the Court to enter Judgment in favor of the Plaintiff as against the **Defendant** in accordance with the prayers sought in the Plaint dated 27/06/2024. The substantive terms of this settlement mandate the Defendant to transfer the absolute

ownership and interest in the suit property, specifically **Title Number L.R No. 8261 (I.R 9480)**, to the Plaintiff.

22.To facilitate this transfer, the Defendant is required to execute all necessary transfer instruments and supporting documents within a strict period of fourteen (14) days from the date of the execution of the Consent. In the event of any default or failure by the Defendant to comply with this timeline, the parties have agreed that the signature of the Defendant be dispensed with, and the Deputy Registrar of this Honourable Court be fully authorized and empowered to sign the said documents in the Defendant's stead to give effect to the transfer. Finally, the parties have reserved their liberty to apply to this Court for any further directions or orders that may be necessary to implement the terms of this Consent.

23.It is this consent that is the subject of the application by the proposed 2<sup>nd</sup> Defendant. Parties agreed to canvass the application by way of written submissions. The Applicant filed their written submissions dated 15/07/2025 and the supplementary submissions dated 2/03/2026. The 3<sup>rd</sup> and 4<sup>th</sup> Defendants filed their submissions dated 13/04/2026. The submissions were read, analysed and considered in informing the final decision herein.

### **Analysis and Determination**

24.The Applicant's case is anchored on the premise that it is the bona fide purchaser of the suit property, **L.R No. 8261**

**(I.R 9480/1)**, having allegedly acquired the same from a third party, Artaxerxes Limited, who in turn purportedly purchased it from the 1<sup>st</sup> Defendant. The Applicant contends that the Consent Judgment entered into between the Plaintiff and the 1<sup>st</sup> Defendant was a product of collusion intended to defeat its proprietary interests and that its draft Defence raises triable issues that necessitate a full trial on the merits.

25. Opposing the application, the Plaintiff and the 1<sup>st</sup> Defendant have raised formidable objections. The Plaintiff contends that this Court is *functus officio*, having already determined the suit with finality through the Consent Judgment of 5/12/2024. It is further argued that the Applicant is a stranger to the title and lacks the requisite *locus standi* to interfere with a settled judicial matter. Substantively, both the Plaintiff and the 1<sup>st</sup> Defendant have placed before this Court forensic evidence, including reports from the Directorate of Criminal Investigations (DCI) and statements from the 1<sup>st</sup> Defendant's Directors. These documents categorically state that the signatures appearing on the Applicant's purported transfer instruments are forgeries, that the Land Control Board consents relied upon are fabricated, and that the Advocate alleged to have witnessed the transaction has disclaimed any knowledge of the same.

26. In analyzing the competing claims, the Court identifies the key issues of determination as follows:

- i. *Whether this Court has the jurisdiction to set aside a Consent Judgment involving a non-party;*
- ii. *Whether the Applicant has demonstrated a prima facie interest in the suit property to warrant joinder; and*
- iii. *Whether the allegations of fraud and forgery leveled against the Applicant's documents override the quest for a merit-based trial.*

27. On the first issue, while the doctrine of *functus officio* generally precludes a Court from revisiting its own final decisions, it is a settled principle of Kenyan law, as enunciated in the locus classicus **Wasike v Wamboko (Civil Appeal 81 of 1984) [1985] KECA** that a Consent Judgment may be set aside on grounds that would vitiate a contract, such as fraud, mistake, or misrepresentation. However, such an intervention is an exercise of the Court's inherent power and must be approached with extreme caution. The Applicant here is not a party to the consent but seeks to set it aside *ex debito iustitiae*. To succeed, the Applicant must show a proprietary interest that is not only colorable but legally tenable.

28. The Court has meticulously examined the evidence regarding the Applicant's title. The 1<sup>st</sup> Defendant, through its administratrix Margaret Nyakinyua Murigu, has emphatically denied ever selling the land to the Applicant's predecessor, Artaxerxes Limited. This denial is fortified by Forensic Report Exhibit "**WKNK3**" and DCI investigations which confirm that

the signatures of the late James Kanyotu's family members were forged.

29. In the face of such damning evidence of criminality, the Applicant's claim to the suit property begins to crumble. Under Section 26 of the Land Registration Act, a Certificate of Title is only indefeasible if it is not challenged on the grounds of fraud or misrepresentation to which the person is proved to be a party. Here, the very root of the Applicant's interest is stained by allegations of forgery which have not been substantively rebutted in the supplementary submissions.

30. Furthermore, the Plaintiff's claim is rooted in a gift *inter vivos* from his late father, the majority shareholder of the 1<sup>st</sup> Defendant, a fact the 1<sup>st</sup> Defendant admits. The Court-sanctioned settlement between a son and his father's estate to regularize a long-standing occupation cannot be easily disturbed by an entity whose own documents are the subject of active criminal investigation for fraud. To enjoin the Applicant and the state offices under these circumstances would be to facilitate a fishing expedition and an abuse of the Court process. The Applicant has failed to establish a legitimate interest that overrides the finality of the Consent Judgment.

31. In the end, the Court finds that the Application dated 2/07/2025 is devoid of merit. The evidence of forgery and fraud presented by the Respondents remains uncontroverted

in any meaningful legal sense, rendering the Applicant's triable issues illusory. Consequently, it is the Court's decision that:

- i) The Application dated 2/07/2025 is hereby dismissed in its entirety.***
- ii) The Consent Judgment and Decree dated 5/12/2024 are hereby reaffirmed.***
- iii) The costs of this Application shall be borne by the Applicant.***

**Orders Accordingly.**

**DATED SIGNED AND DELIVERED VIRTUALLY AT THIKA VIA VIDEOLINK THIS 23<sup>RD</sup> DAY OF APRIL, 2026.**

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**MOGENI J  
JUDGE**

**In the presence of:-**

Mr. Ruiru Njoroge for the Plaintiff/Respondent

1<sup>st</sup> and 2<sup>nd</sup> Defendants - Absent

Mr. Kimani appearing with Mr. Elijah Mwangi for the 2<sup>nd</sup> Proposed Defendant/Applicant

Mr. Allan Kamau for the 3<sup>rd</sup> and 4<sup>th</sup> Defendants

Mr. Melita - Court Assistant

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**MOGENI J  
JUDGE**