

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KITALE**

**ELC CASE NO. E033 OF 2019**

**ALICE CHEMING KATILEM**

*(Suing as the Legal Administrator of the estate of*

**TONGOLIK KATILEM (Deceased)-----**

**PLAINTIFF/APPLICANT**

**VERSUS**

**THE COUNTY GOVERNMENT OF WEST POKOT-----**

**DEFENDANT**

**AND**

**ANTHONY RUTTO-----1<sup>ST</sup> INTENDED  
DEFENDANT/APPLICANT**

**KIRALIMA AYWALI-----2<sup>ND</sup> INTENDED  
DEFENDANT/APPLICANT**

**CHRISTOPHER KAPELINGURA-----3<sup>RD</sup> INTENDED  
DEFENDANT/APPLICANT**

**CHEMINGENY YARAKWANG-----4<sup>TH</sup> INTENDED  
DEFENDANT/APPLICANT**

**SIMION KIDIETET-----5<sup>TH</sup> INTENDED DEFENDANT/  
APPLICANT**

**DAVID CHEPARWALA-----6<sup>TH</sup> INTENDED  
DEFENDANT/APPLICANT**

**LOTULIA YOMIYOM-----7<sup>TH</sup> INTENDED  
DEFENDANT/APPLICANT**

**RULING**

1. The applicants are seeking to be enjoined as defendants in the suit; a stay of further

implementation of the judgment dated **29/11/2023**; setting aside of the said judgment, and leave for the applicants upon joinder to file responses.

- 2.** The grounds on the application dated **6/2/2026** and affidavit sworn by Anthony Rutto are that the applicants, being residents of Toghomo village, have been affected by the judgments, since they were never parties to the proceedings and were not afforded the right to be heard, that they shall suffer dispossession, injustice, and their participation in the suit is necessary for the just and effective determination of all issues on the suit property.
- 3.** The applicants assert that the suit property is unregistered community land, where the respondent has threatened to evict them from approximately **100** acres. The applicants aver that they reported to the area chief, who informed them of this suit, where the respondent concealed and misrepresented facts to obtain orders.
- 4.** Further, the applicants depose that the said judgment has converted community land into private land. Copies of the authority to plead on behalf of the other applicants and photographs of the applicants' homes are attached as **AR1** and **AR2-a-j**.

5. In the replying affidavit sworn by the respondent on **18/2/2026**, the respondent deposes that the application is defective, misconceived, a non-starter, and an abuse of the court process since the applicants have not met the threshold for the orders sought.
6. The respondent deposes that the applicants are acting as agents of the defendant and are not *bona fide* litigants, the suit property has been subject to active litigation since **2019**, and it is untrue for the applicants to allege that they were not aware of the proceedings.
7. The respondent further deposes that the 6<sup>th</sup> applicant is her sister-in-law, who has concealed her identity to mislead the court since she has been living on her late brother's property and has been well aware of the suit proceedings.
8. Again, the respondent deposes that the other applicants are strangers to the suit since they are not residents of Lomut and do not have a legitimate claim over the suit property. For the 1<sup>st</sup> applicant, the respondent deposes that he resides at Mwisho Farm in Trans Nzoia County and his interest in the suit property is false, contrived, misplaced, and in bad

faith. The respondent avers that the photographs are misleading and do not depict the suit property, and are legally incompetent.

- 9.** The respondent deposes that all witnesses, including those of the defendant, were heard and a judgment was subsequently delivered on **29/11/2023**. Costs for the suit were taxed on **23/2/2024**, and the applicants have taken nearly **2** years to file the instant application, which amounts to inordinate delay and is caught up by the doctrine of laches.
- 10.** The respondent avers that the suit property is not community land since the court determined the ownership, and the application is therefore *res judicata* and amounts to another appeal, since the defendant had filed **Civil Appeal No. E061 OF 2024**, which the court struck out.
- 11.** Further, the respondent avers that the allegations of an alleged eviction are false, and strangers should not be allowed to set aside a judgment already appealed against. The respondent has attached the copies of her identification card, decree, certificate of costs judgment, and a notice of appeal as annexures marked as **ACK-1**.

- 12.** The applicants have also filed without leave of court a supplementary affidavit sworn on **18/2/2026**, attaching the electronic certificate as annexure, marked **AR1**.
- 13.** The respondent relies on the written and oral submissions dated **18/2/2026** and **19/2/2026**. Mr. Teti, learned counsel for the respondent, submitted that the application is untenable, defective, and an abuse of the court process and contrary to **Order 1 Rule 10(2)** of the Civil Procedure Rules, since joinder is not granted where a final judgment has been delivered.
- 14.** Regarding the stay of proceedings, learned counsel submitted that there are no live proceedings to be stayed as the suit was fully determined, a decree extracted and costs taxed, and an appeal filed, and therefore, joinder cannot be granted. Learned counsel relied on **Joseph Njau -vs- Maina Chege & others [2002] eKLR** and submitted that the court is functus officio and the applicants have not met the threshold to reopen the case.
- 15.** Further, learned counsel submitted that the application is *res judicata* contrary to **Section 7** of the Civil Procedure Act since the court already

determined the issues raised by the applicants. Counsel submitted that the application has been filed after an inordinate delay, which the applicants have not explained. According to the learned counsel, the allegations that the applicants were not aware of the suit are not substantiated, and equity aids the vigilant and not the indolent.

- 16.** On the allegations of eviction, counsel submitted that there are no orders of eviction since the surveyor was only to visit the suit property for purposes of valuation. Learned counsel submitted that the applicants are only eliciting sympathy from the court, since the enforcement of the decree is against the defendant and not the applicants. Finally, the counsel submitted that the photographs attached are contrary to **Section 106** of the Evidence Act and are of no probative value.
- 17.** In a rejoinder, Mr. Serebe, advocate for the applicants, submitted that the applicants claimed that part of the community land had been converted to private land.
- 18. Order 1 Rules 1, 3, & 10** of the Civil Procedure Rules provide for who may be joined as a plaintiff and

or as a defendant, and substitution and addition of parties, during the life of a suit.

- 19. Order 1 Rule 10(2)** of the Civil Procedure Rules obligates the court to consider whether the presence of the applicant may be necessary to enable the court effectively and completely to adjudicate upon and settle all questions involved in the suit.
- 20.** In **K -vs- MWM & Another (2015) eKLR**, the Court of Appeal stated that **Order 1 Rule 10 (2)** of the Civil Procedure Rules contemplates an application for amendment or joinder of parties where proceedings are still pending before the Court. The court further held that an application for joinder of parties can be filed only in pending proceedings.
- 21.** The court cited the Court of Appeal of Tanzania, where, while considering the equivalent of **Order 1 Rule 10 (2)** of the Civil Procedure Rules in **Tang Gas Distributors Ltd -vs- Said & Others (2014) E. A. 448**, stated that the power of the court to add a party to proceedings can be exercised at any stage of the proceedings; that a party can be joined even without applying; that the joinder may be done either before, or during trial; that it can be done even after judgment, where damages are yet to be assessed;

that it is only when a suit or proceedings has been finally disposed of and there is nothing more to be done that the rule becomes inapplicable. There are instances where joinder applications may be considered even in finalised and determined suits.

22. In the case of **Bellevue Development Company Limited -vs- Vinayak Builders Limited & another [2014] KEHC 5507 (KLR)**, the court held that joinder of parties is possible after judgment in cases of representative suits; or substitution of one or more parties, for instance, in case of death, or incapacity of a party, or change of status of a party; or in execution process. The court also held that any post-judgment joinder of parties must surmount any possible constitutional objections under the rules of natural justice and the principle of the finality of litigation. The applicants do not fall under any of the above categories.
23. In **Murutetu & another -vs- Republic; Kenya National Commission on Human Rights & 2 others (Interested Parties); Death Penalty Project (Intended Amicus Curiae) [2016] KESC 12 (KLR)**, the court held that a personal interest or stake that the party has in the matter must be set

out in the application. The interest must be clearly identifiable and must be proximate enough to stand apart from anything that is merely peripheral. The prejudice to be suffered by the intended interested party in case of non-joinder must also be demonstrated to the satisfaction of the court. The applicants have failed to meet this threshold.

**24.** In this matter as it is, the suit is already determined, and the defendant filed a notice of appeal dated **14/12/2023**, which they later sought to be struck out by an application dated **5/5/2024**. Notably, the defendant also filed an application dated **7/5/2024** seeking a stay of execution of the same judgment, which the court dismissed vide a ruling dated **15/7/2024**.

**25.** From the above analysis, this court finds that it is *functus officio*, the prayer for stay of execution is *res judicata*, and the current application is not only lacking merit but also an abuse of the court process. It is dismissed with costs to the respondent.

**26.** Orders accordingly.

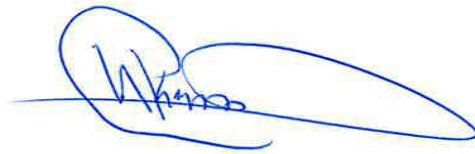
**Ruling dated, signed, and delivered via Microsoft Teams/Open Court at Kitale on this 22<sup>nd</sup> day of April 2026.**

**In the presence of:**

Court Assistant - Dennis

Teti for the respondent present

Kisembe for the applicants present

A handwritten signature in blue ink, appearing to be 'C.K. Nzili', written over a horizontal line.

**HON. C.K. NZILI  
JUDGE, ELC KITALE.**