



REPUBLIC OF KENYA



Chepsergon & 4 others v Lari Nyakinyua (Solai Farm) Ltd & 6 others (Land Case E004 of 2025) [2025] KEELC 5499 (KLR) (Environment and Land) (24 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5499 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA
ENVIRONMENT AND LAND
LAND CASE E004 OF 2025
MC OUNDO, J
JULY 24, 2025**

BETWEEN

**GEOFFREY CHESIRE CHEPSERGON 1ST PLAINTIFF
DAVID KIPSANG KIPLALON 2ND PLAINTIFF
DANIEL SALIO CHEBON 3RD PLAINTIFF
SYMON KIPRONO MOI 4TH PLAINTIFF
JOSEPH MOSIN ROTICH 5TH PLAINTIFF**

AND

**LARI NYAKINYUA (SOLAI FARM) LTD 1ST DEFENDANT
SOLAI RUYOBEI FARM LIMITED 2ND DEFENDANT
CHERUIYOT ARAP CHEMGWONY 3RD DEFENDANT
KIPKOECH CHEBET CHERUTICH 4TH DEFENDANT
SILAS KIPROTICH CHEPKETEI 5TH DEFENDANT
PHILIP SIRMA CHEPTUMO 6TH DEFENDANT
CHIEF LAND REGISTRAR 7TH DEFENDANT**

RULING

1. Vide a Notice of Motion Application dated 29th January, 2025 brought pursuant to the provisions of Sections 1, 1A, 2A, 3 and 3A of the [Civil Procedure Act](#), Order 40 Rules 1 and 2 and Order 51 Rule



1 of the Civil Procedure Rules and all enabling provision of the Law the Plaintiffs/Applicants sought for the following orders:

- i. Spent
 - ii. Spent
 - iii. That pending the hearing and determination of the main suit this Honorable court be pleased to issue orders of injunction restraining the Respondents, their agents, servants, or any other persons acting on their behalf from entering, subdividing, transferring, selling, or in any other way interfering with the parcel of land known as LR No. 20229/1 (Oljorai).
 - iv. That the Honorable Court be pleased to direct the Inspector General and/or Officer Commanding Station Gilgil Police Station to provide security and enforce the orders herein.
 - v. That the costs of this application be provided for.
2. The said application was supported by the grounds therein as well as the Supporting Affidavit of equal date sworn by Geoffrey Chesire Chepsergon, the 1st Plaintiff/Applicant herein who deponed that the 2nd Respondent herein was a private limited liability company wherein he and his co-Applicants were its shareholders and/or creditors having purchased its land LR. No. 20229/1 (Oljorai)
 3. That subsequently, they had been issued with a Share Certificates annexed as GCC3 identifying their respective plot number, acreage and location. That the 2nd Respondent was a private company whose sole objective was to buy and sell land to interested parties. That he and his co-applicants completed payments of their respective portions of land and were eager to take possession of their said portions of land.
 4. That it had been while awaiting allocation of their respective parcels of land, a group calling itself Oljorai community members lay claim on the same parcel of land which had resulted to a lengthy legal battle wherein Judgment had been entered and decree issued in favor of the 2nd Respondent as annexed in GCC4.
 5. That the Plaintiffs therein was aggrieved and preferred an Appeal wherein they also obtained an order of stay pending the hearing of the Appeal in Nakuru Court of Appeal No. 7 of 2022 which had also denied them an opportunity to go into their respective parcels.
 6. That at the time the 2nd Respondent was involved in various internal management battles which had resulted in various cases on its Directorship, which is still a subject matter in Nakuru HCCC E026 of 2022 where the court had directed that fresh elections be carried out but which order had not been complied with hence there was no substantive office to authorize the exchange. That he and his co-applicants' only claim was for the land they had bought.
 7. That during the pendency of the aforesaid issues, he and his co-applicants had been taken aback when on the 13th October 2023, the Permanent Secretary of lands, one Nixon Korir and officials of the 1st Respondent had addressed the media and alleging that the 1st and 2nd Respondents had exchanged the suit parcel of land and that the same was now owned by the 1st Respondent wherein title documents were handed over as annexed in GCC5.
 8. That subsequently, they had contacted the 2nd Respondent's Director over the said issue only to be informed that the 3rd to 6th Respondents while purporting to act as Directors of the 2nd Respondent entered into a deed of exchange on the 29th July 2020 wherein subsequently the said land had been transferred to the 1st Respondent as annexed in GCC6 (a-c)



9. That the current Director of the 2nd Respondent had informed them that the said exchange had been done without the authorization of the 2nd Respondent and that the 3rd to 6th Respondents had only been passing themselves off as Directors, annexed as GCC7 was the CR12 in respect of the 2nd Responent.
10. That pending determination of Directorship to the 2nd Respondent, the 3rd to 6th Respondents, purporting to be Directors, had illegally executed the deed of exchange on behalf of the 2nd Respondent. That as the purchasers for value of their respective portions of land, they were never informed of the intended exchange nor did they authorize the exchange of their respective properties.
11. That the actions of the 3rd to 6th Respondents was detrimental them for the reason that they have been dispossessed of their land which was then transferred to the 1st Respondent. That further, the 1st and 2nd Respondents had now approached the 7th Respondent to commence the process of effecting full exchange, subdivision and issuance of new titles.
12. That accordingly, they stood to suffer loss and damages if the said illegal exchange was to be effected as they would lose their respective parcels of land.
13. That the purported deed of exchange, and subsequent transfer between the 1st and 2nd Respondents had caused them to suffer irreparably.
14. That the Respondents herein especially the 1st Respondent never owned and/or occupied the land in question and as a matter of fact there existed a Decree annexed as GCC8 that sought for eviction of the 2nd Respondent from the 1st Respondent's parcels of land, hence they would not suffer prejudice in any way.
15. He deponed that the 29th October 2024, the 1st Respondent, accompanied by a group of individuals had arrived in a bus wherein they had attempted to unlawfully and forcibly subdivide the suit parcel of land.
16. He thus prayed that their Application be allowed as prayed.
17. In response and in opposition to the Plaintiffs/Applicants Application, the 3rd Defendant/Respondent vide his Grounds of Opposition dated 17th March 2025 opposed the said Notice of Motion on the following grounds.
 - i. That the Application was bad in law, incompetent, misconceived and an abuse of this Honorable Court's process and specifically: -
 - a. The at the time the Applicants purportedly acquired the share certificates, there had been no substantive Directors in office, the High Court having quashed the CR12 in Judicial Review No. 14 of 2018 thus rendering any transactions they had undertaken void ab initio.
 - b. The Applicants had failed to annex any sale agreements to prove the alleged purchase of shares. In theabsence of proper authorization from duly recognized Directors, the share certificates held no legal weight.
 - c. The Applicants had not annexed a valid CR12 showing the Directors that they had transacted with, raising serious doubts about the legitimacy of the purported transactions.



- d. That the matter concerning the legitimate election and appointment of Directors was still pending determination before the High Court in Nakuru Civil Suit No. E026 of 2022. As such, any claim of share acquisition premised on transactions with contested Directors was premature and should be dismissed until the High Court makes a final determination on the Directorship dispute.
 - e. There were no substantive Directors save for the 3rd Defendant. That the 4th to 6th Defendants had merely served as his managerial team and did not possess the authority to issue or validate share transactions. That any dealings with individuals not recognized as substantive Directors lacked legal standing.
18. That the Applicants therefore had not satisfied the Honorable Court on the conditions as settled in the case of *Giella v Cassman Brown and co. Ltd* 1973 E.A 360 to be granted the injunction for which their application should be dismissed with cost having been based on transactions that had been conducted without lawful authority and amidst an unresolved dispute on Directorship.
 19. The 1st and 7th Respondents did not participate in the Applicants' Application herein.
 20. Despite parties having been directed to file their submissions by the court and there having been no submissions filed, the 2nd-6th Respondent's Counsel had sought for the court to deliver itself based on the pleadings that had been filed.

Determination.

21. It is now a settled practice under the new constitutional dispensation that filing of written submissions is the norm as written submissions serve the purpose of expedience and amounts to addressing the court on the evaluation of the evidence of each party and analysis of the law. It is therefore trite that parties who fail to file their submissions on an application as ordered by the court are deemed as parties who have failed to prosecute their application and therefor that application is liable for dismissal. The filing of submissions having been ordered, on the 19th March 2025 and extended on the 28th April 2025 wherein on the 21st May 2025, parties had still not complied, the failure by the parties herein to exercise the leave granted to file written submissions clearly demonstrated inertia and inordinate delay, lack of interest and/or seriousness on their part in the prosecution of the matter.
22. The Court of Appeal in *Rowlands Ndegwa and 4 Others vs. County Government of Nyeri and 3 Others; Agriculture, Fisheries and Food Authority & Another (Interested Parties)* [2020] eKLR, citing with approval the decision of the High Court in, *Winnie Wanjiku Mwai vs. Attorney General & 3 Others* [2016] eKLR, observed as follows:

“With regard to dismissal for want of prosecution, there are indeed no hard and fast rules as to the manner in which the inherent power and discretion to dismiss an action for want of prosecution is to be exercised. It is however generally accepted that dismissal will be invited if there should be a delay in the prosecution of the action and the Respondent is prejudiced by the delay with attention also being paid to the reasons for the inactivity....”
23. The mode of hearing of the Applications having been accepted by the parties, and there having been no compliance to prosecute the same, I am persuaded to dismiss both the main motion dated the 29th January 2025 and the Grounds of opposition dated the 17th March 2025 for want of prosecution.

DATED AND DELIVERED VIA MICROSOFT TEAMS AT NAIVASHA THIS 24TH DAY OF JULY 2025



M.C. OUNDO
ENVIRONMENT & LAND – JUDGE

