



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT BUSIA

ELC NO. 92 OF 2013

EVERLYNE AUMA OCHUNGA
PLAINTIFF/RESPONDENT

= VERSUS =

DIXON ODABA
DEFENDANT/RESPONDENT

ADAM KHAMIS JARDEN INTERESTED PARTY/RESPONDENT

= AND =

EZRA ONDIEKI OMARI 1ST INTERESTED
PARTY/APPLICANT

ANDREW JOSEPH OJIAMBO
WANDERA 2ND INTERESTED
PARTY/APPLICANT

JACKSON MOSES EMUSIKO ... 3RD INTERESTED
PARTY/APPLICANT

CLARICE OMONDI OPIYO 4TH INTERESTED
PARTY/APPLICANT

DIRECTIONS IN RESPECT OF THE INTERESTED

PARTY'S/APPLICANT'S NOTICE OF MOTION

DATED 10TH JANUARY 2026

1. The interested parties herein filed the notice of motion dated 10th January, 2026 seeking among other orders; orders to set aside the judgment delivered in this case on 31st October 2023, joinder to the suit and that the suit be heard a fresh.

2. The application is premised on the grounds that the court issued orders adverse to them without according them an opportunity to be heard. In that regard, the applicants lament that the titles to their parcels of land were cancelled by the court without being afforded an opportunity to be heard and now risk being evicted from the portions of land they occupy as a result of the judgment sought to be set aside.

3. The defendant/applicant acknowledges that the interested parties/applicants have parcels of land that were affected by the judgment but contends that the interested parties obtained interest in their parcels of land when there existed an order of the court restricting dealings with the suit properties hence the dealings were illegal, of no consequence and null and void. The respondent claims/explains that the interested parties'/applicants' parcels of land are far away from his parcel of land hence will not be affected by the eviction orders given by the court.

According to the defendant/respondent the only people to be affected by the eviction orders are Adams Khamis Jarden and Jackson Moses Emisiko whom he accuses of having colluded with the plaintiff to share his portion of land carved out of LR No.Bukhayo/Bugengi/7814.

4. Terming the interested parties bedfellows with the plaintiff in crime and claiming that there was inordinate delay in bringing the application for setting aside of the court's judgment, the respondent submits that the applicants' remedy is to recover any damages they may suffer out of the fraudulent transactions from the plaintiff.
5. It is the defendant/respondent's case that the court was alive to all the claims, hence its well-reasoned judgment delivered on 31st October 2023.
6. I have carefully read and considered the application, the judgment of the court sought to be set aside, the issues of fact and law raised in the application and the law applicable

to setting aside of judgments. I note that the application raises a weighty issue of law touching on the right to be heard before any adverse orders can be made against a party to a suit or a party who is otherwise adjudged to be a necessary party to a suit.

7. A reading of the pleadings filed by the defendant/respondent in his amended defence and counterclaim discloses that the respondent was aware of the dealings in the suit property and the subdivision emanating therefrom, in 2017. Through his response to the instant application, the respondent intimates that he was aware of the beneficiaries of the titles he desired to have their titles cancelled but did not join them to the suit to afford them an opportunity to be heard. Through the impugned judgment of the court, he managed to obtain orders that are adverse to the applicant's interests.
8. In recognition of the weighty issues raised in the application touching on the interested party's right to be heard before any adverse decision can be made against them, which is a

right conferred by **Article 47** in the Constitution, and cognize of the fact that I have no power to set aside a decision of a court of concurrent jurisdiction on a matter heard and determined on its merits by the court, I direct that the file be placed before Olao J who heard the suit and is better placed to deal with the issue of law raised in the application, for consideration and appropriate directions.

**Directions dated, signed and delivered virtually at Busia
this 23rd day of April, 2026**

L. N. WAITHAKA

JUDGE

In the presence of;

Mr Shihemi for the Applicant

N/A for the Respondent and Interested Party

Court Assistant; Tracy

ORIGINAL