



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MILIMANI NAIROBI**  
**ELCLC CASE NO. E020 OF 2026**

**CAROLINE NYAMBURA WAIRIMU & ANOTHER (Suing as the Administrators of the Estate of Regina Wairimu (Deceased)) .....PLAINTIFFS/APPLICANTS**

**-VERSUS-**

**HUSSEIN IBRAHIM**  
**NUNI.....DEFENDANT/RESPONDENT**

**RULING**

**Background**

1. This ruling arises in the context of two pending applications before this Court, namely the Notice of Motion dated 20<sup>th</sup> January 2026 filed by the Plaintiffs/Applicants and the Notice of Motion dated 29<sup>th</sup> January 2026 filed by the Defendant/Applicant.
2. Subsequently, a third application dated 23<sup>rd</sup> March 2026 was filed, raising a preliminary issue relating to the introduction of additional material on record. In view of its nature, the Court will first address the preliminary issue raised therein before proceeding to give directions on the two pending applications.
3. The third application, being the Notice of Motion dated 23<sup>rd</sup> March 2026 and brought under **Sections 1A, 1B and 3A of the Civil Procedure Act (Cap. 21), Order 40 Rules 1, 2 and 4 of the Civil Procedure**

**Rules**, 2010, and all other enabling provisions of the law, was filed under a certificate of urgency and is supported by the Affidavit of Caroline Nyambura Wairimu sworn on the same date, in which the Applicants seek the following orders:

- a) **THAT** this matter be certified as urgent (spent);
  - b) **THAT** the ruling scheduled for delivery on 24<sup>th</sup> March 2026 be arrested pending the hearing and determination of this application;
  - c) **THAT** this Honourable Court be pleased to grant leave to the Plaintiffs to file and rely upon a Supplementary Affidavit annexing documents obtained from the Ministry of Lands and Physical Planning touching on the Suit Property known as LR No. 36/II/28;
  - d) **THAT** upon admission of the supplementary evidence, the Plaintiffs be granted leave to file supplementary submissions; and
  - e) **THAT** costs of the application be in the cause.
4. The application is premised on the grounds set out in the Supporting Affidavit sworn by Caroline Nyambura Wairimu, who deposes that she is one of the Plaintiffs and a duly appointed administrator of the estate of the late Regina Wairimu (Deceased), and that a ruling on the Defendant's Notice of Motion dated 29<sup>th</sup> January 2026 was scheduled for delivery on 24<sup>th</sup> March 2026. She further deposes that subsequent to filing their Replying Affidavit and submissions, the Plaintiffs obtained official records and historical title documents relating to the suit property from the Ministry of Lands and Physical Planning, which were

not previously available despite due diligence.

5. She further avers that the said documents establish a complete and unbroken chain of title to the suit property from 1949 to the estate of the deceased, and are directly material to the determination of the pending application as they go to the root of ownership. It is her contention that admitting the said evidence will not prejudice the Defendant, who will have an opportunity to respond, and that it is in the interests of justice that the court considers the same before rendering its ruling, failing which the Applicants stand to suffer prejudice from a determination made on an incomplete evidentiary record.

### **Response to the Application**

6. In response to the application, the Respondent filed a Replying Affidavit sworn on 31<sup>st</sup> March 2026 by Hussein Ibrahim Nuni, opposing the Application in its entirety. He deposes that the Application is frivolous, misconceived and amounts to an abuse of the court process, and is intended to delay the determination of his Notice of Motion dated 29<sup>th</sup> January 2026 while the Plaintiffs continue to benefit from interim injunctive orders. He further reiterates the contents of his earlier application and avers that the Plaintiffs' conduct offends the provisions of **Section 1A(3) of the Civil Procedure Act** which obligates parties to assist the court in furthering the overriding objective.
7. The Respondent further avers that on 12<sup>th</sup> February 2026, the Court issued specific directions requiring him to file and serve submissions within three (3) days and the Plaintiffs to file and serve their submissions within seven (7) days of service, and thereafter reserved a ruling for 24<sup>th</sup> March 2026. He states that he complied by filing his submissions on 13<sup>th</sup> February 2026, whereas the Plaintiffs failed to

comply within the stipulated timelines and only purported to file submissions on 23<sup>rd</sup> March 2026 at 4:22 p.m., outside the timelines set by the Court.

8. He further contends that the present Application, though dated 23<sup>rd</sup> March 2026, was only filed on 24<sup>th</sup> March 2026 at 2:00 p.m., after the scheduled date for delivery of the ruling, thereby demonstrating that it is an afterthought brought in bad faith to obstruct the course of justice.
9. It is the Respondent's further deposition that no sufficient or cogent explanation has been tendered by the Plaintiffs for their failure to obtain and present the alleged additional documents earlier, nor have they produced any evidence of correspondence or engagement with the Ministry of Lands and Physical Planning to support their claim.
10. He challenges the probative value of the documents sought to be introduced, terming them illegible and incapable of aiding the Court, and asserts that the issue of ownership of the suit property is a substantive matter reserved for determination at the full hearing of the suit. He maintains that the Plaintiffs are guilty of laches and indolence, and urges the Court to dismiss the Application with costs, arguing that no prejudice will be occasioned to the Plaintiffs if the Application is declined, particularly as the matter at hand concerns an interlocutory application.

### **Analysis and Findings**

11. I have considered the Notice of Motion dated 23<sup>rd</sup> March 2026, the Supporting Affidavit, the Replying Affidavit sworn on 31<sup>st</sup> March 2026, as well as the Further Affidavit sworn by Caroline Nyambura Wairimu

and filed on 14<sup>th</sup> April 2026. The issue for determination is whether the Applicants have established sufficient basis for the grant of leave to introduce additional material at this stage of the proceedings. The Court's jurisdiction is derived from **Sections 1A, 1B and 3A of the Civil Procedure Act, Cap. 21**, which require the Court to facilitate the just, expeditious and proportionate determination of disputes and to exercise its inherent powers where necessary to meet the ends of justice.

12. The Applicants state that the documents sought to be introduced were obtained after the close of their response and were not previously available despite efforts made, and that the same bear on the issue of ownership of the suit property. The Respondent opposes the application on grounds that it was filed outside the timelines set by the Court, that no satisfactory explanation has been given for the delay, and that the application is intended to delay the determination of the pending application. He further questions the probative value of the documents and contends that issues of ownership fall for determination at the trial.
13. The Court has weighed the competing positions. While concerns have been raised regarding the timing of the application and compliance with earlier directions, the Court notes that the Further Affidavit and the documents sought to be relied upon have already been placed on record. The question therefore is whether such material should be admitted and relied upon for purposes of determining the pending applications.
14. In exercising its discretion, the Court considers whether the material is relevant, whether its late introduction is explained, and whether any

prejudice will be occasioned. The material sought to be relied upon is not extraneous to the issues arising in the pending applications. Further, any prejudice to the Respondent can be mitigated by affording him an opportunity to respond. The Court must therefore balance adherence to procedural timelines with the need to determine the matter on a proper and complete record.

### **Disposition**

15. Accordingly, the Court makes the following orders:

- a) The Notice of Motion dated 23<sup>rd</sup> March 2026 is hereby allowed. The Further Affidavit sworn on 10<sup>th</sup> April 2026 is hereby admitted and deemed as duly filed.
- b) The Respondent is granted leave to file and serve a Further Replying Affidavit, if any, within two (2) days from the date hereof.
- c) The Respondent shall thereafter file and serve supplementary submissions, if any, within two (2) days of filing the Further Replying Affidavit. The Applicants shall file and serve supplementary submissions, if any, within two (2) days of service.
- d) Ruling in respect of the Notice of Motion dated 29<sup>th</sup> January 2026 shall be delivered on 11<sup>th</sup> May, 2026 at 12:00 noon.
- e) Costs of the application shall be in the cause.

**It is so ordered.**

**DATED, SIGNED and DELIVERED** virtually at **NAIROBI** on **30<sup>th</sup>** day of **April, 2026.**

**MOHAMMED N. KULLOW**  
**JUDGE**

**Ruling delivered in the presence of: -**

**Ms. Njenga with Bashir** ..... for the Plaintiff/Applicant

**Mr. Peter Muchoki** ..... for the Defendant/Applicant

**Philomena W** ..... Court Assistant