

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT
MILIMANI
ELC CASE NO. 1394 OF 2016 (O.S)

JASWANT HARILAL

CHUDASAMA.....PLAINTIFF

VERSUS

SHASHIKANT HARILAL CHUDASAMA.....1st

DEFENDANT

**NILABEN KARTIC SHAH (Suing in her own right and
also as the Legal Representative of her late father**

HARILAL MULJI CHUDASAMA).....2nd

DEFENDANT

AS CONSOLIDATED WITH

ELC NO. 249 OF 2019

JASWANT HARILAL

CHUDASAMA.....PLAINTIFF

VERSUS

SHASHIKANT HARILAL

CHUDASAMA.....DEFENDANT

AND

**NILABEN KARTIC SHAH.....INTERESTED
PARTY**

RULING

1. Before this court for determination, is the Plaintiff in ELC 249 of 2019, hereinafter Applicant's Notice of Motion dated 2nd September, 2025 brought pursuant to the

provisions of **Article 159 2 (d)** of the **Constitution of Kenya** and **Sections 1A, IB, and 3A** of the **Civil Procedure Act** seeking the following reliefs:

i. Spent

ii. That the 1st Defendant/Respondent Shashikant Harilal Chudasama whether by himself or his agent, servants, associates, employees or otherwise be prohibited from placing a for sale sign on the suit property being Nairobi/Block 35/168 209(L.R No 209/3383).

iii. That the Plaintiff/Applicant do conduct an independent valuation of the suit property.

iv. That costs of this application be provided for.

2. The motion is based on the grounds on the face thereof and supported by the affidavit of Jaswant Harilal Chudasama, the Plaintiff He deponed that the firm of Kinyua Koech carried out a valuation of the property and affixed the open market value of the property at Kshs. 154,000,000.
3. The Plaintiff deposed that from his own knowledge, the alleged purchase price is grossly exaggerated and, on that basis, expressed his intention to engage an independent valuer to ascertain the true value of the property. He further deponed that the firm of Kinyua Koech had proposed to erect a “For Sale” sign on the suit

property and that given that he resides on the property, the placement of such a signage would attract unwarranted attention and thereby infringe on his privacy and that of his family.

4. According to the Plaintiff, he is also apprehensive that the said sign will attract fraudsters it being a matter of public notoriety that land fraud is prevalent in the country and 'for sale signs' attract fraudsters; that his advocates have tried to address the issue with the firm of Kamau Kuria Advocates without success as has been shown vide correspondence and that the interests of justice favour the grant of the orders sought in this application.
5. In response, the 1st Defendant/Respondent, through Chudasama Hitesh Shashikant, swore a replying affidavit on 20th November, 2025. He deponed that the Applicant is his uncle and that the suit property-LR No. 209/3383, Nairobi Block 35/168, was jointly acquired in 1974 by his father, the Applicant, and their late grandfather. According to him, the suit property served as the family home for many years before his father later acquired and moved to his own home in Parklands, leaving the Applicant and their late grandfather, who passed away in 2002, residing on the suit property.
6. The Applicant, he explained, has continued to reside on the suit property for the last 22 years without paying any rent to either his father or their late grandfather. In his view, this has fostered a sense of entitlement on the part

of the Applicant, who now believes he can remain on the property indefinitely without paying rent opposing any plans for its sale at market value.

7. The 1st Defendant asserted that the Applicant has shown little regard for the proprietary rights of the other co-owners and is unreasonably opposing the intended sale, which will generate funds necessary to cater for his father's medical needs as his health has worsened since he suffered from a stroke.
8. He further deponed, upon the advice of counsel, that the application amounts to an abuse of the court process having been brought with the intention of turning the court into an instrument of oppression.
9. He further contended that the claim that the property should not be sold at market value, with the proceeds thereafter shared among the co-owners, is irrational and unreasonable falling within the ambit of the Wednesbury Principle of Unreasonableness as articulated in **Associated Provincial Picture Houses Ltd vs Wednesbury Corporation [1948] 1 K.B. 223**. It was his deposition that the Applicant's position on the sale of the property is plainly unreasonable and incapable of justification.
10. According to Mr. Hitesh, the Applicant does not require any order of the court to invite valuers to assess the property, particularly because he is already in occupation thereof. Further, he stated that it is difficult to understand

why the Applicant would seek to have the property sold at a price below its market value and maintained that the court cannot direct professionals, such as valuers and estate agents, on how to undertake their work, including the manner in which the property should be marketed for sale.

- 11.** He explained that that judgment was delivered on 6th February 2024, directing that the property be valued by an independent valuer, sold, and the proceeds shared between the parties in the ratio of 2:1, with the Applicant having the first right of purchase and that the Applicant unsuccessfully sought stay of execution of that judgment and has neither appealed nor sought a review of the orders appointing Kinyua Koech to value and sell the property.
- 12.** Initially, it was deposed, the Applicant declined to grant Kinyua Koech access to the property for purposes of valuation, necessitating further court intervention. He urged that the present application is merely another attempt to frustrate and delay the implementation of the decree. He stated that, in order for the estate agents to effectively market the property, it was necessary to erect a “For Sale” sign directing all inquiries to Kinyua Koech.
- 13.** The proposed signage, he explained, has been designed in a non-intrusive manner so as to ensure minimal interference with the Applicant’s quiet possession and privacy, and that any inspections by prospective buyers

would only be undertaken upon adequate notice and at the convenience of the Applicant. He urged that the Applicant co-operates in this regard.

- 14.** As advised by counsel, the 1st Defendant explained, although the motion is framed as one seeking to restrain the erection of a “For Sale” sign and to procure a fresh valuation, in substance, it amounts to an attempt to review and vary the orders issued on 11th June, 2024.
- 15.** The 1st Defendant contended that the court, having already directed that the suit property be sold through a duly appointed estate agent, cannot now be invited to supervise or micromanage the manner in which that mandate is being executed. To do so, he argued, would not only undermine the finality of the earlier orders, but would also amount to an improper reopening of matters that have already been conclusively determined.
- 16.** He further stated that, curiously, although the Applicant stands to benefit from the market value determined by Kinyua Koech, he appears unwilling to pay the Respondent his rightful share based on that valuation or to facilitate the sale process.
- 17.** The 1st Defendant urged that his father is in his sunset years, having retired from private sector employment, and recently suffered a stroke which left him physically weakened and in urgent need of financial resources for his health and subsistence. There is as such a pressing need to expedite the sale of the suit property so that his

father can enjoy the benefit of his investment and sustain himself during his lifetime.

18. The 1st Defendant further maintained that the Applicant has not demonstrated how the erection of a sale sign would compromise his privacy or attract fraudsters. As shown in the email from Kinyua Koech, the estate agents intend to exercise extreme caution so as to ensure minimal interference with the Applicant's quiet possession and peaceful occupation of the suit property during the marketing phase.
19. He further observed that numerous "For Sale" signs exist in the area and that there has been no reported danger or fraud affecting the various owners. In his view, fraud exists regardless of whether or not a sale sign is erected.

Submissions

20. The Plaintiff/Applicant's counsel filed submissions on 18th March, 2026. Counsel submitted that the court is not *functus officio* merely because it delivered judgment on 6th February 2024 and that the doctrine only bars a merit-based re-engagement with the substantive issues already determined, but does not prevent the court from issuing ancillary, procedural, clarificatory or facilitative orders necessary to give effect to its judgment.
21. Reliance was placed on the decisions in **Raila Odinga & 2 Others vs Independent Electoral and Boundaries Commission & 3 Others, Petition No. 5 of 2013,**

[2013] KESC 8 (KLR), Jersey Evening Post Limited vs A. Thani (2002) JLR 542, and Telkom Kenya Ltd vs John Ochanda (2014) eKLR.

22. Counsel further submitted that the Applicant does not seek to review, vary, stay or set aside the judgment directing valuation and sale of the suit property. Rather, the Applicant only seeks the court's intervention on the manner in which execution is to be undertaken, particularly to restrain the erection of a "For Sale" sign on an occupied family home and to permit an independent valuation.
23. In this regard, it was urged that the Applicant has satisfied the threshold for injunctive relief under **Giella vs Cassman Brown [1973] EA 358**; that the erection of the sign would transform the family home into a public point of interest, expose the family to brokers, strangers, idle curiosity-seekers and potential security risks, and occasion psychological distress, anxiety and stigma, particularly to the minors residing on the property.
24. Such harm, it was deposed, would be irreparable and incapable of adequate compensation by damages and that the balance of convenience favours the Applicant because the Respondent remains at liberty to market the property through less intrusive means such as online listings, print advertisements, brokers and scheduled viewings.
25. Counsel also submitted that the court should permit the Applicant to undertake an independent valuation of the

suit property; that the court's earlier judgment did not bar the parties from obtaining additional or comparative valuations and that a second valuation would merely supplement, rather than displace, the valuation already undertaken by the court-appointed valuer.

26. The 1st Defendant/Respondent's counsel filed submissions on 18th November 2025. Counsel submitted that the court lacks jurisdiction to entertain the application because it is, in substance, an attempt to review or vary the order made on 11th June 2024 appointing Kinyua Koech to undertake the valuation and sale of the suit property despite not having appealed or sought a review of that order. Reliance was placed on **Samuel Kamau Macharia & Another vs Kenya Commercial Bank and 2 Others [2012] eKLR, Owners of the Motor Vessel Lilian vs Caltex Oil Kenya Limited [1989] KLR 1, and Ismail & Another vs Otwala [2023] KEHC 27640 (KLR)**, in support of those propositions.
27. Counsel further submitted that the court had already determined the issue of valuation and sale of the property and was therefore *functus officio* in so far as those questions were concerned. Reliance was placed on **Kenya Broadcasting Corporation vs Geoffrey Wakio [2019] KECA 65 (KLR)**, for the proposition that although a court may exercise supplemental jurisdiction in matters incidental to execution, it cannot revisit issues already conclusively determined.

28. It was argued that once the court appointed Kinyua Koech to undertake the valuation and sale of the property, it cannot then issue orders preventing the real estate agent from carrying out the very functions for which it had been appointed.
29. On the merits, counsel submitted that the Applicant had failed to demonstrate how the erection of a sale sign would compromise his privacy or expose him to fraudsters. It was contended that land fraud occurs irrespective of whether a property bears a “For Sale” sign and that the Applicant himself stood to benefit from the sale since he was entitled to two-thirds of the proceeds.
30. In any event, it was submitted that no evidence was provided to support his allegation that the valuation undertaken by Kinyua Koech was exaggerated, nor had he shown that the valuer was incompetent, relied on irrelevant factors, or used stale data. Reliance was placed on **Zum Zum Investments Limited vs Habib Bank Limited [2014] KEHC 6207 (KLR)**, for the proposition that a party challenging a valuation must do more than merely allege that the value is excessive.
31. Counsel further argued that the orders sought would infringe on the Respondent’s right of access to justice, which includes the right to enforce a decree, as recognised in **Joseph Nyamamba & 4 Others vs Kenya Railways Corporation [2015] KECA 181 (KLR)** and that the Respondent is elderly, in poor health, and

urgently requires his share of the proceeds for medical expenses and sustenance. Counsel therefore urged the court to dismiss the application with costs.

Analysis and Determination

32. Having considered the pleadings and submissions, the issues that arise for determination are:

- i. Whether the Plaintiff/Applicant should be permitted to conduct an independent valuation of L.R Nairobi/Block 35/168?*
- ii. Whether the 1st Defendant/Respondent, or anyone acting under him should be prohibited from placing a “For Sale” sign on L.R Nairobi/Block 35/168?*

33. Vide the present motion, the Applicant seeks, *inter alia*, leave to undertake an independent valuation of the suit property known as Nairobi/Block 35/168. It is the Applicant’s case that the valuation undertaken by Kinyua Koech Limited, which placed the open market value of the property at Kshs. 154,000,000 is grossly exaggerated and he wishes to procure a separate valuation for purposes of comparison.

34. In response, the 1st Defendant/Respondent contends that the plea is unmerited and amounts to an indirect attempt to reopen issues that have already been conclusively determined by the court. It is argued that the court already appointed Kinyua Koech Limited as the independent valuer and estate agent for purposes of implementing the judgment and that the Applicant

neither appealed against nor sought review of that appointment.

- 35.** The Respondent therefore urges that the court is *functus officio* in so far as the appointment of the valuer is concerned and that the present request is merely a disguised attempt to relitigate the issue under the guise of seeking an independent valuation. That question, it was submitted, will be considered in determining whether the plea is merited.
- 36.** By way of brief background, the present suit revolved around a dispute over the ownership of the suit property herein claimed by the parties. The matter proceeded for hearing and vide its judgment rendered on 6th February 2024, the court found that the Applicant herein and the Respondent were each entitled to portions of the suit property.
- 37.** The court consequently directed that the property be valued by an independent valuer for purposes of determining its market value and that it thereafter be sold, with the proceeds being shared in the ratio of 2/3:1/3 between the two aforesaid respectively, with the Applicant having the first option to purchase the land. On 20th June 2024, the Applicant herein filed a motion seeking stay of execution of the judgment pending appeal, but the same was dismissed.
- 38.** Vide a motion dated 29th April 2024, the Respondent sought, *inter alia*, that this court appoints Mr. Fredrick J.

Kinyua of Kinyua Koech Limited as the independent valuer of the suit property for purposes of implementing the decree issued pursuant to the judgment. That application was unopposed and the prayer was allowed on 27th May 2024.

- 39.** Pursuant thereto, the said valuer prepared a valuation report dated 18th June 2025. The Applicant now seeks leave to procure and rely on an independent valuation report.
- 40.** The court has considered the material placed before it. The Applicant's complaint is that the value of Kshs. 154,000,000/= assigned by Kinyua Koech Limited is a "gross exaggeration." However, beyond that bare assertion, no basis has been laid to impugn the valuation report. It has not been demonstrated nor indeed alleged that the valuer lacked the requisite qualifications or expertise, that the valuation was undertaken on the basis of irrelevant considerations, that the valuer ignored relevant factors, or that the report relied on stale or inaccurate market data.
- 41.** Equally, no comparative valuation, indicative market analysis, or even a draft valuation report has been exhibited to demonstrate the alleged exaggeration. The Applicant's position rests solely on his own belief and knowledge of the property. While a property owner may well have a personal view as to the value of his property, such subjective belief, without more, is insufficient to

displace or cast doubt upon a professional valuation undertaken by a court-appointed valuer.

- 42.** In the circumstances, the court is not persuaded that any proper basis has been established to warrant the court's intervention or to justify a departure from the valuation already undertaken by the court-appointed valuer. The plea for an independent valuation is therefore unmerited.
- 43.** The Applicant further seeks an order prohibiting the Respondent, whether by himself, his agents, servants, associates, employees or otherwise, from placing a "For Sale" sign on the suit property. His apprehension is that such signage will attract unwarranted attention to the property, compromise the privacy of his family, expose them to strangers and brokers, and potentially attract fraudsters.
- 44.** The Respondent opposes that plea and maintains that the erection of a "For Sale" sign is a normal and necessary aspect of marketing property. He points out that the court already appointed Kinyua Koech Limited to undertake, not only the valuation, but also the sale of the property and that marketing is an integral part of that mandate.
- 45.** He further states that the proposed sign will be positioned in a non-intrusive manner, all inquiries will be directed to the estate agent, and prospective viewings will only take place upon notice and with minimal interference to the Applicant's occupation.

- 46.** The court has considered the rival positions. Once the court directed that the suit property be sold and appointed Kinyua Koech Limited to undertake the sale process, it necessarily follows that the appointed agent must be allowed reasonable latitude to market the property in a manner consistent with its professional mandate. It would be contradictory for the court to appoint an estate agent to sell the property and thereafter restrain that agent from employing ordinary and reasonable methods of marketing the property.
- 47.** The court is not persuaded that the Applicant has demonstrated any real or specific prejudice likely to arise from the erection of the proposed signage. The fears expressed regarding fraudsters, strangers and breach of privacy remain speculative. No evidence has been placed before the court to show that the property has previously been targeted for fraud, that the proposed signage will disclose sensitive personal information, or that the estate agents intend to conduct the marketing exercise in an intrusive or disruptive manner.
- 48.** On the contrary, the correspondence from Kinyua Koech Limited shows that the signage is intended to be placed in a non-intrusive manner and that viewings will only be conducted upon notice and in a manner that minimizes inconvenience to the Applicant and his family. The Applicant will also benefit directly from the eventual sale,

as he is entitled to two-thirds of the proceeds and has the first option to purchase the property.

49. In the circumstances, the court finds no sufficient basis to prohibit the 1st Defendant/Respondent or the appointed estate agents from placing a “For Sale” signage on the suit property for purposes of marketing the same.

50. In the end, the court finds the Notice of Motion dated 2nd September, 2025 to be unmerited. The same is dismissed with costs.

Dated, signed and delivered virtually in Nairobi this 14th day of May, 2026.

O. A. Angote
Judge

In the presence of;

Mr. Ogara for Mr. Gadu for Plaintiff

Ms Nduta for Dr. Kamau Kuria for 1st Defendant

Court Assistant: Tracy