

RULING

1. Before this court for determination is the Notice of Motion by the 1st Defendant in ELC 152 of 2018, hereinafter the Applicant's Notice of Motion dated 3rd December, 2025 brought pursuant to the provisions of **Section 13 (1), (2), (3) and (5) of the Environment and Land Court Act 2011, Section 1A, 1B, 3A and 63E of the Civil Procedure Act, and Order 40 Rule 1 & Order 51 Rule 1 of the Civil Procedure Rules 2010**, seeking the following reliefs:

- a) *That Gazette Notice No. 16931 of 2025, Kenya Gazette Vol. CXXVII - No. 237 dated 21st November 2025; The Land Registration Act (Cap. 300), Reconstruction of Lost or Destroyed Land Register by the 2nd Defendant/Respondent ("the Chief Land Registrar") be and is hereby set aside and/or quashed.*
- b) *That this Honourable Court do make any other and/or such further orders and issue any further relief it may deem fit to grant in the interest of justice.*
- c) *That the costs of this Application be provided for.*

2. The Motion is premised on the grounds set out on the face thereof and supported by the affidavit of Peter David Leparakwo, the 1st Defendant/Applicant of an even date. He deponed that he filed a counterclaim herein dated 30th July, 2018 in which he asserted that he is the registered proprietor of all that parcel of land known as L.R. No. 24968/2 I.R. 152577, deed plan no. 230580 measuring approximately 9.72 hectares, situated at Karen Plains within Nairobi County (hereinafter “the *suit property*”), and that he has been in continuous occupation thereof at all material times.
3. He explained that on 4th September 2025, the Cabinet Secretary, Ministry of Lands, Public Works, Housing and Urban Development, addressed a letter to his advocates stating that the suit property constitutes public land owned by the Social Health Authority (SHA), being the successor to the now defunct National Health Insurance Fund (NHIF) and that the letter also stated that the I.R. number cited in its title documents, namely I.R. No. 152577, does not, according to official records, correspond with or translate to L.R. No. 24968/2.
4. The 1st Defendant/Applicant explained that it is a matter of public record, widely reported in the media, that substantial sums of money, running into billions of shillings have been disbursed by the Social Health Authority (SHA) in relation to a proposed health facility project on the suit property. He

added that the issue has attracted parliamentary scrutiny and is presently under investigation by the Parliamentary Investments Committee (PIC), as reflected in its 24th Report and that a similar inquiry was noted in the Auditor General's report of 30th June, 2020

5. According to Mr. Leparakwo, in view of the foregoing, he filed the application dated 1st October 2025 seeking, *inter alia*, a temporary injunction restraining interference with the land registry records relating to his title, orders compelling the production and confirmation of those records, and the joinder of the Cabinet Secretary, Ministry of Lands, as a party to the proceedings.
6. It is his position that his counterclaim, together with other numerous pleadings filed herein as regards the ownership of the suit property disclose a strong prima facie case in his favour warranting the protection and preservation of the suit property pending hearing and determination of the suit.
7. He explained that notwithstanding the subsisting dispute over ownership of the suit property, the Chief Land Registrar has caused to be published in the Kenya Gazette, Gazette Notice No. 16931 of 2025, Kenya Gazette Vol. CXXVII - No. 237 dated 21st November 2025; The Land Registration Act (Cap. 300), Reconstruction of Lost or Destroyed Land Register ("the Gazette Notice").

8. He deposed that the Gazette Notice No. 16931, issued under the Land Registration Act, indicates that the land register for L.R. No. 24968/2, purportedly registered in the name of the Social Health Authority, had been lost or destroyed and that it further notified that, unless an objection was lodged within sixty days, the register would be reconstructed under **Section 33(5)** of the **Act**.
9. He deposed that, through the impugned Gazette Notice, the Chief Land Registrar has purported to declare the Social Health Authority (SHA) as the registered proprietor of the suit property. This action, he asserted, directly affects and materially prejudices the subject matter of these proceedings, as it interferes with the very rights, interests, and title presently in dispute before this court.
10. As advised by counsel, he stated, by purporting to declare SHA as the registered proprietor of the suit property and initiating the reconstruction of the property register, the Chief Land Registrar has impermissibly encroached upon and undermined the jurisdiction and authority of this court and that these administrative actions directly pre-empt and interfere with the very question pending before this court which is the ownership, validity of title, and status of the register relating to the suit property thereby usurping the judicial function of this court and offending the doctrines of *sub judice* and *lis pendens*.

- 11.** He urged that unless this Motion is certified urgent and heard immediately and the orders sought therein granted, the Chief Land Registrar will, within the sixty (60) days period from the date of publication of the Gazette Notice, proceed with the reconstruction of the property register in favor of SHA thus prejudicing the subject matter of these proceedings.
- 12.** The Plaintiff (SHA) in ELC No 691 of 2011, filed a replying affidavit on 23rd March, 2026 through Dr Mercy Mwangangi, its Chief Executive Officer. She deposed that the Plaintiff/Respondent is a public body established under the Social Health Authority Act, with *inter alia* the mandate to manage public health insurance and related assets in accordance with the Constitution of Kenya and the relevant statutes.
- 13.** According to the Plaintiff in ELC No 691 of 2011, the Respondent is and has always been the registered proprietor of all that parcel of land known as L.R. No. 24968/2, situated in the Karen Plains area within Nairobi County since 2002, by virtue of a sale agreement between the defunct NHIF (now SHA and herein after referred to the “Fund”) and Kaskazi Traders Limited.
- 14.** It was deposed that the previous owner, Kaskazi Traders Limited, was allocated LR No. 13782 measuring approximately 11.82 hectares through a letter of allotment

dated 24th February, 1999 and later hived off 9.250 ha which it sold to the Fund. She explained that the Respondent's proprietary interest in the suit property is public knowledge and has been confirmed by various government agencies, including the Commissioner of Lands, Mr. Zablon Agwata Mabea, in a letter dated 22nd August, 2007 to the Attorney General, and recently in the letter dated 4th September, 2025 from the Cabinet Secretary, Ministry of Lands, Public Works, Housing and Urban Development addressed to the 1st Defendant/Applicant herein.

- 15.** The CEO of SHA deposed that as a result of four different parties claiming the suit property, including the Fund, asserting proprietary interests over the same parcel of land, the Directorate of Criminal Investigations (DCI) required all claimants to surrender their original title documents to facilitate investigations into the ownership of the property and that in compliance, the Fund instructed its advocates to surrender the original title deed for L.R. No. 24968/2 to the DCI on 13th May 2019.
- 16.** However, despite several follow-ups, the Directorate has neither returned the title deed nor provided any update regarding its status and that in the absence of formal communication, the Fund has since inferred that the title deed may have been lost, misplaced, or is otherwise unaccounted for in the course of the investigations

necessitating the invocation of the statutory process for reconstruction as provided under the **Land Registration Act**.

- 17.** She explained that the Chief Land Registrar, in accordance with **Section 33(5)** of the **Land Registration Act**, published Gazette Notice No. 16931 of 2025, Kenya Gazette Vol. CXXVII - No. 237 dated 21st November, 2025, notifying the public of the intended reconstruction of the lost or destroyed land register for the suit property and that the Chief Land Registrar, upon being satisfied that the register has been lost or destroyed and after due notice, is vested with statutory powers under **Section 14** and **Section 33(5)** of the **Land Registration Act** to reconstruct lost or destroyed land registers and to determine, based on available evidence, the person who is entitled to be registered as the proprietor of the suit property.
- 18.** She explained that the Respondent has invested substantial public funds in the acquisition of the suit property. However, the commencement of any meaningful projects or developments has been hindered by the protracted, two-decade litigation over its ownership and that any further delay or interference with the Respondent's proprietary rights would occasion grave prejudice, not only to the Respondent but also to the wider public interest.

- 19.** In any event, it was deposed, the Chief Land Registrar's actions are subject to the supervisory jurisdiction of this court as any aggrieved party will get redress through the ongoing judicial process noting that this court has inherent powers to grant orders that ensure that justice is done, including orders directing the Registrar to cancel any fraudulent titles and issue new titles to rightful owners.
- 20.** The 1st Defendant/Applicant filed a supplementary affidavit on 27th March, 2026. Mr. Leparakwo deposed that he lodged a complaint with the Directorate of Criminal Investigations (DCI) Headquarters seeking investigations into the alleged ownership documents held by the parties claiming the suit property.
- 21.** Following the complaint and upon conducting investigations, he deposed, the DCI prepared a report and issued recommendations in a letter dated 9th September 2021 addressed to the Chief Land Registrar, Ministry of Lands and Physical Planning, and copied to the Cabinet Secretary, Ministry of Lands and that the report indicated, in part, confirmed that the registration of the Applicant as the owner of the suit property was legitimate.
- 22.** In his view, the Respondent's assertions are calculated to mislead the court and to improperly sanitise an irregular process aimed at reviving or legitimising a title that had already been impugned by competent authorities.

23. He further deponed that, in addition to the findings of the DCI and the Ministry of Lands, several government agencies had confirmed the authenticity of his title, including correspondence from the Ministry of Lands dated 16th January 2018 affirming him as the registered owner, a determination dated 28th January 2020 declaring his title as the valid ownership document and cancelling competing titles, a letter dated 30th May 2022 directing legal action to cancel rival titles, and confirmation by the Nairobi City County Valuation Department that he was the rateable owner of the suit property.
24. He urged that the Respondent and the Chief Land Registrar cannot selectively rely on alleged confirmations by public bodies to justify and/or sanitize the Gazette Notice while disregarding the overwhelming and consistent findings by the same and other competent authorities which directly invalidated its title.
25. In any event, he asserted, such administrative confirmations, do not and cannot form a lawful basis for the reconstruction of the land register under **Section 33(5)** of the **Land Registration Act** in favour of the Respondent, particularly in the face of a subsisting dispute before this court. The two parties filed submissions and a list of authorities which I have considered.

Analysis and Determination

- 26.** Having considered the pleadings and submissions, the sole issue that arises for determination is whether the Gazette Notice No. 16931 of 2025, Kenya Gazette Vol. CXXVII - No. 237 dated 21st November 2025 should be set aside and/or quashed.
- 27.** The 1st Defendant/Applicant asks this court to find that the impugned Gazette Notice is unlawful, irregular and issued in violation of the law, and consequently to set it aside.
- 28.** It is his position that the Chief Land Registrar acted in excess of his statutory mandate by purporting to reconstruct the register and declare the Social Health Authority (SHA) as proprietor of the suit property while there exists a live dispute before this court regarding ownership of the same. He contends that such action directly interferes with the subject matter of the suit and prejudices his proprietary interests. The Registrar's actions, it is urged, violates the principles of *sub judice* and *lis pendens*.
- 29.** On its part, the Plaintiff/Respondent disputes this position, maintaining that the impugned action was undertaken pursuant to the powers conferred upon the Registrar under the Land Registration Act, particularly in relation to the reconstruction of lost or destroyed registers. It is further contended that the process followed was lawful,

procedurally sound, and intended to regularize the register in light of missing or unaccounted for title documents.

- 30.** Beginning with the contention that the Chief Land Registrar's actions constitute sub judice and/or offend the doctrine of lis pendens, the doctrine of sub judice is anchored under **Section 6** of the **Civil Procedure Act**, which provides that no court shall proceed with a matter in which the issues are directly and substantially in issue in a previously instituted suit between the same parties or those claiming under them.
- 31.** The rule is intended to prevent multiplicity of suits, avoid conflicting decisions, and ensure orderly administration of justice. As stated by the Supreme Court in ***Kenya National Commission on Human Rights vs Attorney General; Independent Electoral & Boundaries Commission & 16 others (Interested Parties) (Advisory Opinion Reference 1 of 2017) [2020] KESC 54 (KLR)***, a party invoking sub judice must demonstrate that there exists more than one suit over the same subject matter; that one suit was instituted before the other; that both are pending before courts of competent jurisdiction; and that they involve the same parties or their representatives.
- 32.** In the present case, while there is no dispute that the ownership of the suit property is actively in contest before this court, the impugned Gazette Notice does not amount to

the institution or continuation of a parallel suit or proceeding. Rather, it is an administrative action undertaken by the Registrar in exercise of statutory powers. Strictly speaking, therefore, the doctrine of *sub judice* is not applicable.

33. The Court of Appeal in **Cove Investments Limited vS Rono & 2 others (Civil Appeal (Application) E051 of 2025) [2025] KECA 1089 (KLR) (20 June 2025) (Ruling)** exhaustively restated the scope, rationale, and continuing applicability of the doctrine of *lis pendens* in Kenya thus:

“The above doctrine denotes those principles and rules of law which define and limit the operation of the common law maxim pendente lite nihil innovetur, that is, pending the suit nothing should be changed. As was held in Ex parte Thornton [1867] 2 Ch.p.178, as soon as proceedings are commenced to recover or charge specific property, there is lis pendens, that is, a pending suit, the consequence of which is that until the litigation is at an end neither litigant can deal with the property to the prejudice of the other. This doctrine requires that nothing new can be introduced during the pendency of a suit and if at all anything new is introduced, the same

would also be subject to the final outcome of the suit, which would decide the rights and obligations of the parties.”

- 34.** The question that then arises is whether the Registrars actions in issuing the impugned Gazette notice offends the doctrine of *lis pendens* or otherwise interferes with the subject matter of this suit. It is not lost to this court that the Registrar is clothed with statutory authority under **Sections 14 and 33(5)** of the **Land Registration Act** to deal with instances of lost or destroyed registers, including the power to reconstruct the register upon being satisfied as to the loss and after due notice. This power is intended to preserve the integrity of the land registration system and ensure continuity where records have been compromised.
- 35.** While the impugned Gazette Notice may not, strictly speaking, amount to a transfer or alienation of the property, its effect cannot be considered in isolation from the context in which it was issued.
- 36.** The present dispute concerns highly contested claims of ownership of the suit property. In the court’s view, the reconstruction of the land register in favour of one party, at a time when these competing claims are actively under judicial consideration, carries a real risk of altering the status of the property and pre-empting the issues reserved for adjudication.

37. Accordingly, while the Registrar's power to reconstruct the register is not in doubt, and there has been no demonstration that the exercise of that power was undertaken illegally, unprocedurally, or irrationally so as to warrant its quashing, the court is of the view that the more appropriate course, in the circumstances, is to suspend its implementation.
38. For that reason, the court finds that although the impugned Gazette Notice is not unlawful, its effect should be held in abeyance until this suit is heard and determined.
39. Ultimately, the Notice of Motion dated 3rd December, 2025 partly succeeds and the court directs as follows:
- i. **The Gazette Notice No. 16931 of 2025, published in Kenya Gazette Vol. CXXVII - No. 237 dated 21st November 2025 under the Land Registration Act (Cap. 300), regarding the reconstruction of the lost or destroyed land register for L.R. No. 24968/2 by the 2nd Defendant/Respondent (the Chief Land Registrar), shall not be implemented, and no further steps towards the reconstruction of the said register shall be undertaken pending the hearing and determination of the suit.**
 - ii. **Costs shall abide the suit.**

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

O. A. Angote
Judge

In the presence of;

Ms Asli for Plaintiff in ELC 152/2018

Ms Omambia for Mr. Nyachoti for 1st Defendant

Mr. Allan Kamau for 2nd, 3rd, and 4th Defendants

Mr. Ogembo for 2nd Defendant in ELC 691/2011

Court Assistant: Tracy