

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

ELC CASE NO. 766 OF 2017

MARGARET KATIKO LEPOSO PLAINTIFF/APPLICANT

VERSUS

DAVID GITOME KUHIGUKA 1ST DEFENDANT/RESPONDENT

THE LAND REGISTRAR, KAJIADO COUNTY 2ND DEFENDANT/RESPONDENT

**THE HON. ATTORNEY GENERAL 3RD
DEFENDANT/RESPONDENT**

RULING

Introduction

1. The matter before this Court concerns a Chamber Summons application dated 26th November 2025. The application is brought by the Plaintiff, Margaret Katiko Leposo, seeking various orders intended to facilitate the execution of a Decree issued by this Court on 11th May 2023.
2. The application is expressed to be brought under Order 51 Rule 1 of the Civil Procedure Rules, 2010; Sections 3, 3A of the Civil Procedure Act; and Sections 79 and 80 of the Land Registration Act, 2012.
3. Through the said Chamber Summons, the Applicant seeks the following principal orders:
 - i. That the Land Registrar, Kajiado, be ordered to cancel the subdivisions of the suit land, L.R. KAJIADO/KITENGELA/8776, and more particularly titles L.R. 52850-93 and 52895 all-inclusive.

- ii. That the Court direct the re-issuance of the original title to the Plaintiff to enable the execution of the Decree dated 11th May 2023.
 - iii. That the Land Registrar be directed to instruct the District Surveyor, Kajiado, to cancel the subdivision forms and mutations for the said parcels.
4. The application is premised on the grounds that, following the delivery of judgment on 8th May 2023, the 1st Defendant was awarded 2.8 acres of the suit land while the balance was to revert to the Plaintiff. However, the Land Registrar has reportedly declined to effect the subdivision as ordered, citing that the original mother title no longer exists because the 1st Defendant had already caused it to be subdivided into multiple parcels, specifically L.R. 52850 through 52893 and 52895.
 5. Records from the Land Registry dated March 2026 produced before the court confirm that the resulting titles currently stand in the name of David Gitome Kuhiguka, the 1st Defendant/Respondent herein, with entries noting that the suit ELC 766 of 2017 is still pending against them. The Applicant contends that unless these subdivisions are cancelled and the original title reinstated, the judgment of this Court will be incapable of execution.

Issues for determination

6. The primary issue for determination is whether this Court should exercise its jurisdiction to order the cancellation of the subdivisions of the suit land, L.R. No. KAJIADO/KITENGELA/8776 (namely L.R. Nos. 52850-93 and 52895), and direct the reinstatement of the original title to facilitate the execution of the Decree issued on 11th May 2023.

Analysis and Determination

7. The jurisdiction of this Court to ensure that its judgments are not rendered nugatory is anchored in both statute and the inherent powers of the court. **Section 3A of the Civil Procedure Act** preserves the inherent power of the Court as follows:

"Nothing in this Act shall be deemed to limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court."

8. Regarding the rectification of land records, **Section 80(1) of the Land Registration Act, No. 3 of 2012** provides:

"Subject to subsection (2), the court may order the rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration (other than a first registration) has been obtained, made or omitted by fraud or mistake."

9. In matters involving the execution of a decree, **Section 34(1) of the Civil Procedure Act** is instructive:

"All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the court executing the decree and not by a separate suit."

10. The legal principle regarding the jurisdiction of courts and finality of court orders was articulated in *Samuel Kamau Macharia & Another v Kenya Commercial Bank Limited & 2 Others [2012] eKLR*, where the Supreme Court observed:

"A Court's jurisdiction is only that which is conferred by the Constitution or by statute. It cannot under any circumstances, arrogate to itself jurisdiction through the craft of interpretation, or by any other way, where none has been conferred."

11. Once jurisdiction is established and a judgment rendered, the court remains seized of the matter for purposes of execution to ensure the "fruits of the judgment" are realized by the party in whose favour judgement was entered.

12. The facts of this case reveal a significant procedural impasse. This Court delivered a judgment on 8th May 2023, which was subsequently extracted into a Decree on 11th May 2023. The Decree clearly apportioned the suit land, L.R. No. KAJIADO/KITENGELA/8776, awarding 2.8 acres to the 1st Defendant and the remaining balance to the Plaintiff. This was a final determination of the proprietary rights of the parties.

13. It has emerged, however, that the execution of this Decree is currently frustrated by the fact that the "mother title," L.R. No. KAJIADO/KITENGELA/8776, was subdivided into forty-four (44) separate parcels (L.R. Nos. 52850-93 and 52895) prior to the full implementation of the Court's orders. The Land Registrar has expressed an inability to subdivide a title that is technically "closed" in the registry.

14. Applying the law to these facts, it is evident that the existence of these subdivisions constitutes a legal and administrative barrier to the satisfaction of the Decree. Under **Section 34 of the Civil Procedure Act**, this Court, as the executing court, has the mandate to resolve any questions relating to the satisfaction of the decree. If the subdivisions were allowed to stand, the judgment of 8th May 2023 would remain a "paper judgment," incapable of enforcement. This would not only prejudice the Plaintiff but would also undermine the authority of the Court and the finality of judicial proceedings.
15. The Certificates of Official Search dated 19th March 2026, produced by the Applicant, confirm that the 1st Defendant is the registered proprietor of the resulting sub-titles and that a "Suit Pending" notice was registered against all of them. This indicates that these titles were created subject to the ultimate outcome of ELC Case No. 766 of 2017. Since the suit has been determined in favor of the Plaintiff (save for the 2.8 acres awarded to the 1st Defendant), the register must now be rectified to reflect the Court's final decision.
16. Under **Section 80 of the Land Registration Act**, the Court is empowered to order the cancellation of a registration if it was made in error or if it obstructs the lawful proprietary rights determined by a court of law. The current registration of forty-four sub-plots in the name of the 1st Defendant is inconsistent with the Decree which restricts his interest to only 2.8 acres.
17. Justice requires that the status of the land be restored to its original form to allow for a fresh and accurate subdivision in strict compliance with the Decree of 11th May 2023. To refuse this prayer would be to allow a technicality to override the substantive interests of

justice, which would be a direct contravention of the overriding objective set out in **Section 1A of the Civil Procedure Act.**

18. Consequently, the Court finds that the application for the cancellation of the subdivisions and the reinstatement of the mother title is well-founded and necessary for the effective execution of the Court's Decree.

19. In view of the foregoing, and in the exercise of this Court's inherent powers under **Section 3A of the Civil Procedure Act** to prevent the abuse of the court process and to ensure the effective execution of its decrees, the Court hereby makes the following orders:

- A. **THAT** the Land Registrar, Kajiado County, be and is hereby ordered to cancel the registration of all resultant subdivisions of the suit land, **L.R. No. KAJIADO/KITENGELA/8776**, and more particularly the titles for **L.R. Nos. 52850 through 52893 and L.R. No. 52895** all-inclusive.
- B. **THAT** the Land Registrar, Kajiado County, is directed to reinstate the original "mother" title for **L.R. No. KAJIADO/KITENGELA/8776** in the register and issue a certified copy of the same to the Plaintiff/Applicant to facilitate the execution of the Decree.
- C. **THAT** the District Surveyor, Kajiado, is hereby directed to cancel all subdivision forms, mutations, and survey records associated with the cancelled parcels mentioned in Order (A) above.
- D. **THAT** upon the restoration of the original title, the Land Registrar and the District Surveyor shall proceed to effect a fresh subdivision of **L.R. No. KAJIADO/KITENGELA/8776** in strict compliance with the Decree of

this Court dated 11th May 2023—namely, excise **2.8 acres** for the 1st Defendant and revert the **balance** of the land to the Plaintiff.

E. **THAT** the costs of this application are awarded to the Plaintiff/Applicant as against the 1st Defendant.

It is so ordered.

Dated, Signed and Delivered Virtually this 13th Day of May, 2026.

M.D. MWANGI
JUDGE

In the virtual presence of:

Ms. Parseina for the Plaintiff/Applicant

N/A by the Defendants/Respondents

Court Assistant: Alex

M.D. MWANGI
JUDGE