



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**  
**ELC LAND MISC NO. E072 OF 2025**

**KENNETH KIMITI NJABAI.....**  
.....**APPLICANT**

**VERSUS**

**KENYAN MACHARIA KAREMA.....1<sup>ST</sup>**  
**RESPONDENT**

**WRIGHT AUCTIONEERS.....2<sup>ND</sup>**  
**RESPONDENT**

**RULING**

1. This ruling pertains to the application, dated 23 July 2025, filed by the applicant and it has been moved under the provisions of **Articles 10, 27, 40, 47, 160, and 165 (3)** of the **Constitution of Kenya 2010**, **Sections 90, 96, 97, and 99** of the **Land Act**, **Sections 1A, 1B, and 3A** of the **Civil Procedure Act** and **Order 40 Rules 1, 2, 3 (2), 4, 8, and 10** of the **Civil Procedure Rules**, and he seeks the following reliefs from the court.

**a. Spent.**

**b. Spent.**

**c. This honourable court be pleased to issue an injunction barring the respondents, by themselves, servants, agents, or otherwise, from selling, auctioning, transferring, disposing, charging, encumbering, entering, encroaching upon, or otherwise interfering with the applicant's property L.R. No. 12715/9514 (I.R. 19772) and 12715/9515 (I.R. 119773), pending the hearing and determination of this suit.**

**d. This honourable court do issue such other or further order as it may deem fit and just in the circumstances of this suit.**

**e. That the costs of this application be provided for.**

2. The motion is supported by the grounds set out in the body thereof and the supporting affidavit of the applicant, sworn on the instant date. In summary of the grounds, the applicant states that he has never issued a charge instrument in favour of the 2nd respondent, and any such instrument is a forgery. The alleged principal borrower, Geepak Limited, is unknown to

the applicant, and he has never guaranteed its borrowing. The applicant has custody of his title, and he has never litigated over it. It is therefore inconceivable how the same was obtained and charged to the 2nd respondent without his knowledge. Further, the applicant has not been served with any statutory demand notices as required of a chargee under **Sections 90, 96, and 97** of the **Land Act**.

3. The averments in the supporting affidavit were in total variance with these grounds, and in it, he succinctly informs the court that in April 2019, he entered into a sale agreement to purchase two land parcels, **LR. NO. 12715/9514** and **LR. NO. 12715/9515 (“suit properties)** and took possession after paying the first deposit, using the properties since then. On July 9, 2025, auctioneers broke into the properties, presented a notification of sale, and posted it on the gate, claiming the land would be sold to settle a decree against the registered owner.
4. In opposition, the 2nd respondent, through his replying affidavit deposed on 5 November 2025, contested not only this motion but also another filed on 22 July 2025, which was abandoned. In it, the 2<sup>nd</sup> respondent informs the court that the subject properties have been advertised for sale pursuant to warrants issued in execution of a decree in **Muranga Chief Magistrate's Court, MCLE No. 36 of 2019, Alison Waceke Kamaru & Another v. Kenyan Macharia Kirema &**

**Another.** The applicant is aware of this parallel suit and has filed an application similar to the present one, which constitutes forum shopping in an attempt to secure favourable orders from different courts.

5. Furthermore, the applicant did not disclose to this court the existence of the suit in Muranga, thereby approaching the court with unclean hands. Additionally, the applicant submitted another application to the **Muranga High Court**, which also declined to grant the requested orders. According to the 2nd respondent, the proper procedure would be for the applicant to file objection proceedings in the relevant court as prescribed by law. He asserts that it is well established that litigation must come to an end, and the numerous applications filed by the applicant and the 1st respondent are improper attempts to subvert justice and obstruct the enforcement of a lawfully issued decree.
6. Significantly, despite another application dated 29 September 2025 by the applicant being reserved for ruling, it is clear that it has been spent as this court allowed it on 2 October 2025. There is another application dated 4 September 2025, which the applicant did not address, in which he sought injunctive orders similar to those in the application subject to this ruling, as well as a stay of proceedings in the Muranga cases.

7. Accordingly, following the court's directions, the motion was argued through written submissions filed by the law firms representing the applicant and the 2nd respondent. **Ms. M. Morgan J Muinde & Associates Advocates** for the applicant filed theirs dated 18 December, and **Ms. Wambui Mwangi Advocates** for the 2nd respondent filed theirs dated 2nd January 2026. Thus, having carefully considered the motion, its grounds, affidavits, submissions, legal framework, and relevant jurisprudence, including that relied upon by counsel, the key issue for determination is **whether the motion constitutes an abuse of court process.**
8. Concerning this matter, it is a well-established legal principle that the court possesses inherent jurisdiction to protect itself against abuse or to prevent its processes from being misused. An abuse of court process is any departure from established good order that significantly deviates from the reasonable use of court process; such abuse occurs when an individual makes excessive, improper, or contradictory use of court procedures, thereby contravening the natural legal principles. The persuasive decision in **Satya Bhama Gandhi v. Director of Public Prosecutions & 3 others [2018] KEHC 6100 (KLR)** outlined several examples of abuse of court process.
9. As to the definition of the term "abuse of the court process," reference is made to the decision in the Court of Appeal case of **Muchanga Investments Ltd v Safaris Unlimited**

**(Africa) Ltd & 2 others [2009] KECA 453 (KLR)**, which reaffirmed the definition as set forth in two foreign court decisions in the following manner: -

***“In BEINOSI v WIYLEY 1973 SA 721 [SCA] at page 734F-G a South African case heard by the Appeal Court of South Africa, Mohomad CJ, set out the applicable legal principle as follows: -***

***“What does constitute an abuse of process of the court is a matter which needs to be determined by the circumstances of each case. There can be no all-encompassing definition of the concept of “abuse of process.” It can be said in general terms, however, that an abuse of process takes place where the proceedings permitted by the rules of court to facilitate the pursuit of the truth are used for purposes extraneous, to that objective.”***

***Again the Court of Appeal in Abuja, Nigeria in the case of ATTAHIRO v BAGUDO 1998 3 NWLL pt 545 page 656, stated that the term abuse of court process has the same meaning as abuse of judicial process. The employment of judicial process is regarded as an abuse when a party uses the judicial process to the irritation and annoyance of his***

***opponent and the efficient and effective administration of justice. It is a term generally applied to a proceeding which is wanting in bona fides and is frivolous, vexatious or oppressive. The term abuse of process has an element of malice in it.***

***In the Nigerian Case of KARIBU-WHYTIE J Sc in SARAK v KOTOYE (1992) 9 NWLR 9pt 264) 156 at 188-189 (e) the concept of abuse of judicial process was defined:-***

***“The concept of abuse of judicial process is imprecise, it implies circumstances and situations of infinite variety and conditions. Its one feature is the improper use of the judicial powers by a party in litigation to interfere with the administration of justice ...”***

10. The applicant did not address this issue, but the 2nd respondent did, and this court agrees with the 2nd respondent's assertions that this matter amounts to an abuse of court process on several grounds.
11. Firstly, our legal framework establishes the procedures for commencing court proceedings. Our **Section 19** of the **Civil**

**Procedure Rules** states that every suit shall be instituted in the manner prescribed by the **Rules**. The significance of this legal provision is that a suit must be initiated in accordance with the procedure stipulated by law. Generally, a suit is commenced by way of a plaint, as provided under **Order 3 Rule 1 (1)** of the **Civil Procedure Rules**. In cases involving special circumstances, such as a constitutional petition, the **Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013** govern the proceedings. Alternatively, a suit may be instituted in other exceptional circumstances through an originating summons, as provided under **Order 37** of the **Civil Procedure Rules**.

12. Furthermore, a lawsuit may be instituted by way of a notice motion, as the applicant did, provided that a specific statute governs the procedure for seeking the court's intervention in such a manner (*see Abdi Abdullahi Somo v. Ben Chikamai & 2 Others [2016] eKLR*). Additionally, in cases where no procedural framework is established by statute for a particular proceeding, the court may be moved by an originating motion (*See Saint Benoist Plantations Ltd v. Jean Emile Adrien Felix (CA No 25 of 1954)*).

13. A review of the various applications submitted by the applicant demonstrates that the nature of the grievances he has posited pertains to either a statutory power of sale or his

status as a purchaser of land. Regrettably, this court remains uncertain about his grievances because the grounds in support of the motion and his supporting affidavit are entirely inconsistent.

14. Nevertheless, all point to the fact that he ought to have commenced this matter by means of a plaint, which he did not do. Furthermore, he has not shown that a specific statute granted him the authority to approach the court by a notice of a motion in the absence of a substantive suit. Consequently, in the absence of a primary suit, this court finds that the motion dated 23 July 2025 is incompetent. It also finds his application dated 4 September 2025, which sought similar reliefs, constitutes an abuse of court process and is similarly incompetent.

15. Secondly, the applicant, before bringing this matter before this court, was fully aware of the proceedings in **Muranga CM ELC 36 of 2019**, as he presented the warrants to this court. Being aware of these proceedings and since he claims an interest in the disputed property, he ought to have approached the Muranga subordinate Court with an application objecting to the attachment, rather than rushing to this court to seek unwarranted relief. Following this, this Court lacks jurisdiction to address this issue because the attachment and sale of the parcels in question were conducted under a lawful court order, and this court cannot interfere with the Muranga Court's

enforcement proceedings. In this regard, this court is guided by **Order 22, Rule 51** on objection to attachment, which states;

***“(1)Any person claiming to be entitled to or to have a legal or equitable interest in the whole of or part of any property attached in execution of a decree may at any time prior to payment out of the proceeds of sale of such property give notice in writing to the court and to all the parties and to the decree-holder of his objection to the attachment of such property.***

***(2)Such notice shall be accompanied by an application supported by affidavit and shall set out in brief the nature of the claim which such objector or person makes to the whole or portion of the property attached.***

***(3)Such notice of objection and application shall be served within seven days from the date of filing on all the parties.”***

16. Lastly, it is clear that the applicant was engaging in forum shopping, as he submitted two applications, both dated 4 September 2025, to this court and the Muranga court, each seeking to prevent the sale of the suit properties,

demonstrating an attempt to obstruct the sale process. Furthermore, he filed several other applications, some of which sought similar reliefs, some of which he abandoned, and others of which he failed to prosecute. In essence, he was instituting multiple actions concerning the same subject matter in different courts against the same opponent on similar issues. Therefore, this court concludes that his actions constituted an abuse of the court process.

17. In the end, for the foregoing reasons and findings, the applicant's applications dated 23 July 2025 and 4 September 2025 are hereby struck out, while his application dated 29 September 2025 is marked as spent. As he was unsuccessful, he shall bear the costs of the 2nd respondent for these applications. Since the 1st respondent did not participate in these proceedings, no costs are awarded to him. This file is now effectively marked as closed.

Orders accordingly.

**Delivered and Dated at Machakos this 12<sup>th</sup> day of May, 2026.**

**HON. A. Y. KOROSS  
JUDGE  
12.05.2026**

**Ruling delivered virtually through Microsoft Teams Video Conferencing Platform**

In the presence of;

Ms. Kanja Court Assistant

Miss Sibika for M/s Muinde for applicant.

Mr. Mandela for Miss Mwangi for 2<sup>nd</sup> respondent.

No appearance for 1<sup>st</sup> respondent.

ORIGINAL