



REPUBLIC OF KENYA



KENYA LAW
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Johana & another v Bett & 16 others (Environment and Land Case E035 of 2024) [2025] KEELC 5479 (KLR) (23 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5479 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT AND LAND CASE E035 OF 2024**

**CK NZILI, J
JULY 23, 2025**

BETWEEN

KIPLANGA KOROS JOHANA 1ST PLAINTIFF

STANLEY MALAKWEN MOSBEY 2ND PLAINTIFF

AND

DANIEL KIPKEMBOI BETT 1ST DEFENDANT

**ELIZABETH JEPKOECH KEMBOI (LEGAL REPRESENTATIVE OF THE
ESTATE OF DAVID KIBITOK KEMBOI) 2ND DEFENDANT**

AND

JOSEPH RONO 1ST PROPOSED DEFENDANT

JOSEPHAT ROTICH 2ND PROPOSED DEFENDANT

EZEKIEL BIWOTT 3RD PROPOSED DEFENDANT

JULIUS KIPRONO 4TH PROPOSED DEFENDANT

EVANS YEGO 5TH PROPOSED DEFENDANT

JAMES BUNEI 6TH PROPOSED DEFENDANT

LABAN KEMBOI 7TH PROPOSED DEFENDANT

JOEL MITEI 8TH PROPOSED DEFENDANT

AMOS KIPLAGAT 9TH PROPOSED DEFENDANT

ERIK KINGENO RUTO 10TH PROPOSED DEFENDANT

MOSES GACHUI 11TH PROPOSED DEFENDANT

DICKSON NJAU 12TH PROPOSED DEFENDANT



SAMMY TOO 13TH PROPOSED DEFENDANT
GILBERT OKODOI 14TH PROPOSED DEFENDANT
KENNEDY KIPROTICH ROTICH 15TH PROPOSED DEFENDANT

RULING

1. By an application dated 17/4/2024, the court is asked by the proposed 3rd - 17th applicants to:
 - (a) Stay the decree issued on 1/4/2025.
 - (b) Vary, review and set aside the judgment and all the consequential orders or decrees.
 - (c) Join them as defendants in the suit.
2. The reasons are set on the face of the application and in a supporting affidavit of Joseph Rono, sworn on 17/4/2025. It deposed that the 1st and 2nd defendants/respondents lack the capacity to enforce the decree for specific performance, for they are no longer title holders. It is deposed that there is an error on the face of the record as a certified copy of the title was not produced before the court under Order 21 Rule 6 of the *Civil Procedure Rules*. The applicants depose that the parties misled the court, there was fraud and misrepresentation of facts with the aim of using the court to unjustly enrich themselves.
3. The applicants depose that the plaintiffs/respondents, 1st and 2nd defendant/respondents, and their advocates have always been on one side against the entire membership of Kaptien Farm, hence hoodwinked the court to deny the rightful members of their shares, both old and new members. The applicants depose that as the secretary of the Farm believes that the plaintiffs/respondents and the 1st and 2nd defendants/ respondents orchestrated this suit in connivance, collusion and being economical with the truth in a scheme to deny the rest of the membership justice.
4. The applicants depose that similar suits have had a direct impact on the subject matter where the deponent was a party, namely, Kitale HCCC no 35 of 1997, Kitale ELC no 55 of 2009, and Eldoret Court of Appeal Appl. no 45 of 2015, attached as annexures JR-1, 2, 3, and 4. The applicants depose that the original membership of Kaptien Farm was 18, and the 1st plaintiff/respondent was not a member, who bought shares and resold them to Appollos Mwangi Muna, as per a sale agreement attached as JR-5 and so was the 2nd plaintiff/respondent, as per their evidence in the judgment attached for the respective cases above as JR-6.
5. As regards the 1st and 2nd defendants/respondents, it is deposed that they also sold their shares to Daniel Arap Bett and Mr. Mwiri Muna. The deponent deposes that though he was not an original member, he bought shares as per the agreement attached as JR-7. The applicants depose that Kaptien Farm has 408 acres, which ought to be shared by over 70 families and the parties who consented to having sold off their shares ceased to have interest in the suit land; hence, the secrecy of this consent, so that genuine members would not know anything about it.
6. The applicants lament the speed of concluding the case, to evade justice through, by the connivance and collusion of the parties, especially where the 1st and 2nd defendants/respondents surrendered the title to the government of Kenya for subdivision, after ceasing to own the property as per a copy marked as JR-8. The applicants depose that the 2nd plaintiff/respondent, after selling off his shares, went on to testify in support of the estate of the buyer, Appollos Mwangi Muna and therefore it was a wonder why he now craves subdivision and seeks to benefit. The applicants depose that there is no evidence on



how the parties to the consent intend to subdivide the suit land parcel, who is to benefit and how legal fees, survey charges and miscellaneous costs will be arrived at.

7. The applicants depose that they have bona fide and legitimate interest in the matter, the parties to the consent lack interest in the subject suit land, they are connivers and conspirers who do not even stay on the land, most of the other members of the Farm are unaware of the suit and that the parties to the consent wanted to get justice through the back door.
8. The application is opposed through a replying affidavit of Daniel Kipkemboi Bett, on behalf of the 1st and 2nd defendants/respondents. They admit past litigations over LR no 1800/3, commonly known as Kaptien Farm, including this suit, Kitale HCCC no 35 of 1997, Kitale ELC no 55 of 2009, and Court of Appeal Civil Appl. no 116 of 2015.
9. The 1st and 2nd defendants/respondents depose that the issue of surrender of title for subdivision scheme was confirmed by the court and that the 1st defendant/respondent holds a title in trust for the 1st and 2nd defendants/respondents and the other 16 members as per annexure DKB-1, a certificate of title.
10. The 1st and 2nd defendants/respondents depose that the suit land initially belonged to the white settlers and was later transferred to the Agricultural Finance Company in 1964 and most members have died as per a copy of area list marked as DKB-2; otherwise, the proposed defendants/applicants are strangers with no demonstrable interest in the land. The 1st and 2nd defendants/respondents depose that the surrender of title did not charge the ownership of the suit property, nor did the government of Kenya or the National Land Commission acquire the land. The 1st and 2nd defendants/respondents depose that they were declared as the lawful owners of 132.5 acres in Kitale ELC no 55 of 2009, which decision was upheld by the Eldoret Court of Appeal Civil Appl. no 116 of 2015.
11. The 1st and 2nd defendants/respondents depose that the 1st defendant/respondent retains legal authority to manage and administer the property as owners and trustees. The defendant depose that the interested parties may have bought shares from strangers who misrepresented themselves as members of the Farm; otherwise, they should have exercised due diligence and cannot therefore benefit from their wrongdoing and if they are tilling the land, then they are trespassers who lack locus standi.
12. Further, the 1st and 2nd defendants/respondents depose that the portion decreed for subdivision is vacant and nobody will be evicted. The 1st and 2nd defendants/respondents depose that the suit contained uncontested issues and that the application by the 3rd - 17th proposed defendants/applicants is an attempt to frustrate the execution of a lawful decree and that the issues raised have already been determined in past litigations or could have been raised in those pervious suits; otherwise there is no error apparent on the face of the record.
13. The 1st and 2nd defendants/respondents depose that there is no alleged fraud, collusion, misrepresentation or attempt for unjust enrichment, otherwise, the suit was aimed at compelling them to perform their role as registered owners in trust of the members, by subdividing and transferring the land to its members, which process could not be completed before, out of serious security threats posed by trespassers inhibiting access to the land for survey process.
14. The 1st and 2nd defendants/respondents depose that if the 3rd - 17th proposed defendants/applicants have bona fide claims against members of Kaptein Farm, for monetary compensation out of purchase, their remedy lies in lodging separate proceedings for recovery of such funds; otherwise, the relief sought is not merited.



15. A party seeking to join a suit post judgment has to show exceptional circumstances to justify the exercise of the discretion in its favour. Such circumstances include where adverse orders have been issued against him, with no notice or being heard on the issue in dispute.
16. In *Merry Beach Ltd v Attorney General & Others* [2018] eKLR, the court said that enjoining such a party would also mean setting aside the judgment entered, to give him an opportunity to be heard.
17. The applicants herein aver that the consent entered was secretly done, the parties to it acted in collusion or cahoots to obtain a back door justice, the case was heard at a breakneck speed, the parties who came to court have no interest in the suit land after it was surrendered to government and that as bona fide and legitimate purchasers or occupants of the suit parcel of land, they will be prejudiced by the execution of the judgment. Further, the applicants aver that there was an error apparent on the face of the record for non-disclosure of material facts; hence, the judgment ought to be set aside and they be allowed to be heard.
18. A party seeking joinder must demonstrate stake, or interests which it seeks to protect. The applicants have not attached any sale agreements or documents to show the nexus between the subject suit land and themselves. It is not enough to allege an interest in land without proof of how, when and where the interest arose.
19. Other than saying that they have planted crops and are in occupation of the land, the terms and conditions of the entry and occupation, as well as who among the original shareholders of the Farm sold or transferred interest, the applicants have assumed that the court would know all those facts.
20. In *Mbogo v Shah* [1968] EA 93, and *Patel v EA Cargo Handling Services Ltd* [1974] EA 75, the court held that the discretion to set aside a regular judgment can be exercised to avoid a mis advertence, mistake or for the ends of justice to be met, so long as the defendant has a triable issues in his proposed defence. The applicants urge the court not to shut them out and to give them a seat at the table of justice, yet they have not attached a draft defence that they intend to raise, if they were to be given a chance to join the suit post judgment.
21. What the court has is a consent judgment that was entered into by the parties and their advocates. To set aside a consent judgment, a party must prove that the consent, just like a contract, is vitiated by illegality, coercion, misrepresentation, duress, or is against public policy and or was unconscionable. See *Flora Wasike v Wamboko* [1988] eKLR. The burden was on the applicants to prove such elements and or grounds. The replying affidavit by the 1st and 2nd defendants/respondents has shown the nexus that they have with the suit land, as the registered owners in trust, who, as per law and the judgment, have to undertake their fiduciary duties for the benefit of the 18 members of the Kaptien Farm.
22. There is no supplementary affidavit filed to refute the contents of the replying affidavit and the annexures thereto. In *Board of Trustees of NSSF v Michael Mwolo* [2015] eKLR, the court held it could not interfere with a consent judgment unless good grounds and circumstances were provided. There is no evidence of fraud, collusion or that the agreement was contrary to public policy. In *Brooke Bond Liebig Ltd v Mallya* (1975) EA 266, the court observed that only in certain circumstances can a consent judgment be set aside.
23. In this matter, evidence that the parties and their lawyers connived or colluded before me and used this court to get back-door justice is not substantiated. The application is dismissed with costs.
24. Orders accordingly.



**RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT
KITALE ON THIS 23RD DAY OF JULY 2025.**

In the presence of:

Court Assistant - Dennis

Rutto for Yego for plaintiffs present

1st and 2nd defendant

Tum & Co. Advocates

Miss Tum present

Sonoiya & Co. Advocates absent

HON. C.K. NZILI

JUDGE, ELC KITALE.

