



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Ongati & 3 others v Nyambarora & another (Environment and Land  
Case 84 of 2016) [2025] KEELC 5397 (KLR) (16 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5397 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KITALE  
ENVIRONMENT AND LAND CASE 84 OF 2016**

**CK NZILI, J  
JULY 16, 2025**

**BETWEEN**

**MILKAH KERUBO ONGATI ..... 1<sup>ST</sup> APPLICANT**

**YUNES NYAMOITA NYAGAKA ..... 2<sup>ND</sup> APPLICANT**

**AND**

**MOSES MAOGA NYAMBARORA ..... APPELLANT**

**AND**

**BENARD OTERI OMWENGA ..... APPLICANT**

**AND**

**FRED MAOGA NYAMBARORA ..... 1<sup>ST</sup> RESPONDENT**

**PETER KIPKURUI LANGAT ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. What Moses Maoga Nyambarora and the three other applicants are seeking through an application dated 16/4/2025 is; joinder in the suit, setting aside, or review of a judgment delivered on 30/9/2021, to protect their interests as purchasers of title No. Trans Nzoia/Kiptoi/156 and a temporary injunction restraining the 1<sup>st</sup> respondent from selling, charging, disposing, alienating, or in any way interfering with the suit land. The reasons are contained on the face of the application and a supporting affidavit sworn by Moses Maoga Nyambarora on 16/4/2025 on behalf of the co-applicants.
2. The applicants depose that they bought 25ft by 100ft from a self-help group for Kshs. 22,000/= on 13/9/1997, out of L.R No. Trans Nzoia/Kaptoi/49. That on 25/11/1988, the 2<sup>nd</sup> respondent sold 2 plots of 50ft by 100 ft to the self-help group, who later sold the two plots as per annexures MMN-1, 2,



- and 3. The applicants say that they developed the plots into residential houses, where they have lived uninterrupted since 1997, as per annexure MMN-4(1-V111).
3. The applicants depose that they were condemned unheard with no notice, until they learned of the court orders when they conducted a search, only to find that the 1<sup>st</sup> respondent had acquired a title deed in July 2024, as per the annexed official search certificate marked MMN-5. The applicants depose that the 2<sup>nd</sup> respondent did subdivide the original parcel into several portions and transferred all except plot No. 156, remaining under his name, which they now occupy part of it, measuring ½ an acre, but the 1<sup>st</sup> respondent claimed all of it, mistakenly thinking that they are on a different parcel of land.
  4. The applicants depose that they have been on the portion for over 12 years; otherwise, their plots are fenced off, occupied, and the 1<sup>st</sup> respondent would only be entitled to 0.6145 acres after separating their 0.25 from plot No. 156.
  5. The application is opposed by a replying affidavit of Fredrick Maoga Nyambarora, sworn on 21/5/2025 for lack of capacity, that they did not purchase the land alleged, that they are not on the alleged lands, the self-help group is non-existent, the matter is concluded, he occupies the entire parcel of land, after he purchased it, has occupied the same for 30 years and lodged a caution in 1998 as per annexure FMN-1, the alleged agreements did not comply with the *Law of Contract Act*, the judgment and decree have already been enforced as per the certificate of official search and there is no surveyor's report to sustain the allegation of the acreage occupied.
  6. The applicants rely on written submissions dated 1/7/2025. Reliance is placed on *Sangram Singh -vs- Election Tribunal, Koteh*, AIR 1955 SC 664, *Ridge -vs- Baldwin* [1964] AC [1963 ALL ER 66 and *Mwachala -vs- Msafari & Others* [2025] KECA 1142 [KLR], on the proposition that decisions should not be reached in violation of the right to a fair hearing and due process, especially where they affect people's lives and property. Further, the applicants submit that they have been on the land since 1997, hence are entitled to the suit parcel under adverse possession.
  7. Equally, the applicant submits that the court has the power to revoke the judgment since it was obtained *ex-parte*. Reliance is placed on *Alton Homes Ltd & Another -vs- Davis Nathan Chelogoi & Others* [2020] KECA 326 [KLR], *Transafrica Assurance Co Ltd -vs- Lincoln Mujuni*, Misc App No 789 of 2014, High Court of Uganda, Kampala and *CMS Holdings Ltd -vs- James Mumo Nzioki* [2004] eKLR.
  8. The applicants submit that under Order 1 Rule 10(2) of the *Civil Procedure Rules*, they are necessary parties who ought to be joined to the suit, given that they are purchasers for value, who have been in occupation since 1997, hence seek to protect their possession. Reliance is placed on *Pravin Bowry -vs- John Ward & Another* [2015] eKLR. The applicants submit that the issue raised by the 1<sup>st</sup> respondent that they are not on the parcel No. 156 requires proper evidence at the hearing and the fact that the decree has been executed does not insulate the decree from review as held in *Benjob Amalgamated Ltd -vs- Kenya Commercial Bank Limited* [2014] eKLR, *Nguruman Ltd -vs- Shompole Group Ranch & Another* [2014] eKLR, *Standard Chartered Financial Services Ltd & Others -vs- Manchester Outfitters Ltd* [2014] KESC 50 [KLR], *AVH Legal LLP -vs- Raballa & Others*, Civil Appeal Appl. No. 117 of 2018, *David Kiptugen -vs- Commissioner of Lands & Others* [2016] KECA 712 [KLR], *Jeremiah Mgbanga Msafari -vs- Millicent Zigbe Mwachala & Others* [2021] KEHC 13623 [KLR] and *Merry Beach Ltd vs Attorney General & Others* [2018] eKLR. The applicants submit that they have met the ingredients of *Giella -vs- Cassman Brown & Co. Ltd* [1973] EA 358.
  9. The 1<sup>st</sup> respondent relies on a written submission dated 30/6/2025, that the application is bad in law for seeking review, setting aside, joinder and a temporary injunction simultaneously. The 1<sup>st</sup>



- respondent submits that the applicants seek joinder without specifying the role that they will take upon joinder; hence, the application is unmeritorious. Reliance is placed on *Kenya Medical Lab Technicians & Technologists Board & Others -vs- Attorney General & Others* [2017] eKLR, and *Everton Coal Enterprises Ltd -vs- Rose Wakanyi Karanja* SC Appl. No. E025 of 2023, where the Supreme Court relied on *JMK-vs- MWM & Another* [2015] eKLR, *Nduva & Others -vs- Ndar & Others* [2024] KEHC 8118 [KLR] (Civ) (27<sup>th</sup> June 2024) (Ruling), *Joseph Njau Kingori v Robert Maina Chege & 3 Others* [2002] KEHC 1192 (KLR) and *Kaluma -vs- NGO Coordination Board & Others*, Appl. No. E011 of 2023 KESC 72 [KLR] (Civ) (12<sup>th</sup> September 2023) (Ruling).
10. The applicants are seeking joinder in the suit post-judgment. They do not specify whether to join as defendants, plaintiffs, interested parties, or affected parties. The applicants allege that they have a stake in the suit parcel, as they are purchasers for value who have been in occupation since 1997 and were unaware of the suit till they conducted an official search in July 2024. The judgment was entered on 30/9/2021. It was not an ex-parte judgment.
  11. There was a defence by way of a replying affidavit dated 18/4/2019. The plaintiff was decreed the whole of LR No. Trans Nzoia/Kiptoi/156. The applicants rely on annexures marked MMN-1, 2, and 3; photos and a copy of the official search marked MMN-4 (i-vii) and 5, as well as an alleged surveyor's report. The sale agreements are not translated into English. They do not relate to the suit parcel. The photos are not accompanied by a certificate of electronic production. The purported survey report lacks authenticity. It does not ascertain that the alleged sale agreements and buildings are situated in the decreed suit parcel. The inordinate delay in applying for joinder, review and setting aside is not explained.
  12. In *Fakir Mohamed -vs- Joseph Mugambi & Others* [2005] eKLR, the court observed that the period of delay, the reasons for the delay, chances of the appeal succeeding, degree of prejudice, and the effect of the delay in the administration of justice are key factors to consider.
  13. In *Utalii Transport Co. Ltd & Others -vs- NIC Bank Ltd* [2014] eKLR, the court held that though there is no law on what is maximum and minimum delay, it all depends on the circumstances of each case, the subject matter, nature of the case, and explanation given. From June 2024, when the official search was conducted, to the filing of the application, the applicants have not explained the delay.
  14. Similarly, between 1997 to 2025, the applicants have not explained why they did not follow up with the seller to regularize their ownership documents. Equally, the applicants have not defined the capacity they wish to join the suit and the nature of their defence or claim they wish to raise and against which of the two parties.
  15. Without specifying the capacity and the nature of the claim of defence, the cited case law of *Pravin Bowry -vs- John Ward & another* (supra), *Benjob Amalgamated Ltd -vs- KCB* (supra), *Nguruman Ltd -vs- Shompole* (supra), *David Kiptugen -vs- Commissioner of Lands* (supra), *Alton Homes Ltd -vs- David Nathan Chelogoi & Others* (supra), *Msafari -vs- Mwachala*, and *Merry Beach Ltd -vs- Attorney General & Others* (supra), is misplaced. This court cannot impose a party to a capacity or role it has not specified. This court cannot also join a party, set aside or review a regular judgment that was in personam, without the party specifying an arguable defence or claim by way of a draft pleading.
  16. In *Patel -vs- EA Cargo Handling Services Ltd* [1974] EA 75, the court said that the main concern is to do justice to the parties. In *James Kanyिता Nderitu & another -vs- Marios Philotas Ghikas & another* [2016] eKLR, the court said the factors to consider in a regularly entered judgment are, whether the intended defence raises trial issues, prejudice to the opposite party and the interests of justice. See also *Mbogo -vs- Shah* [1968] EA 93.



17. Even though a court may join a party to a suit at any stage, even after judgment, as held in *Mary Beach Ltd -vs- Attorney General & Others* 92018] eKLR, there must be exceptional circumstances to justify it. There are no adverse orders against the intended applicants that were made against them without notice. As to injunction, the party has to establish a prima facie case, show that it will suffer irreparable loss and damage and that the balance of convenience tilts in favour of granting an injunction. The rights of the applicants that have been infringed by the plaintiff to call for a rebuttal has not been demonstrated. The attached sale agreements do not relate to the decreed land.
18. The irreparable loss or damage is not demonstrated by tangible and cogent evidence. Speculative fear or apprehension are not enough. The injury, loss, or damage must be real, apparent, and imminent. See *Nguruman Limited -vs- Jan Bonde Nielsen & 2 others* [2014] and *Mrao Ltd -vs- First American Bank of Kenya Ltd & 2 Others*, [2003] KLR 125. The upshot is that I find the application dated 6/4/2025 lacks merit. It is dismissed with costs.
19. Orders accordingly.

**RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 16<sup>TH</sup> DAY OF JULY 2025.**

In the presence of:

Court Assistant - Dennis

Nafula for applicant present

Masai for Kiarie for 2<sup>nd</sup> respondent present

Wainanina for the plaintiff present

**HON. C.K. NZILI**

**JUDGE, ELC KITALE.**

