



Ngetich & 13 others v Deputy County Commissioner, Kipkelion East & 2 others; Emenkei Techno Services Limited (Interested Party); Mokal Investment Limited (Intended Interested Party) (Environment and Land Miscellaneous Application E023 of 2024) [2025] KEELC 650 (KLR) (20 February 2025) (Ruling)

Neutral citation: [2025] KEELC 650 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERICHO
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E023 OF 2024
LA OMOLLO, J
FEBRUARY 20, 2025**

BETWEEN

- ANTHONY NGETICH 1ST APPLICANT**
LANDO AGENCIES LIMITED 2ND APPLICANT
ANDREW CHERUIYOT ROTICH 3RD APPLICANT
CHILILEK ENTERPRISES LIMITED 4TH APPLICANT
LEONARD NGERECHI 5TH APPLICANT
SIMON KIPTOO SIGILAI 6TH APPLICANT
KERIWEST SUPPLIES ENTERPRISES LTD 7TH APPLICANT
TIMES STAR LIMITED 8TH APPLICANT
EZEKIEL KIPKOECH TONUI 9TH APPLICANT
JOHNSTONE KIPKEMOI CHEBOCHOK 10TH APPLICANT
FATUMA ALI ABDULREHMAN 11TH APPLICANT
BYMARK GENERAL ENTERPRISES LIMITED 12TH APPLICANT
SILVERLINE CONTRATCORS LIMITED 13TH APPLICANT
BELTED HOLDINGS LIMITED 14TH APPLICANT

AND

- DEPUTY COUNTY COMMISSIONER, KIPKELION EAST ... 1ST RESPONDENT**
OCPD, LONDIANI POLICE DIVISION 2ND RESPONDENT



AND

LIPTON TEAS AND INFUSIONS LIMITED PROPOSED DEFENDANT

AND

EMENKEI TECHNO SERVICES LIMITED INTERESTED PARTY

AND

MOKAL INVESTMENT LIMITED INTENDED INTERESTED PARTY

RULING

1. This ruling is in respect of the Intended Interested Party/Applicant's Notice of Motion application dated 31st October, 2024, the Proposed 3rd Respondent/Applicant's Notice of Motion application dated 1st November, 2024 and the Applicants/Respondents Preliminary Objection dated 11th November, 2024.
2. The Intended Interested Party/Applicant's application dated 31st October, 2024 is expressed to be brought under Order 51 Rules 1 & 15, Order 1 Rule 10 of the Civil Procedure Rules and Sections 1A, 1B, 3A & 63(e) of the Civil Procedure Rules. The application seeks the following orders;
 - a. Spent
 - b. Spent
 - c. That the orders issued by this Honourable Court on 22nd October, 2024 be set aside forthwith.
 - d. That the intended Interested Party/Applicant be enjoined as the Interested Party in this application.
 - e. That costs of this application be provided for.
3. The application is based on the grounds on its face and the supporting affidavit sworn on 31st October, 2024 by one Isaac Kiprono the intended Interested Party/Applicant's director.
4. The proposed 3rd Respondent/Applicant's application dated 1st November, 2024 is expressed to be brought under Articles 40, 48 & 50 of *the Constitution*, Sections 1A, 1B, 3, 3A of the *Civil Procedure Act*, Order 1 rule 10(2), Order 40 Rule 7, Order 45 Rule 1 & 2, Order 51 Rule 1 & 15 of the Civil Procedure Rules, Sections 18, 19, 20, 24, 25 & 26 of the *Land Registration Act*, Rules 40(1) & 41(1) of the Land Registration (General) Regulations, 2017.
5. The application seeks the following orders;
 - a. Spent
 - b. That this Honourable Court be pleased to join the Applicant in the proceedings as the 3rd Respondent.
 - c. Spent
 - d. That upon the inter partes hearing of this application, this Honourable Court be pleased to discharge and/or set aside the orders issued on 22nd October 2024 directing the 15th and 16th Respondents to provide security to the Interested Party herein in the intended exercise of



ascertaining and fixing the boundaries and beacons of various parcels of land owned by the 1st – 14th Respondents i.e. LR 9932/8, LR 9932/9, LR 9932/10, LR 9932/11, LR 9932/12, LR 9932/13, LR 9932/14, LR 9932/15, LR 9932/16, LR 9932/17, LR 9932/18, LR 9932/19, LR 9932/20, LR 9932/21, LR 9932/22.

- e. That this Honourable Court be pleased to strike out the 1st – 14th Respondent's Application dated 12th September 2024 with costs to the Applicant.
6. The application is based on the grounds on its face and the supporting affidavit sworn on 1st November, 2024 by one Jonathan Mwita Wangubo the General Counsel Plantations of the proposed 3rd Respondent/Applicant.
7. The Applicants/Respondents filed the Preliminary Objection dated 11th November, 2024 in response to the Intended Interested Party/Applicant's application dated 31st October, 2024.
8. The grounds on the face of the preliminary objection are as follows;
 - a. That the deponent of the supporting affidavit has no authority to swear the same as he is not a director of the Applicant.
 - b. That the application has been overtaken by events as the order dated 22nd October, 2024 has already been executed and the boundaries and beacons duly fixed hence this Court has become functus officio and the fileB should be marked as closed.

Factual Background.

9. The Applicants/Respondents commenced the present proceedings vide the Notice of Motion application dated 12th September, 2024 wherein they sought the following orders;
 1. That this application be certified urgent and be heard forthwith and ex parte in the first instance.
 2. That this Honourable Court be pleased to grant an order authorizing/directing the Respondents herein to provide security to the Interested Party herein in the intended exercise of ascertaining and fixing the boundaries and beacons of the various parcels of land owned by the Applicants herein being parcels numbers L.R 9932/8, L.R 9932/9, L.R 9932/10, L.R 9932/11, L.R 9932/12, L.R 9932/13, L.R 9932/14, L.R 9932/16, L.R 9932/17, L.R 9932/18, L.R 9932/19, L.R 9932/20, L.R 9932/21 and L.R 9932/22 respectively entirely at the cost of the Applicants themselves.
 3. That this Court be pleased to grant any other order as it deems necessary.
 4. That the costs of this Application be in the cause.
10. No response was filed to the application.
11. On 22nd October, 2024 the application dated 12th September, 2024 was allowed in the following terms;
 - a. The Respondents herein shall provide security to the Interested Party herein in the intended exercise of ascertaining and fixing the boundaries and beacons of various parcels of land owned by the applicants herein i.e LR 9932/8, LR 9932/9, LR 9932/10, LR 9932/11, LR 9932/12, LR 9932/13, LR 9932/14, LR 9932/15, LR 9932/16, LR 9932/17, LR 9932/18, LR 9932/19, LR 9932/20, LR 9932/21, LR 9932/22.
 - b. The costs of the application shall be borne by the Applicants.



12. The application dated 31st October, 2024 first came up for directions on 4th November, 2024 when the Court certified it urgent. The Court granted the Respondents five days upon service to file their responses and listed in on 12th November, 2024 for inter partes hearing of the application.
13. On 12th November, 2024 it was brought to the attention of the Court that another application had been filed by the proposed 3rd Respondent/Applicant which had not been served upon the other parties. The Court directed that the said application be served upon all the other parties and the matter was to be a further mentioned on 14th November, 2024.
14. On 14th November, 2024 the Court gave directions that the applications dated 31st October, 2024 , 1st November, 2024 shall and the Preliminary Objection dated 11th November 2024 shall be heard together with the by way of written submissions.
15. On 11th December, 2024 the matter was mentioned to confirm filing of submissions and subsequently reserved for ruling.

The Proposed Interested Party/Applicant's Contention in the application dated 31st October, 2024.

16. The Supporting Affidavit is sworn by Isaac Kiprono the Director of the proposed Interested Party/Applicant.
17. He contends that the Intended Interested Party/Applicant was incorporated under the Company's Act on 16th July, 1990. He adds that he together with the 3rd Applicant/Respondent Andrew Cheruiyot Rotich are the only directors of the said company and they hold 250 shares each.
18. He also contends that the proposed Interested Party/Applicant is the registered owner of land parcel No. LR No. 9932/7 title No. IR 246019 and have a lease of 99 years.
19. He further contends that the said parcel of land is the subject matter of a suit filed before this Court which is Kericho ELC No. E014 of 2022.
20. It is his contention that during the pendency of the said suit, his Co-Director the 3rd Applicant/Respondent and the other Applicants/Respondents herein allegedly purported to sub-divide the said land and issue shares among themselves without the authority of Mokal Investments Limited.
21. It is also his contention that the 1st, 2nd, 4th to 14th Applicants/Respondents are not shareholders of Mokal Investments Limited and that the share certificates annexed to their Supporting Affidavit are fake and that at no time did the Company hold a meeting and make any resolution to sell or give shares.
22. It is further his contention that the orders sought by the Applicants/Respondents herein to direct the Respondents to provide security to the Interested Party/Respondent are misconceived, an abuse of the Court process and amounts to contempt of Court proceedings in Kericho ELC No. E014 of 2022.
23. He ends his deposition by urging the Court to set aside and/or quash the impugned orders issued on 22nd October, 2024.

The Applicants/Respondents Response to the Intended Interested Party/Applicant's application.

24. In response to the Intended Interested Party/Applicant's application dated 31st October, 2024 the Applicants/Respondents filed a Replying Affidavit sworn by Silas Kiptui Kipchilat on 11th November, 2024 together with the Notice of Preliminary Objection also dated 11th November, 2024 whose grounds have been set out in the preceding paragraphs.



25. He deposes that he has been authorized by his co-Applicants/Respondents to file the Replying Affidavit.
26. He also deposes that the application dated 31st October, 2024 is baseless, misconceived, frivolous and an abuse of the Court Process.
27. He further deposes that the deponent of the said replying affidavit is a stranger to the Applicants/Respondents as he is not a director of Mokal Investments Limited.
28. It is his deposition that the said application has been overtaken by events as the order issued on 22nd October, 2024 has already been executed and the boundaries and beacons duly fixed and therefore the Court is functus officio and the file should be marked as closed.
29. He ends his deposition by stating that the Applicants/Respondents are not parties in Kericho ELC Case No. E014 of 2022 and in the said circumstances, the application by the Intended Interested Party/Applicant should be dismissed for being fatally defective.

The Proposed 3rd Respondent/Applicant's Contention in its application dated 1st November, 2024.

30. The Supporting Affidavit to the application is sworn by Jonathan Mwita Wangubo. He describes himself as the one Proposed 3rd Respondent/Applicant's General Counsel Plantations.
31. He contends that on or about 26th October, 2024, the 1st to 14th Applicants/Respondents invaded the Proposed 3rd Respondent/Applicant's property LR No. 9932/2 for the purposes of ascertaining and fixing of boundaries on the said land on the basis that they were the owners of LR No. 9932/8, LR No. 9932/9, LR No. 9932/10, LR No. 9932/11, LR No. 9932/12, LR No. 9932/13, LR No. 9932/14, LR No. 9932/15, LR No. 9932/16, LR No. 9932/17, LR No. 9932/18, LR No. 9932/19, LR No. 9932/20, LR No. 9932/21, LR No. 9932/22. He adds that the said titles appear to be subdivisions of LR 9932/7.
32. He also contends that the 1st to 14th Applicants/Respondents presented orders of this Court issued on 22nd October, 2024 directing the 15th and 16th Respondents to provide security to the Interested Party/Respondent herein in the intended exercise of ascertaining and fixing the boundaries and beacons on various parcels of land purportedly owned by them.
33. He reiterates that the proposed 3rd Respondent/Applicant is the registered owner of LR No. 9932/2 and contends that the 1st to 14th Applicants/Respondents application which gave rise to the impugned orders did not disclose key material facts.
34. He further contends that the proposed 3rd Respondent/Applicant is a company incorporated and licensed under the laws of Kenya.
35. It is his contention that two portions were excised from the proposed 3rd Respondent/Applicant's land LR No. 9932/2 which are LR No. 9932/5 and 9932/6 and the remainder of the property remained in the head title as LR No. 9932/2.
36. It is also his contention that on 6th October, 2022 the proposed Interested Party/Respondent trespassed upon the said land and started cutting down trees while alleging that it owned LR 9932/7 which it had been granted upon the surrender of LR 9932/2 after the excisions of LR 9932/5 and 6.
37. It is further his contention that the said invasion prompted the proposed 3rd Respondent/Applicant to file Kericho ELC No. E014 of 2022 against the proposed Interested Party/Respondent and the Chief Land Registrar seeking reliefs that included nullification of the impugned title. He adds that the



proposed 3rd Respondent/Applicant also sought for interim injunctive orders restraining them from trespassing.

38. He contends that the proposed 3rd Respondent/Applicant's application for interim injunction orders was dismissed on 15th June, 2023. He adds that the proposed 3rd Respondent/Applicant was aggrieved by the said decision and it lodged an appeal before the Court of Appeal in Nakuru.
39. He also contends that the proposed 3rd Respondent/Applicant filed the application dated 19th June, 2023 before the Court of Appeal in Civil Appeal (Application) No. E052 of 2023 seeking for a temporary injunction against the intended Interested Party/Respondent and any other person from interfering with the suit property.
40. He further contends that the Court of Appeal delivered a ruling on 27th October, 2023 which allowed its application and granted the temporary injunction with costs and adds that the said order remains in force to date.
41. It is his contention that both the Court of Appeal matter and the suit in Kericho ELC No. E014 of 2022 are ongoing with the latter being scheduled for mention to take a hearing date on 4th November, 2024.
42. It is also his contention that it is during the pendency of the Court of Appeal orders that the Applicants/Respondents herein filed the application seeking for orders that the 1st and 2nd Respondents do provide security for the Interested Party/Respondent to ascertain and fix the boundaries.
43. It is further his contention that even though the 1st to 14th Applicants/Respondents alleged that they were the registered owners of the listed parcels of land, they did not produce any title documents in their names to prove their ownership.
44. He contends that the annexed copies of Certificates of title produced by the Applicants/Respondents show that the alleged owner is Mokal (the intended Interested Party/Respondent) and not the 1st to 14th Applicants/Respondents.
45. He also contends that the fact that the 1st to 14th Applicants/Respondents are shareholders of the Intended Interested Party/Applicant as alleged does not mean that they are the registered owners of the said parcel and adds that Mokal (the intended Interested Party/Respondent) being a corporate entity is separate from its shareholders and capable of owning property in its own name.
46. He further contends that the properties in question are neither owned by the 1st to 14th Applicants/Respondents nor by Mokal (the intended Interested Party/Respondent) as they are owned by the proposed 3rd Respondent/Applicant as evidenced by the grant annexed to the application.
47. It is his contention that the orders issued by this Court were not served upon the proposed 3rd Respondent/Applicant and they are therefore invalid and ought to be set aside.
48. It is also his contention that the 1st to 14th Applicants/Respondents failed to disclose the existence of Kericho ELC Case No. E014 of 2022 which involves a dispute over the ownership of the suit property. He adds that it is clear from the share certificates exhibited by the 1st to 14th Applicants/Respondents that they are shareholders of the intended Interested Party/Respondent the primary Defendant in Kericho ELC Case No. E014 of 2022.
49. It is further his contention that by virtue of being shareholders of Mokal the intended Interested Party/Respondent, they ought to have known about the pending suit as well as the Court of Appeal orders.



50. He contends that the 3rd Applicant/Respondent is a director of Mokal Investments Limited the Intended Interested Party/Respondent and was aware of the pending matters but failed to disclose them before this Court. He adds that the said concealment constitutes a serious non-disclosure of material facts.
51. He also contends that the 1st to 14th Applicants/Respondents assertion that security was required due to the large size of the suit property and its proximity to the Mau South Forest is misleading and was intended to misinform the Court.
52. He further contends that the Proposed 3rd Respondent/Applicant has been in continuous occupation of the suit property since the year 1957.
53. It is his contention that the proposed 3rd Respondent/Applicant uses the said property for essential economic activities that include planting of Eucalyptus trees and tea bushes. He adds that the said activities are critical to its tea processing operations at its factory within the Sambret Estate.
54. It is also his contention that the proposed 3rd Respondent/Applicant has over the years developed significant infrastructure on the suit property including workers houses, administration offices, a police post, a school, a dispensary and other facilities to support its operations within the estate and serve the local community.
55. It is further his contention that the proposed 3rd Respondent/Applicant's occupation and activities on the suit property are evident and readily observable.
56. He contends that the 1st to 14th Applicants/Respondents knew or ought to have known the proposed 3rd Respondent/Applicant's established presence on the suit property.
57. He also contends that it is on the account of the proposed 3rd Respondent/Applicant's presence on the suit property that the 1st to 14th Applicants/Respondents sought for security to invade the land. He adds that the failure to disclose this fact to the Court and only attributing their need for security on the size of the property and proximity to the forest amounts to a deliberate attempt to mislead the Court and constitutes material non- disclosure.
58. He further contends that a reading of the 1st to 14th Applicants/Respondents application shows that the entire application is predicated on misrepresentation and fraud.
59. It is his contention that he has been advised by his advocates on record that the 1st to 14th Applicants/ Respondents were duty bound to disclose all the facts including the facts that were detrimental to their case. He adds that the said duty extends to all material facts that could influence the Court's decision regardless of whether it was favorable or unfavorable to their position.
60. It is also his contention that he has been advised by his advocates on record that the 1st to 14th Applicants/Respondents were required to present information accurately, truthfully and avoiding any misrepresentation or omission or critical details in order not to mislead the Court.
61. It is further his contention that the 1st to 14th Applicants/Respondents breached their duty of candor and it resulted in the issuance of the impugned orders which would not be granted had the Court been provided with accurate and complete information.
62. He contends that the said orders that were granted have far reaching implications and will adversely affect the proposed 3rd Respondent/Applicant. He adds that if the orders are enforced, the 1st – 14th Applicants/Respondents will enter the suit property and proceed with the exercise of ascertaining and fixing boundaries.



63. He also contends that the said exercise will fundamentally alter the suit property, destroy the substratum of the proposed 3rd Respondent/Applicant's pending suit in Kericho ELC Case No. E014 of 2022 as well as render the appeal Civil Appeal No. E052 of 2023 nugatory.
64. He further contends the enforcement of the said orders will risk disrupting the social and economic activities currently conducted by the proposed 3rd Respondent/Applicant on the suit property including the planting and harvesting of tea and trees as well as the related processing activities.
65. It is his contention that unless the orders sought are granted, the proposed 3rd Respondent/Applicant will suffer undue hardship. He adds that it is therefore necessary that the Court intervenes immediately and suspends the impugned orders.
66. It is also his contention that it is in the interest of justice that the orders sought be granted and that the 1st to 14th Applicants/Respondents will not suffer any prejudice if the orders are set aside. He adds that the Applicants/Respondents ought to ventilate their claims through the intended Interested Party/Respondent in Kericho ELC Case No. E014 of 2022.
67. It is further his contention that the Applicants/Respondents are incapable of compensating the proposed 3rd Respondent/Applicant for the resulting harm, given the extensive scale and value of its interests and operations on the suit property. He adds that the disruption caused by enforcing the impugned orders would be substantial, irreversible and highly prejudicial.
68. He contends that he is advised by the Proposed 3rd Respondent/Applicant's advocates on record that the Applicants/Respondents have acted in willful and deliberate contempt of the Court of Appeal's orders and by concealment of material facts have caused this Court to issue orders which undermine the Court of Appeal orders issued in Civil Appeal (Application) No. E052 of 2023. He adds that should the said orders remain, they will undermine judicial consistency, introduce procedural absurdities and ultimately compromise both the constitutional framework and the integrity of Kenya's judicial system.
69. He also contends that the Applicants/Respondents are using the application and the orders herein as a tactic to circumvent the ongoing proceedings in Kericho ELC No. E014 of 2022. He adds that their application therefore lacks sufficient grounds for the issuance of the impugned orders.
70. He further contends that the proposed 3rd Respondent/Applicant is a key player in the agricultural service sector in Kenya with a significant impact on the Kenyan economy. He adds that the proposed 3rd Respondent/Applicant runs social activities on the suit property which serves the local community. The public therefore has a significant interest in ensuring that the proposed 3rd Respondent/Applicant can continue to operate effectively, without undue restrictions that would hinder its ability to meet its financial obligations.
71. It is his contention that the proposed 3rd Respondent/Applicant should be joined as a necessary party to the present proceedings as it is the registered proprietor of the suit property.
72. It is also his contention that the Applicants/Respondents claim is founded on their purported ownership of the suit property and their intention to undertake exercises to ascertain and fix boundaries. He adds that he is advised by the proposed 3rd Respondent/Applicant's advocates that pursuant to Section 18(2) of the *Land Registration Act*, this Court lacks the jurisdiction to determine any proceedings related to boundaries as the said jurisdiction is vested in the land Registrar.
73. It is further his contention that the process of ascertaining boundaries commences upon an application being made by an interested person to the Registrar, who must then issue a notice to the owners



and occupiers of the adjoining land as stipulated under Section 19 of the Land Registration Act and Regulations 40 and 41 of the Land Registration (General) Regulations.

74. He contends that the Interested Party/Respondent is neither the Land Registrar nor have the Applicants/Respondents disclosed any necessary application made to the Land Registrar in the required form under the Land Registration (General) Regulations.
75. He also contends that in the said circumstances and in light of the above provisions of the law the Applicants/Respondents application is a non-starter and the orders issued ought not to have been granted.
76. He further contends that the Applicants/Respondents have exhibited share certificates to prove their shareholding in Mokal Investments Limited. It is his contention that the said shareholding does not entitle them to claim ownership of the suit property as Mokal being a corporate entity has a distinct legal personality and is capable of suing and/or being sued in its own. Consequently, the Applicants/Respondents lack locus standi to seek and obtain the impugned orders. The application filed is therefore fatally defective and ought to be struck out.
77. He ends his deposition by stating that the present miscellaneous application offends the principle of sub judice in light of the pending suit that is between the proposed 3rd Respondent/Applicant, the Intended Interested Party/Respondent and the Chief Land Registrar.

The Applicants/Respondents Response to the proposed 3rd Respondent/Applicant's application dated 1st November, 2024.

78. The Applicants/Respondents filed a Replying Affidavit sworn on 12th November, 2024 by Silas Kiptui Kipchilat.
79. He deposes that he is authorized by his co-Applicants/Respondents to swear the replying Affidavit.
80. He also deposes that the Proposed 3rd Respondent/Applicant's application has been overtaken by events as the order issued on 22nd October, 2024 has already been executed and the boundaries and beacons fixed. He adds that this Court is therefore functus officio and the file should be marked as closed.
81. He further deposes that from the annexed report, the exercise of ascertaining boundaries went on smoothly with the 1st and 2nd Respondents providing security.
82. It is his deposition that the Applicants/Respondents herein are not parties to ELC Case No. E014 of 2022 and Nakuru Civil Appeal (Application) No. E052 of 2023 and therefore they cannot vouch for the facts thereof or the orders issued therein.
83. It is also his deposition that the subject matter in the present proceedings and the suits referred to are not the same.
84. It is further his deposition that parcel No's LR No. 9932/8, LR No. 9932/9, LR No. 9932/10, LR No. 9932/11, LR No. 9932/12, LR No. 9932/13, LR No. 9932/14, LR No. 9932/16, LR No. 9932/17, LR No. 9932/18, LR No. 9932/19, LR No. 9932/20, LR No. 9932/21 and LR No. 9932/22 belong to the Applicants/Respondents and they have valid titles issued by the Chief Land Registrar.
85. He deposes that the process of issuance of the title deeds begun in the year 2022 long before the Court of Appeal was seized with Nakuru Civil Appeal (Application) No. E052 of 2023.



86. He also deposes that he has been advised by his advocates on record that if indeed the proposed 3rd Respondent/Applicant is alleging contempt of the Court of Appeal orders then they should move the Court of Appeal accordingly because this Court lacks the jurisdiction.
87. He further deposes that the issues raised by the proposed 3rd Respondent/Applicant are substantive in nature and can only be handled in a proper suit and not in their application which was for specific purpose which has already been spent.
88. He ends his deposition by reiterating that the proposed 3rd Respondent/Applicant's application has been overtaken by events as the orders issued on 22nd October, 2024 have already been executed. Therefore, the proposed 3rd Respondent/Applicant's application lacks merit and should be struck out with costs.

The Intended Interested Party/Applicant's Response to the Applicants/Respondents Replying Affidavit sworn on 11th November, 2024.

89. The Intended Interested Party/Applicant filed a Further Affidavit sworn by Isaac Kiprono ,its director, on 9th December, 2024.
90. He deposes that he became aware of an illegal alteration of Mokal Investments Limited when the Applicants/Respondents responded to its application by attaching a current CR 12 of the said company.
91. He also deposes that upon discovery of the said alleged fraudulent alteration and change of directors therein, he wrote a letter to the Registrar of companies in respect to the said fraud who in turn wrote a show cause letter to the 3rd Applicant/Respondent and other directors who allegedly

fraudulently registered themselves as directors.

92. He further deposes that he is still a bonafide director of Mokal Investments Limited and not a stranger to the Intended Interested Party/Applicant herein as alleged by the Applicants/Respondents.
93. He ends his deposition by stating that the suit property has not been demarcated nor beacons fixed hence the order issued by this Court on 22nd October, 2024 has not been implemented hence not overtaken by the events.

Issues for determination.

94. The Intended Interested Party/Applicant and the proposed 3rd Respondent/Applicant filed submissions. Both submissions are dated 9th December, 2024.
95. The Applicants/Respondents did not file any submissions.
96. The Intended Interested Party/Applicant reiterates that it is the registered owner of LR No. 9932/7 and it denies that the Applicants/Respondents are its shareholders as they did not annex any document from the Registrar of Companies to prove their assertions.
97. The Intended Interested Party/Applicant also reiterates that it has not held any meeting to make a resolution of the demarcation of the said land among any purported shareholders.
98. The Intended Interested Party/Applicant submits that the suit property is the subject matter of ELC Case No. E014 of 2022 and if the Applicants/Respondents proceed and demarcate the same, the said suit shall be defeated.



99. The proposed 3rd Respondent/Applicant submits on the following issues;
 - a. Whether the application for joinder is merited.
 - b. Whether the Court should stay, suspend and/or discharge the impugned orders.
 - c. who should bear the costs of this Application?
100. With regard to the first issue, the proposed 3rd Respondent/Applicant relies on Order 1 Rule 10 (2) of the Civil Procedure Rules, the judicial decision of Nairobi CACA 101 of 2011 Peter Nganga Muiruri v HFCK Ltd & Others (unreported) as was cited in Central Bank of Kenya v Tsavo Securities Ltd & Standard Chartered Bank Ltd [2017] KEHC 7400 (KLR), Kingori v Chege & 3 others (2002) 2 KLR 243 and Civicon Limited v Kivuwatt Limited & 2 others (2015) eKLR.
101. The proposed 3rd Respondent/Applicant reiterates that it is the registered owner of LR No. 9932/2 which is the same property claimed by the intended Interested Party/Applicant as LR 9932/7. The proposed 3rd Respondent/Applicant submits that this is the same property that the Applicants/ Respondents allege that they subdivided and obtained titles to.
102. The proposed 3rd Respondent/Applicant also reiterates that it enjoys exclusive possession and that there is a subsisting injunction issued by the Court of Appeal and it therefore has an identifiable stake in the matter by virtue of its ownership. It relies on the judicial decision of Kenya Medical Laboratory Technicians and Technologists Board & 6 others v Attorney General & 4 others [2017] eKLR and submits that the impugned orders interfered with its property thereby making its joinder essential.
103. It is the proposed 3rd Respondent/Applicant's submissions that its joinder is critical for the Court to fully and conclusively resolve all the issues and it urges the Court to join it in the suit.
104. With regard to the second issue, the proposed 3rd Respondent/Applicant relies on Section 80 of the Civil Procedure Act, Order 45 Rule 1 & Order 51 Rule 15 of the Civil Procedure Rules and reiterates that the Applicants/Respondents concealed and misrepresented facts in their application as set out in its supporting affidavit.
105. The proposed 3rd Respondent/Applicant relies on the judicial decisions of Samuel Maina Njoroge v Teachers Service Commission & 3 Others [2016]eKLR, Josephat Supare Ole Sakunda & 10 others v Harison Musau & Anor [2005] eKLR and submits that the injunction order issued by the Court of Appeal restrained any form of interference with LR No. 9932/2 and any excisions made from the said parcel.
106. It also submits that the impugned orders are in direct conflict with the orders of the Court of Appeal and should therefore be set aside.
107. It is also its submissions that despite the Applicants/Respondents contention that the intended exercise has already been completed and the orders spent, nothing stops them from using the said orders to interfere with the suit property as the orders do not have a definite time period.
108. The proposed 3rd Respondent/Applicant relies on the judicial decision of John Ndirangu Kiboga & others v Attorney General & 2 Others [2016] eKLR and urges the Court to discharge and/or set aside the orders issued 22nd October, 2024.
109. The proposed 3rd Respondent/Applicant relies on Section 27 of the Civil Procedure Act and urges the Court to allow its application with costs.



Analysis and determination.

110. I have considered the applications, the responses thereto, the preliminary objection and the submissions filed by the parties herein.
111. Numerous issues have come up in this matter. Ranging from whether or not the Applicants/ Respondents are shareholders of the Intended Interested Party, whether or not the 3rd Applicant/ Respondent is a director of the Intended Interested party, whether or not the intended interested party passed a resolution to have the suit parcel transferred to the Applicants/Respondent, whether or not the orders issued by this court on 22nd October, 2024 have been perfected, Whether or not the orders issued by this court contradict those of the Court of Appeal, whether the subject of the orders issued in this matter is the same as that in the suit Kericho ELC No. 14 of 2022.
112. It is my view that the following issues arise for determination;
- a. Whether the intended Interested Party/Applicant and the Proposed 3rd Respondent/ Applicant should be joined to the suit.
 - b. Whether the preliminary objection dated 11th November, 2024 has merit.
 - c. Whether the orders issued by this Court on 22nd October, 2024 should be set aside.
 - d. Who should bear costs of the applications and the preliminary objection.

A. Whether the intended Interested Party/Applicant and the proposed 3rd Respondent/Applicant should be joined to the suit.

113. Order 1 Rule 10(2) of the Civil Procedure Rules states as follows: -

“The Court may at any stage of the proceedings, either upon, or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as Plaintiff or Defendant be struck out, and that the name of any person who ought to have been joined, whether as Plaintiff or Defendant or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon or settle all questions involved in the suit, be added.”

114. The Supreme Court in Francis K. Muruatetu and another v. Republic & 5 others [2016] eKLR set out the following elements the Court has to consider when determining an application for joinder of an Interested Party;

- a. The Personal interest or stake that the party has in the matter must be set out in the application. The Interest must be clearly identifiable and must be proximate enough, to stand apart from anything that is merely peripheral.
- b. The prejudice to be suffered by the intended Interested Party in case of non-joinder, must also be demonstrated to the satisfaction of the Court. It must also be clearly outlined and not something remote.
- c. Lastly, a party must, in its application, set out the case and/or submission it intends to make before the Court, and demonstrate the relevance of those submissions. It should also demonstrate that these submissions are not merely a replication of what the other parties will be making before the Court.”



115. In the judicial decision of *Skov Estate Limited & 5 others v Agricultural Development Corporation & another* [2015] eKLR the Court held as follows;

“In my view, for one to convince the Court that he/she needs to be enjoined to the suit as interested party, such person must demonstrate that it is necessary that he/she be enjoined in the suit, so that the Court may settle all questions involved in the matter. It is not enough for one to merely show that he/she has a cursory interest in the subject matter of litigation. Litigation invariably affects many people. A judgment or order in most cases does not only affect the litigants in the matter. It does have ramifications for others as well and one may very well argue that these others have an interest in the litigation. That is a fair argument, but a mere interest, without a demonstration that the presence of such party will assist in the settlement of the questions involved in the suit, is not enough to entitle one be enjoined in a suit as interested party.

In other words, there needs to be a demonstration that the interest of the person goes further than “merely being affected” by the judgment or order. It must be shown that the presence of that person is necessary, so that the issues in the suit may be settled, and that if the person is not enjoined, the Court may not be fully equipped to settle the questions in the suit or may be handicapped in one way or another. A joinder may also be allowed if the intended interested party has a claim of his own, which in the circumstances of the matter, needs to be tried, or is convenient to be tried alongside the claims of the incumbent plaintiff and Defendant. The threshold for joinder of an interested party should not be too low, or else, this is prone to open doors for busybodies to be joined to proceedings, merely to spectate or confuse the issues in the matter. Apart from the above, whether or not to enjoin a person as an interested party, must be looked at within the context and surrounding circumstances of each particular case.” [Emphasis mine]

116. In the present matter, the Intended Interested Party/Applicant contends that the Applicants/ Respondents allege to be its shareholders and that they approached this Court seeking orders that security be offered to them as they undertake the process of demarcation of boundaries of various parcels of land.
117. I must clarify that the orders sought were not for boundary demarcation but for security to be offered to the applicants as they undertake that process. From the attachment in support of the application, it is evident that the Land had been sub-divided. Whether the sub-division was legal or illegal is a question that can be determined in other proceedings.
118. The Intended Interested Party/Applicant contends that apart from the 3rd Applicant/Respondent, the other Applicants/Respondents are not its shareholders and therefore the prayers they sought ought not to have been granted.
119. It therefore seeks that it be joined to the suit as an Interested Party.
120. The Proposed 3rd Respondent/Applicant on the other hand contends that the Applicants/ Respondents failed to disclose to this Court that there is a suit pending before this Court to wit Kericho ELC case No. E014 of 2022. It is its contention that the subject matter of the pending suit is the same as in the present matter and that the applicants had knowledge of this fact but failed to disclose it to this court. The Proposed 3rd Respondents expressly stated that the 3rd Applicant is a director of proposed interested party and that the proposed interested party is a substantive defendant in the pending suit i.e Kericho ELC case No. E014 of 2022.



121. The Proposed 3rd Respondent/Applicant also contends that there is an order of injunction issued on 27th October, 2023 by the Court of Appeal. The proposed 3rd Respondent goes on to explain that the effect of the said order is that it prohibited any form of interference with the suit property adding that the orders issued by this court on 22nd October, 2024 contradict the Court of Appeal order.
122. It is upon this background that the Proposed 3rd Respondent/Applicant seeks to be joined to this suit.
123. The Applicants/Respondents in response generally oppose the grant of the orders sought in the applications and do not specifically address the joinder of the Intended Interested Party/Applicant and the Proposed 3rd Respondent/Applicant to the suit.
124. This matter was brought before this court as an ex-parte Miscellaneous application. The orders sought were granted on 22nd October, 2024. Among the orders sought, (1) and (2) are significant. They are as follows:
1. That this application be certified urgent and be heard forthwith and ex parte in the first instance
 2. That this Honourable Court be pleased to grant an order authorizing/directing the Respondents herein to provide security to the Interested Party herein in the intended exercise of ascertaining and fixing the boundaries and beacons of the various parcels of land owned by the Applicants herein being parcels numbers L.R 9932/8, L.R 9932/9, L.R 9932/10, L.R 9932/11, L.R 9932/12, L.R 9932/13, L.R 9932/14, L.R 9932/16, L.R 9932/17, L.R 9932/18, L.R 9932/19, L.R 9932/20, L.R 9932/21 and L.R 9932/22 respectively entirely at the cost of the Applicants themselves.
125. The Applicants/Respondents described the suit parcels as being owned by them and attached copies of certificate of title for LR No's. 9932/9, 9932/10, 9932/12, 9932/19, 9932/20 all issued to Mokal Investments Limited. They are described as being sub-divisions of IR/246019/1.
126. The Applicants/ Respondents also attached copies of share certificates issued by Mokal Investment Limited to the County Government of Kericho, Simon Kiptoo Sigilai, Chiliek Enterprises Limited, Johnstone Kipkemoi Chebochok, Belted Holdings Limited, Silverline Contractors Limited, Thony Ngetich and Time Star Limited. The relevance of these share certificates to the suit parcels was not clear. However, all these persons are Applicants/ Respondents with exception of the County Government of Kericho.
127. On perusal of the application dated 12/9/2024, the Proposed 3rd Respondent and Intended Interested Party's application, I have made the following observation in respect of the suit parcels:
- a. The Proposed 3rd Respondent is claiming ownership of parcel of land known as 9932/2 Grant No. IR 83721
 - b. The Intended Interested Party is claiming ownership of parcel of land known as 9932/7 Grant No. IR 246019
 - c. The Applicants are claiming ownership of L.R 9932/8, L.R 9932/9, L.R 9932/10, L.R 9932/11, L.R 9932/12, L.R 9932/13, L.R 9932/14, L.R 9932/16, L.R 9932/17, L.R 9932/18, L.R 9932/19, L.R 9932/20, L.R 9932/21 and L.R 9932/22. I have seen certificates of title for LR No's. 9932/9, 9932/10, 9932/12, 9932/19, 9932/20 all issued to Mokal Investments Limited and are described as being sub-divisions of IR/246019/1.
128. A cursory glance at the aforementioned parcels of land does not establish any nexus between them. Should there be any, it would require taking evidence and producing documents. Miscellaneous



proceedings are intended for matters that are not contested. I am of the view that if a matter is contested, a party would have to file a suit. Order 3 Rule 1 provides that a suit may be commenced by way of a Plaint, petition and/or originating summons.

129. The judicial decision of Joseph Kibowen Chemjor v William C Kiseru [2013] eKLR offers useful insights and I reproduce them as hereunder;

“... There are times when all that a person wants is an order of court where the rights of the parties are not going to be determined. There is no “action” being enforced or being tried. In many such instances, it is the discretion of the court being sought or a procedural issue sought to be endorsed. The court in such a case is not being asked to determine any rights of the parties. Now, the Civil Procedure Rules do not specifically provide for the procedure to be followed where there is no “action”. In such instances, I think it is permissible for such person to file a miscellaneous application because the court is not asked to determine any issues between the parties. This is common and permissible where all that the party wants is a mere order from the court which does not settle any rights or obligations of the parties. This for instance can cover applications for leave to institute suit out of time or for leave to commence judicial review proceedings.

At this level, the court is not adjudicating on any rights. Where there is a call to adjudicate on rights of parties then it must be said that there is a “civil action” and this must be commenced in the manner prescribed by the Rules. A matter touching on whether or not a caution needs to be removed is in my view a civil action which then must be commenced in the manner prescribed by the Rules. The issue whether the caution should be removed or should remain is at that moment a contentious issue that must be tried on merits.” (Emphasis mine)

130. My understanding, influenced by perusal of the survey report dated 28th October, 2024, is that the order for provision of security for the exercise of ascertaining and fixing boundaries and beacons of the various parcels of land owned by the Applicants/Respondents has been executed. This court did not concern itself with process pursuant to which the suit parcel had been sub-divided, all that was important at the time of the order was to establish whether the person desirous of the order had evidence of ownership.
131. If the title of the Applicants/Respondent to the suit parcels is being challenged, then these proceedings are not the proper forum to do so. The intended Interested Party and the Proposed 3rd Respondent ought to file a suit.
132. The only thing capable of being challenged in these proceedings is the order for provision of security; which is spent. As such, there is nothing pending before this court.
133. In the judicial decision of Lilian Wairimu Ngatho & another v Moki Savings Co-Operative Society Limited & another [2014] eKLR the Court held as follows;

“The provisions of Order 1 Rule 10(2) state that joinder of a party can be made “at any stage of the proceedings”. “Proceedings” are defined in Black’s Law Dictionary Ninth Edition at page 1324 as “the regular and orderly progression of a lawsuit, including all acts and events between the time of commencement and the entry of judgment”. A party can therefore only be joined to a suit at any time during the pendency of the suit, but not after the same has been concluded. This finding is premised on the basis that the purpose for joinder is to enable the Court effectually and completely adjudicate upon and settle all questions involved in a



suit. It is therefore of no use if a party seeks to be joined when the Court has already made its findings on the issues arising.” [Emphasis Mine]

134. As was held in the above cited judicial decision, a party can only be joined to a suit during the pendency of the suit and not after it has been concluded. Proceedings in this matter have been concluded. That being the case, Mokal Investments Limited and Lipton Teas and Infusions Limited cannot be joined to the suit as Interested Party and 3rd Respondent respectively.
135. The suit ELC No. E014 of 2022 has been mentioned in this Application. It is pending before this court and I have taken the liberty of perusing the said file in a bid to obtain clarity on the parties to the proceedings and issued raised by the proposed 3rd Respondent/Applicant herein against the Intended Interested Party/Applicant.
136. The Court record shows that pending determination of these applications and Preliminary objection, the Proposed 3rd Respondent herein (Plaintiff in ELC No. E014 of 2022) on 4th December, 2024 filed an application seeking leave to further amend its Plaint to include the Applicants/Respondents herein as Defendants and are also seeking orders that the certificates of title issued in respect of the suit parcels be declared null and void and that the said certificates be recalled and revoked. This application is scheduled for hearing on 11th February, 2025.
137. As stated in the preceding paragraphs, any claims as between the Applicants/ Respondents herein and the Proposed 3rd Respondent and the Intended Interested parties over the title to, use and occupation of the suit parcels needs to be ventilated in a suit. The suit Kericho ELC No. E014 of 2022 provides opportunity for these competing claims to be determined.

B. Whether the preliminary objection dated 11th November, 2024 has merit.

138. The Applicants/Respondents filed a preliminary objection to the Intended Interested Party/Applicant’s application dated 31st October, 2024. The grounds on the face of the preliminary objection have already been set out in this ruling but I will nonetheless replicate them as hereunder;
- “ a. That the deponent of the supporting affidavit has no authority to swear the same as he is not a director of the applicant.
- b. That the application has been overtaken by events as the order dated 22nd October, 2024 has already been executed and the boundaries and beacons duly fixed hence this Court has become functus officio and the file should be marked as closed.”
139. In the judicial decision of Ushago Diani Investment Limited v Abdulwahab (Environment & Land Case 12 of 2023) [2023] KEELC 20213 (KLR) (27 September 2023) (Ruling) the Court cited with approval Oraro v Mbaja [2005] eKLR 141 where the Court held as follows on the nature of preliminary objections;
- “A preliminary objection is now well identified as and declared to be a point of law which must not be blurred with factual details liable to be contested and in any event, to be proved through the process of evidence. Any assertion which claims to be a preliminary objection and yet it bears factual aspects calling for proof or seeks to adduce evidence for its authentication is not, as a matter of legal principle, a true preliminary objection which the Court should allow to proceed. Where a Court needs to investigate facts, a matter cannot



be raised as a preliminary objection anything that purports to be a preliminary objection must not deal with disputed facts and it must not itself derive its foundation from factual information which stands to be tested by normal rules of evidence.”

140. A preliminary objection raises a pure point of law which is argued on the assumption that all facts pleaded by the other side are correct. However, it cannot be raised if any facts have to be ascertained. Further, a preliminary objection must stem from the proceedings and raise pure points of law and should not deal with disputed facts nor should it derive its foundation from factual information.
141. The first ground on the Applicants/Respondents preliminary objection is that the deponent of the supporting affidavit has no authority to swear it as he is not a director of Mokal Investments Limited the Intended Interested Party/Applicant.
142. Though I have under issue (a) above, found that the Intended Interested Party/Applicant cannot be joined to the suit because proceedings in this matter have been concluded, I also find that what the Applicant/Respondents raise as a preliminary objection bears factual aspects and necessitates calling for proof and is therefore not, strictly speaking, a preliminary objection.
143. The Second ground on the preliminary objection is that the Intended Interested Party/Applicant’s application has been overtaken by events as the order issued on 22nd October, 2024 has been executed.
144. In response the Intended Interested Party/Applicant contends that the suit properties have not been demarcated and neither have the beacons been fixed. It also contends that the orders issued by the Court on 22nd October, 2024 have not been implemented.
145. It is evident that the issue of whether or not the orders issued on 22nd October, 2024 have been implemented is disputed. As was held in *Oraro v Mbaja* (supra) cited above, a preliminary objection deals with a pure point of law and does not concern itself with disputed facts. This second ground on the Applicants/Respondents preliminary Objection also fails.
146. Consequently, I find that the Applicants/Respondents preliminary objection dated 11th November, 2024 lacks merit.

C. Whether the orders issued by this Court on 22nd October, 2024 should be set aside.

147. The Supreme Court in the judicial decision of *County Assembly of Mandera County v Governor, Mandera County & another* [2020] eKLR held as follows;

“10] Having considered the said prayer, we unanimously find that a party yet to be enjoined in a matter such as the present Reference, lacks the capacity to seek any substantive orders in it and that the prayer aforesaid is premature, the Prayer for dismissal of the Reference is consequently struck out.” [Emphasis Mine]

148. In the judicial decision of *Hopf V Director of Survey & 2 others; Sakaja & 2 others* (Interested Party) (Environment & Land Case 4 of 2021) [2022] KEELC 6 (KLR) (4 May 2022) (Ruling) the Court held as follows;

“In that respect it means a person has first to move the Court. In case he so wishes, he should seek leave of the Court first. After the leave is granted, he will be enjoined. It is upon being give (sic) leave and he actually being enjoined that he can participate in the proceedings and move the Court for other reliefs. Absent of that, he is a stranger to the proceedings.” [Emphasis mine]



149. I have, under issue (a) stated that there is no suit pending before this court and that no party can, therefore, be joined. Without orders of joinder, a party lacks the capacity to seek substantive orders.
150. Given my analysis and finding on issue (a) above it shall not be necessary to speak anymore on this question.

D. Who should bear costs of the applications and the preliminary objection.

151. On the question of costs, it is now settled that costs shall follow the event. This is in accordance with the provisions of Section 27 of the *Civil Procedure Act* (Cap. 21). A successful party should ordinarily be awarded costs of an action unless the Court, for good reason, directs otherwise.

Disposition.

152. Taking all the above into consideration I find as follow:
- a. The Intended Interested Party's application dated 31st October, 2024 lacks merit and is hereby dismissed with no order as to costs.
 - b. The Proposed 3rd Respondent's Application dated 1st November, 2024 lacks merit and is hereby dismissed with no order as to costs.
 - c. The Applicant/Respondents preliminary objection dated 11th November, 2024 lacks merit and is hereby dismissed with no order as to costs.
153. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO THIS 20TH DAY OF FEBRUARY, 2025.

L. A. OMOLLO

JUDGE.

In the presence of: -

Mr. Langat for the Applicant/Respondent.

Mr. Koske for the Interested Party/Applicant.

Mr. Odhiambo for Nyaburi for the Proposed 3rd Respondent /Applicant.

Mr. Ojwang for 1st and 2nd Respondent.

Court Assistant; Mr. Joseph Makori.

