



**Muhanji & 23 others v Muhoma; Kinyungu & 10 others (Interested Parties) (Environmental and Land Originating Summons 116 of 2018) [2024] KEELC 13543 (KLR) (18 November 2024) (Ruling)**

Neutral citation: [2024] KEELC 13543 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT ELDORET**  
**ENVIROMENTAL AND LAND ORIGINATING SUMMONS 116 OF 2018**  
**EO OBAGA, J**  
**NOVEMBER 18, 2024**

**BETWEEN**

**LUKE MUHANJI & 23 OTHERS & 23 OTHERS & 23 OTHERS & 23 OTHERS & 23 OTHERS & 23 OTHERS ..... PLAINTIFF**

**AND**

**RICHARD OGWARO J MUHOMA ..... RESPONDENT**

**AND**

**RICHARD NGOWI KINYUNGU & 10 OTHERS & 10 OTHERS & 10 OTHERS & 10 OTHERS & 10 OTHERS & 10 OTHERS ..... INTERESTED PARTY**

**RULING**

1. By Notice of Motion dated 15<sup>th</sup> February, 2024, the Interested Parties/Applicants sought the following orders: -
  - a. The suit herein be reopened
  - b. That this honourable court be pleased to review, vary and/or amend the orders of 31<sup>st</sup> July, 2019 to include the Interested Parties.
  - c. That the transfer of the various sub-divisions of parcel of land No. Pioneer/Ngeria Block 1/1067 be made directly to the respective owners/ purchasers with each person bearing his/her own costs of subdivision and transfer.
  - d. Costs be in the cause.
2. The application is based on 4 grounds on its face and the Supporting Affidavit sworn by Richard Ngowi Kinyungu on even date, on his own behalf and on behalf of the other interested parties. He



stated that the parties in the main suit entered into a consent which was adopted as an order of the court on 31<sup>st</sup> July, 2019. It is his claim that pursuant to the said order; majority of the interested parties, who are bonafide purchasers of the subdivisions emanating from the suit land and have hence acquired interest, have been unable to obtain title documents to their respective portions.

3. It is his contention that the directions issued in the said order on the transfer of the subdivided portions to two persons, is costly as the same would entail paying stamp duty and transfer costs twice. He thus argued that it is imperative that there be direct transfers to the respective owners hence the need to review and/or vary the orders of 31/7/2019.
4. He maintained that the interested parties acquired interest by purchasing from the original owners but were never included in the suit. That notwithstanding, their interests ought to be catered for, they annexed a copy of the sale agreement in support of their purchase/ beneficial claims.
5. He further argued that since the order was issued it has never been implemented due to the challenges facing the transfers and financial implication. He thus urged the court to amend the said order and include the interest of all the purchasers.
6. The application was not opposed. Despite the Respondents being served with the Application and the Hearing Notice and an Affidavit of Service dated 25/9/2024 filed to that effect; the respondents neither filed a response to the instant application nor attended the hearing of the same. The Application is therefore deemed unopposed.

#### **Analysis and Determination:**

7. This court is of the considered opinion that the sole issue arising for determination is whether the applicants have met the threshold of setting aside the orders of 31/7/2019 to warrant the grant of the orders sought;
8. From the outset, I wish to point out that even though the Application was not opposed; the Applicants still bear a duty of proving their case on a balance of probabilities whether the evidence is unchallenged or not. The court in *Gichinga Kibutha...v...Caroline Nduku* (2018) eKLR, the Court held that:

“It is not automatic that instances where the evidence is not controverted the Claimant shall have his way in Court. He must discharge the burden of proof. He must prove his case however much the opponent has not made a presence in the contest.”
9. The grounds for setting aside/ reviewing an order of the court are now well settled. The court in determining whether or not to grant such orders ought to exercise such powers judicially taking into account the circumstances of each case.
10. However, before delving into the merits of whether or not the Applicants have proved their claim to warrant the setting aside of the order; I consider it necessary to first address the issue of locus standi/ capacity.
11. The Applicants have confirmed at paragraph 8 of the Supporting Affidavit and on ground (a) in the body of the application, that they were not included in the suit and they are therefore not parties in the suit. This is further confirmed from the pleadings and proceedings on the court record. Do they therefore have the requisite locus to approach the court and seek the orders?



12. In defining the term locus standi, the court in the case of In *Alfred Njau & Others v Nairobi City Council* (1983) eKLR the Court defined the term as follows: -

“The term locus standi means a right to appear in Court and, conversely, as is stated in Jowitt’s Dictionary of English Law, to say that a person has no locus standi means that he has no right to appear or be heard in such and such a proceeding...”

13. Loosely translated, locus standi is a right to be heard; that even though a person may have a cause of action, if he has no locus standi, then he cannot be heard. First, the applicants herein have never been enjoined as interested parties in the suit, they are not therefore parties to the suit. Secondly, the effect of the order of 31<sup>st</sup> July, 2019 was to determine and conclude the matter, there is therefore no proceedings pending that they can be enjoined to, even if they were to seek to be enjoined as interested parties.

14. In view of the foregoing, it is my finding that the applicants herein do not have the requisite locus standi to seek the audience of this court. It is not disputed that they are the bonafide purchasers, however, they are not parties in the instant suit and thus have no right to be heard.

15. Having held that the applicants have no locus standi, I therefore find that the discussing the merits of the application seeking to set aside and review the orders of 31<sup>st</sup> July, 2019 would be an academic exercise and the same would amount to giving them an audience when they have no capacity.

**Conclusion:**

16. In the premises, I accordingly find that the Application dated 15<sup>th</sup> February, 2024 is not merited and is hereby dismissed with no orders as to costs

It is so ordered!

**DATED, SIGNED AND DELIVERED AT ELDORET THIS 18<sup>TH</sup> DAY OF NOVEMBER, 2024.**

**E. OBAGA**

**JUDGE**

Ruling delivered in the virtual presence of: -

Mr. Kariuki Mwaniki for the Interested Parties/Applicants

No appearance for the Respondents

Court Assistant – Laban

**E. OBAGA**

**JUDGE**

**18<sup>TH</sup> NOVEMBER, 2024**

