



REPUBLIC OF KENYA



**Gathemia t/a Gatheru Gathemia & Company Advocates v Ngenda
Location Ranching Company Limited (Miscellaneous Civil Suit
E014 of 2022) [2025] KEHC 9020 (KLR) (26 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9020 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAROK
MISCELLANEOUS CIVIL SUIT E014 OF 2022
CM KARIUKI, J
JUNE 26, 2025**

BETWEEN

**GATHERU GATHEMIA T/A GATHERU GATHEMIA & COMPANY
ADVOCATES APPLICANT**

AND

NGENDA LOCATION RANCHING COMPANY LIMITED RESPONDENT

*(Arising from conveyance involving NAROK CIS-MARA OLOLULUNGA/4198,
NAROK CISMARA OLOLULUNGA /4199, NAROK CIS-MARA
OLOLULUNGA/4200, NAROK CISMARA OLOLULUNGA/4201, and NAROK
CIS-MARA OLOLULUNGA 4202 WITH MOHAMED HASSAN YUNIS)*

RULING

1. The applicant lodged an advocate-client bill of costs dated 09/12/2022. The same was taxed by the taxing officer on 25/04/2024. The taxing officer allowed the bill of cost as against the respondent at Kshs. 591,008.40/=. A certificate of taxation was issued on 11/06/2024.
2. The certificate of taxation dated 25/04/2024 was neither appealed nor set aside.
3. There was no dispute as to the retainer between the applicant and the respondent.
4. This court (Gikonyo J) vide its judgment of 20/12/2024, adopted the certificate of taxation as a judgment of the court.
5. The Applicant is in possession of the Respondent's title known as L.R.No.6290.
6. The Applicant contends that it has no other means of recovering the fees that have already been taxed by the taxing Officer.



7. The Applicant is apprehensive that once the said title is released, the Respondent will automatically either sell it to its members or charge it. Hence, the application herein seeks to ensure that each party's interests are sufficiently safeguarded by this Court.

The application.

8. In its Notice of Motion dated 30/01/2025, the Applicant sought orders that;
1. That this application be certified as urgent and service be dispensed with in the first instance
 2. That an ex parte order do issue forthwith protecting the Applicant's lien over the original title of all that property known as L.R. No. 6290(IR 17964) pending settlement of fees taxed in this matter and in any other Court.
 3. That pending the hearing and determination of this application, an interim attachment Order be issued restraining the Respondent from transferring, alienating, charging, or otherwise encumbering the Respondent's property known as L.R No. 6290(IR 17964).
 4. That the Judgment-Debtor's subject property known as L.R. No. 6290(IR 17964) to be attached and sold by public Auction to recover the total outstanding decretal sum of Kshs. 930,131.01/= together with interest at 14% per annum until payment in full.
 5. Costs of this application be recovered from the sale of the property.
9. The application is premised on Article 159 of *the Constitution* of Kenya and the inherent jurisdiction of the Court.
10. The application is based on the grounds set out on the face of the application and the supporting affidavit of Gatheru Gathemia, an advocate of the High Court of Kenya, sworn on 30/01/2025.

The response.

11. The firm of Hari Gakinya & Company Advocates filed a Notice of objection dated 21/03/2025 that it wishes to object to orders attached of all the piece of land known as L. R. NO. 6270 (I.R 17964) for reasons that the same is supposed to be under the custody of the High Court in Nakuru serving as a security for costs in HCA NO. 74 OF 2020. Ngenda Location Ranching Co. Ltd Vs Hari Gakinya & Co. Advocates.
12. Together with the notice of objection, the firm of Hari Gakinya & Company advocates filed an application dated 21/03/2025 seeking the following orders:
1. Spent.
 2. That this Honourable court be pleased to order Mr Gatheru Gathemia to urgently hand over the original title L. R. NO. 6290 [IR 17964) to this court for onward transmission to the High Court, Nakuru.
 3. That costs be provided for.
13. The application is premised on Article 159 of *the Constitution* and Order 22, Rule 51 (2) of the Civil Procedure Rules
14. The application is based on the grounds set out on the face of the application and the supporting affidavit of John Hari Gakinya, sworn on 21/03/2025, that the title for L.R. NO. 6290 (IR 17964) is supposed to be in the custody of the High Court in Nakuru as Security for costs in Nakuru HCCAP



NO. 74 OF 2020, Ngenda Location Ranching Co. Ltd Vs Hari Gakinya & Co. Advocates; the firm of Gatheru Gathemia had applied for stay pending appeal and offered the said title as security which was allowed but unlawfully failed to hand over the title to court; there are proceedings against Mr Gathemia to produce the original title to court; the conduct of Mr Gathemia is contemptuous of this court and the High Court in Nakuru for failing to deposit a Security with intention of converting it; the title is therefore not available for protection by this court as it is supposed to be in custody of Nakuru High Court.

15. The applicant filed a replying affidavit sworn on 08/04/2025 by Gatheru Gathemia.
16. The applicant contends that the application is fatally defective in both form and substance.
17. The applicant contends that the court is functus officio, having entered judgment in favour of the applicant/deed holder on 20/12/2024 by this court.
18. The applicant contends that the interested party is not a party to the suit and has not sought leave of the court to be enjoined in the matter, so he cannot seek any substantive orders.
19. The applicant contends that the orders sought to be relied upon by the said intended interested party/advocate were obtained through a consent entered into between Waiganjo & Co. advocates & Hari Gakinya & Co. Advocates in proceedings where the law firm of M/s Gatheru Gathemia & Co. advocates is not a party and the attempts to have the same enforced against the said law firm is therefore opposed and contested vehemently as it is not only unjust and unfair but also in utter contravention of the cardinal rules of natural justice.
20. The applicant contends that on 31/01/2024, Waiganjo & Co. advocates & Hari Gakinya & co. Advocates unilaterally and without leave of court entered a consent. Accordingly, the court adopted the consent and issued the order dated 07/02/2024 in even terms. The applicant was not a party to the consent order dated 31/01/2024 and 07/02/2024.
21. The applicant contends that the certificate of title is registered in the names of the respondent, was placed into physical possession of the applicant on the basis of a retainer for legal services in Nakuru CMCC No. 999 of 2016, Hari Gakinya vs Ngenda location ranching & anor, which precipitated an in appeal Nakuru HCMISC. No. E283 of 2023 Gatheru Gathemia & co advocates vs Ngenda Location Ranching Co., ltd, Nakuru HCCC No. 36 of 2019(formerly ELC No. 12 of 2016 Zenith realtors Estate Ltd vs. Ngenda Ranching Co., ltd, which precipitated in HCMISC No. E145 of 2022 Gatheru Gathemia t/a Gather Gathemia & Co. Advocates vs Ngenda Location Ranching Co. Ltd, HCMIS No. E146 of 2022 Gatheru Gathemia t/a Gather Gathemia & co advocates vs Ngenda Location Ranching Co. Ltd which proceedings arose from HCC no. 999 of 2016, Hari Gakinya vs Ngenda Location Ranching Co. ltd & anor, Narok HCMISC E No 014 of 2022 Gatheru Gathemia T/A Gatheru Gathemia & Co Advocates vs Ngenda Ranching Co. Ltd which taxation proceedings arose from the conveyance of NAROK/CIS-MARA OLOLULUNGA/4198, NAROK/CIS-MARA OLOLULUNGA/4199, NAROK/CIS-MARA OLOLULUNGA/4200, NAROK/CIS-MARA OLOLULUNGA/4201 and NAROK/CIS-MARA OLOLULUNGA/4202, Narok HCMISC E No 015 of 2022 Gatheru Gathemia T/A Gatheru Gathemia & Co Advocates vs Ngenda Ranching Co. Ltd which taxation proceedings arose from the conveyance of NAROK/CIS-MARA OLOLULUNGA/4198, NAROK/CIS-MARA OLOLULUNGA/4199, NAROK/CIS-MARA OLOLULUNGA/4200, NAROK/CIS-MARA OLOLULUNGA/4201 and NAROK/CIS-MARA OLOLULUNGA/4202.
22. The applicant contends that there exists no dispute as to the retainer for legal fees between the applicant and the respondent.



23. The applicant contends that the certificates of taxation issued in favour of the Decree-Holder in the foregoing matters have never been reviewed and/or set aside.
24. the applicant filed a notice of preliminary objection dated 10/04/2025 against the intended interested party on the following grounds: - 1) The Court is functus officio having entered Judgment in favour of the Applicant/Decree-Holder on 20th December, 2024 by the Honourable Justice Gikonyo 2) The purported Interested Party is not a party to the suit and has not sought leave of the Court to be enjoined in the matter, so he cannot seek for any substantive Orders. 3) An Interested Party cannot raise, canvass, and or propagate any issue, which is at variance with issues and espoused by the principal parties being the Applicant and the Respondent. 4) The position of the Interested Party was well established by the Supreme Court of Kenya in the case of Francis Kariuki Muruatetu & Others vs. Republic & 5 Others (2016)eKLR, where the Court stated, "Therefore, in every case, whether some parties are enjoined as Interested parties or not, the issues to be determined by the Court will always remain the issues as presented by the principal parties..... An Interested Party may not frame its own fresh issues, or introduce new issues for determination by the Court" 5) The order sought to be relied upon by the said intended Interested Party/Advocate was obtained ex parte in proceedings where the law firm of M/s. Gatheru Gathemia & Co. Advocates is not a party, and the attempts to have the same enforced it is not only against the said law firm is therefore opposed and contested vehemently unjust and unfair, but also in utter contravention of the cardinal principles of natural justice. The application has not disclosed any grounds or basis to justify or warrant the drastic orders sought.
25. the applicant filed grounds of opposition dated 10/04/2025 on the following grounds inter alia: 1) The Court is functus officio having entered Judgment in favour of the Applicant/Decree-Holder on 20th December, 2024 by Honourable Justice Gikonyo 2) The Interested Party is not a party to the suit and has not sought leave of the Court to be enjoined in the matter, so he cannot seek for any substantive Orders 3) An Interested Party cannot raise, canvass and or propagate any issue, which is at variance with issues and espoused by the principal parties being the Applicant and the Respondent. 4) The position of the Interested Party was well established by the Supreme Court of Kenya in the case of Francis Kariuki Muruatetu & Others vs. Republic & 5 Others (2016)eKLR, where the Court stated..... "Therefore, in every case, whether some parties are enjoined as Interested parties or not, the issues to be determined by the Court will always remain the issues as presented by the principal parties..... An Interested Party may not frame its own fresh issues, or introduce new issues for determination by the Court." 5) The application has not disclosed any grounds or basis to justify or warrant the drastic orders sought. The application is totally lacking in merit both in fact and/or in law. 7) The application is incompetent, bad in law, and defective, and the same ought to be dismissed and/or disallowed with costs. 8) The Application is a vexatious, unjust, unfair, and gross abuse of due process. 9) The Application is based upon false, fallacious, grossly misleading, and speculative premises. 10) The Application, if allowed, will set a bad precedent for litigants nationwide. 11) The Application by the Interested Party has not established sufficient cause to warrant or merit the draconian prayers sought. 12) The Application is motivated by spite, ill will, and other ulterior motives not analogous to justice or equity. 13) The Application is devoid of merit and should be dismissed with costs.

Directions of the court

26. On 18/03/2025, this court issued the following orders;
1. That an ex parte order is issued forthwith protecting the Applicants' lien over the original title of all that property known as L.R. No. 6290(IR 17964) pending settlement of fees taxed in this matter and in any other Court.



2. That an interim attachment Order is hereby issued restraining the Respondent from transferring, alienating, charging, or otherwise encumbering the Respondent's property known as L.R No. 6290(IR 17964)
 3. That the Judgment-Debtor's subject property known as L.R. No. 6290(IR 17964) to be attached and sold by public Auction to recover the total outstanding decretal sum of Kshs. 930,131.01/= together with interest at 14% per annum until payment in full.
 4. Costs of this application be recovered from the sale of the property
27. The application was canvassed by way of written submissions. The applicant has filed. The respondent and the purported intended party have not filed.

The applicant's submissions.

28. The applicant submitted that the Interested Party did not seek mandatory leave to be enjoined, and Mandatory leave cannot be granted ex post facto. The applicant relied on Black's Law Dictionary, 9th Edn. 2009, Rule 2 of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013, Sammy M. Makove, Commissioner of Insurance & Anor-vs-Kiragu Holdings Ltd(2013) eKLR, and Ephram Mwangi Maina-vs- Kairu Enterprises Ltd & 2 Ors - HCCC. 841 of 1996.
29. The applicant submitted that An Interested Party cannot raise, canvass, and or propagate any issue, which is at variance with issues and espoused by the principal parties being the Applicant and the Respondent. The Respondent, being the primary party, hasn't sought to either Appeal/or set aside the Judgment, and the Interested Party cannot hold its brief. the applicant relied on Francis Kariuki Muruatetu & Others-vs-Republic & 5 Others (2016) eKLR.
30. The applicant submitted that once a party has filed a substantive appeal in the Court of Appeal, the High Court became functus officio and couldn't have adopted an Order for Costs pending hearing and determination of the same appeal. The applicant relied on Shollei v Judicial Service Commission & another (Application 10 (E016) of 2022) [2023] KESC 8 (KLR) (Civ) (17 February 2023) (Ruling), Raila Odinga vs IEBC & 3 others [2013] eKLR, Jersey Evening Post Limited v A Thani [2002] JLR 542 at pg 550, Section 29 of the *Civil Procedure Act*.
31. The applicant submitted that the subject certificate of title Land Reference No. 6290 (Title Number I.R. 17964) is registered in the name of the Respondent. The title is security and in lieu of unpaid fees in the listed Court matters. The applicant relied on Section 48(1) 52 of the *Advocates Act*, Kenya Commercial Bank Limited v Rachier & Amollo Advocates (Commercial Case E270 of 2022) [2024] KEHC 12108 (KLR)
32. The applicant submitted that consent was entered into without involving or consulting with the Decree-Holder. Further, the High Court did not have jurisdiction to adopt the impugned Consent on Costs emanating from the Lower Court. The Costs can only be executed and/or recovered from the very Court that delivered the Judgment in "CMCC. 999 of 2016". The said Consent was in Rem and not in persona.

Analysis And Determination.

33. This court has considered the application dated 21/3/2025, supporting affidavit thereof, and the fact that the respondent did not file any response despite service. The application is therefore unopposed on the part of the respondent. This court has also considered the Interested Parties' application dated



21/03/2025, the applicant's Preliminary objection dated 10/04/2025, Grounds of opposition dated 10/04/ 2025, and Replying Affidavit sworn by Gatheru Gathemia dated 8/04/ 2025.

34. In the instant case, Judgment was issued on 20/12/2025 by this court (Gikonyo J). On 18/03/2025, this court issued an Order for attachment and sale by Public Auction of the Respondent's property known as L.R No. 6290(IR 17964), which has not yet been set aside or appealed against.

a. Whether the firm of Hari Gakinya & Co. advocates is properly on record as an interested party.

35. 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.”

36. Black's Law Dictionary defines an Interested Party as: “a party who has a recognizable stake (and therefore standing) in the matter.”

37. Further, the Supreme Court of Kenya in Communications Commission of Kenya and 4 Others –vs- Royal Media Services Limited & 7 [2014] eKLR held as follows:

“An interested party is one who has a stake in the proceedings, though he or she was not party to the cause ab initio. He or she is one who will be affected by the decision of the Court when it is made, either way. Such a person feels that his or her interest will not be well articulated unless he himself or she herself appears in the proceedings, and champions his or her cause. Similarly, in the case of Meme v. Republic, [2004] 1 EA 124, the High Court observed that a party could be enjoined in a matter for the reasons that:

- (i) Joinder of a person because his presence will result in the complete settlement of all the questions involved in the proceedings;
 - (ii) Joinder to provide protection for the rights of a party who would otherwise be adversely affected in law;
 - (iii) Joinder to prevent a likely course of proliferated litigation.
- We ask ourselves the following questions: a) what is the intended party's state and relevance in the proceedings, and b) will the intended interested party suffer any prejudice if denied joinder?”

38. The law on joinder of interested parties to suits has been settled by the Supreme Court of Kenya in the case of Francis K. Muruatetu and Another vs. Republic & 5 Others (2016) eKLR. The court set out identifiable key elements for consideration in an application for joinder as an Interested Party. The elements are as follows: -

- 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.”

39. From the foregoing legal provisions and from the case law, the following elements emerge as applicable where a party seeks to be enjoined in proceedings as an interested party: One must move the Court by way of a formal application. Enjoinment is not as of right, but is at the discretion of the Court; hence, sufficient grounds must be laid before the Court, on the basis of the following elements: 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. 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. Lastly, a party must, in its application, set out the case and/or submissions 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.

40. The intended interested party has filed pleadings in this matter without seeking leave of the court to be enjoined as a party. A party cannot assume standing as an interested party. Filing an application without having an application to be formally enjoined means that the party has no locus standi in the matter.

41. The intended interested party has not sought nor been granted leave to be enjoined as an interested party. Accordingly, it has no standing in this matter, and the application is improperly before the court. Thus, the court makes orders.

I. The interested party application is rejected with no orders as to costs.

42. Orders accordingly.

**DATED, SIGNED, AND DELIVERED AT NAROK THROUGH TEAMS APPLICATION, THIS
26TH DAY OF JUNE, 2025**

CHARLES KARIUKI

JUDGE

