



**U-Haul Vehicle Limited v Kiambu Dandora Farmers Co. Ltd & 5 others;
Mwangi & 6 others (Interested Parties); Andenga (Proposed Interested
Party); Waititu & 7 others (Objector) (Environment and Land Case Civil
Suit 39 of 2019) [2023] KEELC 15898 (KLR) (14 February 2023) (Ruling)**

Neutral citation: [2023] KEELC 15898 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE CIVIL SUIT 39 OF 2019**

AA OMOLLO, J

FEBRUARY 14, 2023

BETWEEN

U-HAUL VEHICLE LIMITED PLAINTIFF

AND

KIAMBU DANDORA FARMERS CO. LTD 1ST DEFENDANT

DANDORA HOUSING SCHEME LIMITED 2ND DEFENDANT

NATIONAL LAND COMMISSION 3RD DEFENDANT

CHIEF LAND REGISTRAR 4TH DEFENDANT

INSPECTOR GENERAL OF POLICE 5TH DEFENDANT

ATTORNEY GENERAL 6TH DEFENDANT

AND

BEN MAINA MWANGI INTERESTED PARTY

ELIUD KINUTHIA KAMAU INTERESTED PARTY

EPHANTUS MAINA KIRAGU INTERESTED PARTY

GEORGE MAINA INTERESTED PARTY

WALLACE MWANGI MACHARIA INTERESTED PARTY

SAMUEL KAMAU NGUGI INTERESTED PARTY

PETER KAMAU MBUTHIA INTERESTED PARTY

AND

CAROLINE KUNG'A ANDENGA PROPOSED INTERESTED PARTY



AND

ESTHER NJOKI WAITITU OBJECTOR
PENINAH NJUGUNA OBJECTOR
JOSEPH MUTUKU ZAKAYO OBJECTOR
JOSEPHINE NDUKU MUTUA OBJECTOR
NICODEMUS OJUMA ANYANG OBJECTOR
THOMAS NAKITARE ISOKAT OBJECTOR
PAULINE MAKALI OBJECTOR
ALICE WAITHERERO MICHIRE OBJECTOR

RULING

1. The Plaintiff filed the instant case against the 1st to 6th Defendants challenging ownership of the properties known as L. R. Nos 209/9465, L. R. 209/9466, L. R. No 209/9467 and L. R. No 209/9468 hereinafter referred to as “the suit properties” On the 17th June 2019, an order of interim injunction prohibiting any further construction continued on the suit properties was issued by the court. From the record, it would appear that constructions continued hence the filing of the application for contempt application brought the Defendants. On the 26th November 2020, the Court rendered a decision on that application and issued an order of demolition of the structures erected contrary to the court order of injunction. It is this order of 26th November 2020 that has vexed the current applicants to bring the applications before the Court.
2. In the Notice of motion dated 26th August 2022 by the 1st -7th Interested parties/Applicants, they sought for orders of review, setting aside or varying the ruling of 26th November 2020 that directed for demolition of any construction or properties erected after 17th June 2019 on the suit properties. The motion further requested for specific orders requiring the Plaintiff/Respondent to identify the exact houses to be demolished. The application was supported by the grounds on the face of the application, *inter alia* that they were not party to the proceedings when orders for demolition were issued which orders are adverse to them.
3. The 1st to 7th Interested Parties stated that true ownership of suit premises is yet to be determined. They urge that while the Court has a duty to protect its integrity, it also has a duty to protect innocent litigants. That there is no demonstration that the interested parties knew of the existence of the impugned court order. In further support of the motion, the 1st Interested Party swore an affidavit to that effect on 26th August 2022. He deposed that the order of 26th November 2020 did not order for eviction hence whatever was reported in the newspaper cutting they annexed was not true. Mr Maina Mwangi deposed that the order should bear the exact houses and location to avoid abuse of the court order. He concluded that if the orders they sought are granted, it will avoid further litigation as the Plaintiff/Respondent would have been restrained from abusing the court order.
4. The proposed 8th Interested Party filed a Chamber summons dated 3rd October 2022 which sought two main orders; first, a prayer to be joined as the 8th Interested Party and secondly an order staying the implementation of the orders issued on 17th June 2019 and 26th November 2020 pending hearing and determination of the main suit. The grounds made in support of the application were listed on



the face of it and included that the Applicant is a bonafide purchaser having purchased the plot from the 1st Defendant and therefore deserves to be given an audience by this Court.

5. The proposed 8th Interested party/Applicant swore an affidavit in support of the application stating that she is a bona fide purchaser for value of the building erected on the suit properties from the 1st Defendant and was issued with a certificate of ownership on 12/11/2021 while not aware of the demolition orders. She stated that she conducted due diligence before purchase of the property and the mother title of the suit property was in the 2nd Defendant's name and free from any encumbrance. Further she stated that she was in peaceful possession till the week of 11th to 18th September 2022.
6. The third application is the Notice of Motion dated 26th September 2022 by the 1st-8th Objectors/Applicants seeking orders; That pending the inter partes hearing and determination of the main suit, the Honourable court be pleased to issue an order for stay of execution of the orders dated 17th June 2019 and 26th November 2020 thereof. That the Plaintiff be stopped or restrained from demolishing or otherwise dealing with property erected on LR No. 209/9465, LR No. 209/9465, LR No. 209/94666, LR No. 209/9467, and LR No. 209/9468 pending the hearing and determination of the Main suit.
7. The Objectors' motion was supported by the grounds listed on its face and an affidavit sworn by the 1st Objector, Esther Njoki Waititu who stated *inter alia* that the objector/applicants have a strong claim on the suit properties and buildings earmarked for demolition and that they were bona fide purchasers for value without notice of the orders issued. The 1st Objector deposed *inter alia* that they purchased their plots comprised in the suit property between the period 2020-2021 and were issued with certificates of ownership by the 1st Defendant which copies they have annexed. She added that they undertook due diligence and the records at the lands office did not show the existence of any encumbrance including any court order registered on the title.
8. She deposed further that It goes against the right to fair trial and principle of natural justice for the structures erected on the suit property to be demolished without the court granting them room to ventilate their grievances and lay the proprietary claims they have on the suit land, which information and evidence was not within the purview and records of this court at the time of issuing the orders. The objectors urge that the structures erected on the land were put up in good faith and in knowledge that the property was free from any encumbrance including this Hon. Court's orders as none of them was listed as a party and neither were they ever served with the injunctive orders.
9. The three applications have been vehemently opposed by the Plaintiff/Respondent replying affidavits sworn by Francis Kibiru Njenga, the property manager of the Plaintiff/Respondent on 7th November 2022 and 23rd November 2022 respectively. The Plaintiff stated that the orders in subject were issued in presence of all parties which orders restrained the 1st and 2nd Defendants by themselves or persons acting for and under them from undertaking further developments on the suit properties. Mr Njenga deposes that the 1st and 2nd Defendants by themselves or persons acting for and under them entered the suit properties and started excavating, developing and erecting structures which actions were meant to change the structure of the suit property and to remove the same from the Plaintiff.
10. The Plaintiff/Respondent deposed that they complied with the part of the orders of 26th November 2020 as they affixed copies of the impugned order on the unlawful structures and also published the same on the two daily newspapers. That the Defendants and the Interested parties have blatantly disobeyed this court's order and it is in bad faith that they still approach the Court in yet another attempt of disregard of the orders. The Respondent annexed photographs stating that the defendants



and the Interested Parties are still continuing with constructions of buildings in disobedience of the court order.

11. Further, the Plaintiff contended that the proposed interested party has not shown any separate and distinct interests from those of 1st Defendant warranting to be joinder to the suit and that being a member of the 1st Defendant and holding a shareholder certificate to that effect, she was aware of the suit and orders issued. The Plaintiff stated that the proposed interested party had not proved a *prima facie* ownership of the property as there is no nexus between it and the shareholder certificate annexed. Also, the Plaintiff stated that the sale agreements produced were entered on 17/11/2021 during pendency of the instant suit.
12. The 1st -7th Interested parties filed submissions in support of their application dated 26th August 2022. The Interested parties submitted that they have always known the suit properties as L.R No.11379/3 and not the numbers indicated in the Court Order of 17th June 2019 and further that the said order lapsed by 16th June 2020 hence no Order was in place to be executed.
13. The 1st -7th Interested parties submitted that they are not in contempt of the court orders issued as they were not personally served with the orders hence they were not aware of the same. In support of this argument, they cited the case of *HMI V KBH* [2021]eKLR, *Samuel M.N Mweru & Others Versus the National Land Commission and 2 Others* [2020] eKLR and in *Amos Mathenge Kabuthu versus Simon Peter Mwangi* [2015] eKLR on the elements to be proved on finding of civil contempt.
14. The Interested parties submitted that the share certificates they hold show that they bought the portions of the suit property in the year 2012 and not while the orders of 17th June 2019 were in place. That the said orders having not been served to them, in the interests of justice they should not be condemned unheard. On this limb of the rules of natural justice, several decisions were cited by the Applicants. For instance, the case of *Official Receiver vs Sukhdev Nairobi* HCCC No. 423 of 1966 [1970] EA 243 where the Court stated thus;

“In a court of justice, parties are entitled to be heard and to insist upon every possible objection. It would be wrong for this or any court to refuse to hear an objection even if it appears meritless and tedious. Woe be the day when this will be allowed to happen. It would be honourable to abdicate from the seat of justice than to allow such performance of denial to take place. The Court may disallow an objection, reject a motion or refuse a plea but it must never refuse to hear it. A court of law is for the preservation not usurpation of rights of parties”
15. The 8th Interested Party filed her written submissions dated 5th December 2022 and submitted *inter alia* that joining her to these proceedings will help this court to effectually and completely determine questions in dispute without leaving any party unheard. That the proposed 8th Interested party has demonstrated the stake she is claiming in the suit property by disclosing that she is a *bonafide* purchaser having purchased the land as an innocent party evidenced by the documents annexed to the affidavits sworn in support of the application.
16. It is her further submission that her stake is different from that of the 1st defendant and that her interest can only be ably articulated by her not the 1st Defendant. She cited the case of *Francis Kariuki Muruatetu vs Republic & 5 others* (2016)eKLR where the Court laid out the elements a proposed interested party must meet before being joined. These include personal interest or stake; the prejudice to be suffered by that interested party unless joined; and the party must set out the submissions they intend to make to the court.



17. The proposed 8th Interested Party submitted that it is imperative that this Court does grant stay of execution of the impugned orders to allow for issues in dispute to be determined. This applicant submitted that she is not feigning ignorance about being aware of the existence of the impugned court. That before purchasing the suit property, she undertook due diligence on title number 11379/3 which did not indicate any order registered on it. That she only became aware of this case after the Police visited the place with intention of demolitions going on. She urged that granting the orders in her application dated 3rd October 2022 will provide for all parties to present their grievances.
18. Like the 1st – 7th Interested parties, the 1st to 8th Objectors also filed their submissions dated 2nd December 2022. They opened their submissions by giving a background of this case particularly how the orders sought to be stayed were issued. Then they framed the following three issues which they submitted on;
- i. Whether the objectors and interested parties are in contempt of this court’s order
 - ii. Whether it would be in the interest of justice that the objectors be condemned unheard
 - iii. Whether this court has discretion/powers to stay execution of the court orders
19. The Objectors submitted that they were never aware of the contents of the court proceedings, the resultant ruling and the orders of demolition. The referred this court to the decision of *R vs Attorney General & another exparte Mike Maina Kamau*. They added that the objectors and the Interested Parties were never given an opportunity to ventilate their claim. On whether they should be condemned unheard, they referred this court to the observation in the case of *Sangram Singh vs Election Tribunal Kotch* (AIR 1955 SC 664) thus;
- “There must be ever present to the mind the fact that our laws of procedure are a guided principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that affect their lives and property should not continue in their absence and that not be precluded from participating in them”
20. The Objectors submitted that they are crying for justice and a fair hearing so that the court grants them an opportunity to air their grievance and preserve their hard earned property which is being taken away arbitrarily. The Objectors further submit that the bulk of documents annexed to their affidavit consisting of share certificates, sale agreements *et al* show they have a strong case and that a grave injustice will be occasioned on hundreds of families if the preservatory orders are not given. The Objectors referred this court to section 152(g) of the *Land Act* which gives her power to suspend demolitions to meet the ends of justice and where gross violation may arise. In support, they cited the holding in *Doa Doa Tented Camps and Lodges Ltd vs Jubilee Insurance Co. of Kenya Ltd* (2021)eKLR.
21. The Plaintiff filed submissions dated 15th December 2022. The Plaintiff submitted that the Objector’s application dated 26st September 2022 is irredeemably defective on because, the persons calling themselves objectors are not parties to the suit and have not sought to be joined to the suit therefore are strangers and cannot be allowed to seek such substantive orders and in support cited the case of *Kwame Kariuki & another v Mobamed Hassan Ali & 3 others* (2012) eKLR.
22. The Plaintiff further stated that the said application is defective as it seeks for stay of court orders without seeking to appeal the orders which it seeks stay relying on the case of *Gilbert Kimani Nyumu v Gidion Kipkoeb Kiptisia* [2020] eKLR where the court directed that a party cannot seek to stay an order against which an appeal is not directed and also submitted that the same application is defective



- because it seeks stay of execution under Order 22 Rule 22 of the [Civil Procedure Rules](#) yet there is no judgement or decree of the court which has been issued on which execution can be mounted.
23. The Plaintiff submitted that the agreements dated 14th Octoberst Defendant, contrary to the court order of 17th June 2019 and the applicants having purchased the suit properties with full knowledge of this suit an orders issued do not deserve the exercise of the equitable jurisdiction of this court citing the case of [MN v TAN & another](#) [2015] eKLR. dated 16th February 2022, 14th December 2021, 29th November 2019, 4th June 2020 and receipts dated 2020, 2021 and 2022 are prove of transactions, done by the 1 2019, 29th November 2019, 4th June 2020, 16th February 2022, share certificates
 24. The Plaintiff submitted that the Objectors ought to have established a *prima facie* case to warrant stay of execution and that the law recognizes only title document as establishing a *prima facie* case for ownership.
 25. In regard to the proposed Interested Party's application dated 3rd October 2022, the Plaintiff submitted that the Proposed Interested Party has failed to establish a case for joinder because she has not stated the separate and distinct issue she wishes to advance that is different from the claim made by the 1st defendant or the 1st to 7th Interested Parties citing *inter alia* the case of [Shivling Supermarket Limited v Jimmy Ondicho Nyabuti and 2 others](#) (2018) eKLR and [Francis Kariuki Muruatetu & another v Republic & 5 others](#) [2016]
 26. In regard to the application dated 26th August 2022 seeking for Court to review, set aside or vary its decision of 26th November 2020 and that the court specifies the exact houses to be demolished , the Plaintiff submitted that the application does not comply with the requirements of Order 45 of the [Civil Procedure Rules](#) which provides grounds for setting aside or varying a decision of a court because there is not a mention of the ground upon which the application is mounted and they cannot rely on the ground of other sufficient reason as they have not claimed there is discovery of new information or that there is an error apparent on the face of the record.
 27. In support, the Plaintiff cited the case of [Republic v Advocates Disciplinary Tribunal ex parte Apollo Mboya](#) [2019] eKLR and [National Bank of Kenya Limited v Ndungu Njau](#) [1997] eKLR. Further, the Plaintiff submitted that the orders given on 17th June 2019 applied to the entire suit properties hence all structures erected in the suit properties are in contravention of the court order and that the applicants having sought for review and set aside of the same orders dated 26/11/2020 in their application dated 23/12/2020 without success cannot come with another application seeking similar orders in affront of *res judicata* as was held in [Kigwe Limited v Njewar Academy](#) [2018] eKLR and [George W. M. Omondi & Another v National Bank of Kenya Ltd & 2 Others](#) [2001] eKLR.
 28. After perusing the pleadings filed and the submissions rendered, this court does frame the following Issues for determination with respect to the three applications;
 - a. Whether the 8th proposed interested party should be joined in the suit?
 - b. Whether or not to grant the order for review, setting aside or varying the ruling of 26th November 2020 sought
 - c. Whether an order of stay of execution can be granted and to which party
 - d. Cost?
 29. The 8th Proposed interested party stated that she has an interest in the suit property having purchased a portion of the suit property from the 1st Defendant without notice of the existing suit and orders. Joinder of parties is governed by Order 1 of the [Civil Procedure Rules](#) which gives permission of all



parties in whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally; or in the alternative, where if such persons brought separate suits, any common question of law of fact would arise.

30. However, this court has the discretion to allow joinder of parties and the same may be refused where it appears to court that such joinder may embarrass or delay the trial of the suit or will lead into practical problems of handling the existing cause of action together with the one of the parties being joined or is unnecessary.
31. Nambuye, J (as she then was) in *Joseph Njau Kingori v Robert Maina Chege & 3 others* [2002] eKLR held that:

“...Necessary parties who ought to have been joined are parties who are necessary to the constitution of the suit without whom no decree at all can be passed. Therefore in case of a defendant two conditions must be met: (1) There must be a right to some relief against him in respect of the matter involved in the suit. (2) His presence should be necessary in order to enable the Court effectively and completely to adjudicate upon and settle all the questions involved in the suit being one without whom no decree can be made effectively and one whose presence is necessary for complete and final decision on the questions involved in the proceedings. A proper party is one who has a designed subsisting direct and substantive interest in the issues arising in the litigation which interest will be recognisable in the Court of law being an interest, which the Court will enforce. A person who is only indicated or commercially interested in the proceedings is not entitled to be added as a party.”

32. It is my view that the 8th proposed interested party having demonstrated that she is a purchaser for value (whether innocent or not), and that she has developed the sold plot (whether legally or otherwise) has demonstrated that she has an identifiable stake in the disputed land. It is true as pleaded by the Plaintiff that the person who sold her the suit property is already a party to these proceedings. However, the joinder of this party is necessary to the extent that the orders that will emanate from this suit will affect her personally. The rules of natural justice as has been substantively submitted on by the parties require that a person should not be condemned unheard. In any event, the application has been made before closure of the pleadings. Thus joining the proposed 8th Interested Party will not occasion any delay in having the Court effectively and completely adjudicate upon and settle all the questions involved in the suit.

b) Whether the order for review, setting aside or varying the ruling of 26th November 2020 should be granted.

33. The 1st -7th Interested Parties/Applicants sought for an order for review, setting aside or varying the ruling of 26th November 2020. In the grounds in support of the motion, these Applicants aver that the orders are capable of being abused since it has been left to the discretion of the Plaintiff to pin point the houses to be demolished. They also stated that they were not aware of this instant suit which they were not parties to. Thirdly that there was no demonstration to this Court on how they were in breach of the impugned orders. In the supporting affidavit, the 1st I. Party deposed that that the court did not order for eviction as was portrayed in the newspaper reports.
34. From the arguments presented by the 1st -7th Interested Parties, one of the grounds for seeking review is that the order not being specific in terms of the houses to be demolished. However, the order of 26th November 2020 that sought to be reviewed particularly paragraph 1 stated thus, “all the structures and buildings constructed on or put up on L.R. No209/9465, L.R. No. 209/9466, L.R. No 209/9467 and L.R. No 209/9468 shall be demolished by the owners thereof” and in the event of default with



paragraph 1 within 21 days of the publication of the order in two of the daily newspapers, the court gave the Plaintiff/Respondent liberty to carry out the demolitions.

35. The meaning of the word ALL means any structures that were on the suit parcels listed were to be demolished. The order did not require the Plaintiff to pin point the houses/structures to be demolished. Secondly, the newspaper cutting annexed in the supporting affidavit does not constitute the publication of the order as directed by the court on 26th November 2020. Further, the order required the Plaintiff to demolish only where the owners of those structure had not complied with the court order so it was not a matter left to the discretion of the plaintiff.
36. The 1st to 7th interested parties moved the court for review of the orders under order 45 of the Civil Procedure Act. Order 45 (1) states thus;
 - b. by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay
37. The 1st to 7th Interested parties have not expounded the grounds under which they want this court to exercise her discretion on review. If it was a mistake or error apparent that the order was not clear, the error has not been explained. In my reading of the impugned order, the same was clear on the structures to be demolished. Further, the Interested parties stated they were not aware of the suit and the orders. First, they all derive their interest in the suit land from title held by the 1st Defendant. The 1st Defendant denied any knowledge of the people on the land during the prosecution of the contempt application. The Plaintiff cannot be blamed for the mistakes of the party of had dealings with these Applicants denying them.
38. Further, the considerations to be made in an application for setting aside orders as settled in the case of *Mbogo vs Shab* (1968) EA 93 included that the discretion is intended to avoid injustice or hardship resulting from accident or inadvertence but should not assist a person who deliberately seek whether by evasion or otherwise to delay the course of justice. This case is yet to proceed to pre-trial stage and since the Interested Parties/Applicants having been made a party to this suit will have an opportunity to defend the claim. However, at this stage, they have not demonstrated that they claim is so distinct from those of the Defendants so that they do not fall under the categories of parties who are litigating under the 1st and 2nd Defendants. In the absence of this distinction, the right, I find no basis to review the orders for purposes of re-hearing the application for contempt.
39. The importance of the 1st to 7th Interested Parties demonstrating that their claim has nothing to do with the 1st and 2nd Defendants case was relevant because, the courts has since moved away from the position that the order alleged to have been breached must be personally served on a person sought to be punished together with the penal notice before contempt can be proved. Lenaola J in the case of *Basil Criticos Vs Attorney General and 8 Others* [2012] eKLR pronounced himself as follows: -
 - “...the law has changed and as it stands today knowledge supersedes personal service.....where a party clearly acts and shows that he had knowledge of a Court Order; the strict requirement that personal service must be proved is rendered unnecessary”



40. There is a mention by my predecessor at page 11 of his ruling dated 4th October 2021 on the 1st to 7th Interested Parties Applicants application dated 23rd December 2020 where the Plaintiff is indicated to have informed the court that the existence of this suit had been published in a daily newspaper and as such the Applicants could not feign ignorance of the same. This piece of information is important because these parties had pleaded that they had undertaken due diligence before buying or starting to build on the land. The 1st to 7th Interested Parties put emphasis in their submissions on the doctrine of natural justice as one of the main grounds to have the orders issued on 26th November 2020 reviewed. Rights however come with duties and in this case, the duty of diligence was on the Applicants. I conclude that the Applicants are not deserving of the orders sought first because they have not demonstrated good grounds but secondly because they were heard through the 1st and 2nd Defendants from whom they derive their rights.
41. Now I will deal with the objector's application that sought stay of the orders of this court issued on 17th June 2019 and 26th November 2020. As correctly pointed out, the 1st to 8th objectors have not sought to be joined in these suit as parties. Secondly, besides the application, they have not filed any objection proceedings nor appealed the order complained off. The Objectors have not moved to set aside the impugned order of 26th November 2020.
42. I have considered the submissions made in support of the application with issue number 1 and 2 being argued as if this court was hearing the contempt application. The Objectors submitted that on the general principle that no person can be punished for contempt without being heard then went on to state that the Plaintiff needed to prove that the terms of the order being breached was clear, unambiguous and binding on the parties. That the plaintiff failed to demonstrate that the Objectors and the Interested parties were in contempt of court orders. The Objectors further submitted that they were never given a chance to ventilate a defence and therefore the court was unable to issue a balanced order in the interest of justice to secure the *status quo* prevailing.
43. All the issues raised by the objectors of being condemned unheard would bear some merit if they moved the court to set aside the orders in place probably because they have a good defence to the claim. Parties are bound by their pleadings and the court cannot grant what is prayed for especially where the application was heavily contested. The objectors stated they are crying for justice to be given an audience and platform to air their grievance. However, on the face of their motion, they forgot the important bit of requesting to be made parties to this suit.
44. Can this court give orders to stay the impugned orders of 17th June 2019 and 26th November 2020? The Objectors invoked the provisions of section 152(g) of the [Land Act](#) and section 63(e) of the [Civil Procedure Act](#) which provides thus,
- “In order to prevent the ends of justice from being defeated, the court may, if it is so prescribed... make such other interlocutory orders as may appear to the court to be just and convenient”
45. The 8th Interested Party had equally applied for orders of stay of execution of the orders of 17th June 2019 and 26th November 2020. Like the objectors, the 8th Interested Party did not make a prayer for review or setting aside the said impugned orders. They want the implementation of those orders stayed pending hearing and determination of the suit. The orders of this court made on 17th June 2019 at paragraph 4 stated that pending further directions of the court, there shall be no further development or construction works on the properties in dispute namely L.R Nos 209/9465, 209/9466, 209/9467 and 209/9468.



46. By virtue of the 8th interested party and the objectors seeking to have the injunction order issued on 17th June 2019 stayed is asking the Court that they be allowed to continue with developments? These parties are yet to file any responses to the Plaintiff's application from which the impugned order emanated from. It is my considered view and I so hold that granting the order staying the injunctive relief in place is sanctioning chaos so that in the event the Plaintiff/Respondent becomes the eventual winner, the suit property would have been wasted and it would be almost impossible to execute the decree.
47. Further, the request for stay of execution of the orders of 26th November 2020 pending determination of the main suit in my opinion amounts to asking this court to sit on appeal over its own orders. The trial court found that the structures that had been put up were in contravention of the orders of temporary injunction in place. The Applicants with one hand argues that the impugned orders were issued without giving them a hearing but on the other hand did not either purge the contempt or apply to have the orders reversed. Justice Okongó made the orders after hearing the parties before him. All the Applicants derive their title from the 1st Defendant who participated during the prosecution of the application for contempt. Stay can and should only be granted pending a determination that the judge was wrong in making the impugned orders but not proceeding with this case as if those orders were not material to the issues raised.
48. In conclusion, I make the following orders:
- a. The 8th Interested Party's application dated 3rd October 2022 is allowed in terms of prayer 2 only that she is joined as the 8th Interested Party to the suit. Prayers 3-5 of the application are not granted.
 - b. The 1st -7th Interested Parties' application dated 26th August 2022 is dismissed for lack of merit
 - c. The Objectors application dated 26th September 2022 is dismissed for lack of merit
 - d. The Plaintiff is awarded costs of the dismissed applications

DATED AND DELIVERED AT NAIROBI IN VIRTUAL COURT THIS 14TH DAY OF FEBRUARY 2023

A. OMOLLO
JUDGE

