



**REPUBLIC OF KENYA**

**IN THE SUPREME COURT OF KENYA**

*(Coram; Koome; (CJ & P); Mwilu (DCJ & VP), Ibrahim, Wanjala, Njoki, Lenaola & Ouko, SCJJ)*

**PETITION NO.17 (E021) OF 2022 AS CONSOLIDATED WITH  
PETITION NO. 24 (E027) OF 2022**

**–BETWEEN–**

**ZEHRABANU JANMOHAMED S.C**

*(Suing as the Executrix of the Estate of the Late*

**H.E. DANIEL TOROITICH ARAP MOI).....1<sup>ST</sup> APPELLANT**

**RAI PLYWOOD (K) LTD .....2<sup>ND</sup> APPELLANT**

**–AND–**

**NATHANIEL K. LAGAT.....1<sup>ST</sup> RESPONDENT**

**SUSAN CHERUBET CHELUGUI & DAVID K. CHELUGUI**

*(Suing as the Administrators of the Estate of the Late*

**NOAH KIPNGENY CHELUGUI).....2<sup>ND</sup> RESPONDENT**

**DISTRICT LAND REGISTRAR UASIN GISHU.....3<sup>RD</sup> RESPONDENT**

**THE REGISTRAR OF TITLES.....4<sup>TH</sup> RESPONDENT**

**THE NATIONAL LAND COMMISSION.....5<sup>TH</sup> RESPONDENT**

**KIMAIYO TIONY &**

**MOSES KINIYA NENE.....INTENDED INTERESTED PARTIES**

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*(Being an application for joinder as interested parties)*

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**Representation:**

Kimaiyo Tiony & Moses Kiniya Nene

*(Intended interested parties, acting in Person)*

Mr. Julius Kemboy..... for the 1<sup>st</sup> appellant

*(Kemboy Law Advocates)*

Mr. Kibe Muigai..... for the 2<sup>nd</sup> appellant

*(Kinoti & Kibe Company Advocates)*

Mr. Ahmednasir M. Abdullahi SC..... for the 2<sup>nd</sup> respondent

*(Ahmednasir Abdullahi Advocates LLP)*

Mr Odongo, Advocate..... for the 3<sup>rd</sup> and 4<sup>th</sup> respondents

*(State Counsel)*

Mr. Niuster, Advocate..... for the 5<sup>th</sup> respondent

*(National Land Commission)*

**RULING OF THE COURT**

[1] UPON reading the Motion by the applicants dated 17<sup>th</sup> January 2023 and lodged on 24<sup>th</sup> January 2023, pursuant to Articles 50 (1) and 159 (2) (a) of the Constitution, Sections 1A, 1B and 3A of the Civil Procedure Act, Orders 1 Rule 10 and 51 Rule 1 of the Civil Procedure Rules 2010 and Rule 24 of the Supreme Court Rules, seeking the following orders, that: *leave be granted to Tiony Kimaiyo and Moses Kiniya Nene to be admitted as interested parties in the petition; the intended interested parties be granted an opportunity to submit written and oral arguments in the petition; the intended interested parties be allowed to submit, with leave of Court any other information they may deem important and relevant to allow for the just disposition of this matter; any further orders necessary to achieve the ends of justice; and there be no orders as to costs in this application;*

**[2] UPON** examining the grounds on the face of the application, supporting affidavit jointly sworn by Tiony Kimaiyo and Mose Kinyi Nene on 17<sup>th</sup> January 2023, and the applicants' written submissions dated 22<sup>nd</sup> January 2023, and filed on 24<sup>th</sup> January 2023, wherein the applicants urge that they are holders of a Power of Attorney granted by Nathaniel Kiptalam Lagat over L.R 10492/2 DP 106636; that this property is the subject of an ongoing case at the Environment Land Court at Eldoret being No. 916B of 2012, ***Kimaiyo Tony and Moses Kinyi Nene v. Rai Plywood (K) Ltd and 3 Others*** (ELC No. 916B of 2012) in which injunctive orders were issued against Rai Plywood (K) Ltd, barring them from continuing to build a perimeter wall; that they were surprised to learn that another suit was instituted at the Environment and Land Court between the same parties, over the same subject matter but to their exclusion; that the decision of the Court of Appeal affected them adversely as they were neither party to the proceedings, nor were they informed of the same, but only learned of the present petition from the media;

**[3] FURTHER**, noting the intended interested parties' submission, in which they argue that ELC No. 916B of 2012, focuses on the title from which the suit property was carved namely, Eldoret Municipal Block 15/10/10492; that the property was irregularly and fraudulently subdivided into Eldoret Municipal Block Nos. 21 and 23 and the resultant titles issued without due process or permission from the original owners. Furthermore, that if the Award granted by the superior courts below is maintained, the rightful owners of the property will be denied possession and the Kenya National Police Service will lose a 10-acre parcel of land that it purchased to use as a shooting range; that the proceedings at the Court of Appeal were a sham as critical evidence including original documents demonstrating the historical background of the suit property, were concealed from the court leading to an unfair judgment;

[4] UPON reading the 2<sup>nd</sup> appellant's replying affidavit sworn on 10<sup>th</sup> February 2023 and submissions dated 23<sup>rd</sup> February 2023 wherein the application is opposed, on grounds *inter alia* that, the applicants lack *locus standi* to approach this Court for any orders as Nathaniel K. Lagat is a substantive party to proceedings before this Court and the superior courts below; that the applicants' grievance against the 2<sup>nd</sup> appellant must be fully addressed in ELC Suit No. 916B of 2012; that the suit property they wish to address the Court over, i.e, L.R. 10492/2 is separate and distinct from the suit property which is the subject matter of this petition namely, Eldoret Municipality/Block 15/239; that the applicants are disingenuously attempting to raise new facts in this appeal that were not in dispute before the superior courts below; and that this Court can only deal with issues presented by the principal parties in the petition and not from parties wishing to be joined, in line with this Court's holding in ***Methodist Church in Kenya v. Mohamed Fugicha & 3 Others*** SC Petition No. 16 of 2016 [2019]eKLR;

[5] UPON considering the 2<sup>nd</sup> respondent's replying affidavit sworn on 9<sup>th</sup> February 2023, and submissions dated 23<sup>rd</sup> February 2023, on the basis of which they are largely in agreement with the 2<sup>nd</sup> appellant, in opposing the application for joinder; that the power of attorney presented by the applicants does not confer the right of ownership over the suit property; that the 2<sup>nd</sup> respondent is not a party to the applicants' suit in ELC, No. 916 B of 2012, since it is only defending the judgments of the trial court and Court of Appeal giving rise to the present petition;

[6] FURTHER, noting the 2<sup>nd</sup> respondent's submission to the effect that Nathaniel Kiptalam Lagat is the 1<sup>st</sup> respondent herein, having participated in the Court of Appeal proceedings as the appellant in Civil Appeal No. 254 of 2019; that the Court of Appeal was informed that Nathaniel Kiptalam Lagat had applied to be joined to the trial court proceedings in ***Susan Cherubet Chelugui & Another v. Daniel Toroitich Arap Moi & 5 Others*** ELC Petition No. 9 of 2014 [2019] eKLR, which application was dismissed; that the 1<sup>st</sup> respondent has all along

litigated on his own behalf without reference to the applicants; that the 1<sup>st</sup> respondent did not prefer an appeal against the decision of the Court of Appeal or participate in the petition before this Court in whatever capacity; and that the applicants have not adduced any evidence demonstrating the alleged fraud;

[7] **UPON** noting further submissions by the 2<sup>nd</sup> respondent that the applicants have not met the requirements under Rule 24 of the Supreme Court Rules 2020, and that they have not demonstrated any stake or interest in the matter; or that they stand to suffer prejudice should they not be joined; and that they will advance arguments relevant to the petition as was determined in *Trusted Society of Human Rights Alliance v. Mumo Matemu & 5 Others*, SC Petition No. 12 of 2013; [2014] eKLR (*Mumo Matemu Case*) and *Francis Kariuki Muruatetu & Another v Republic & 5 Others*, SC Petition No. 15 & 16 of 2015 (consolidated); [2016] eKLR (*Muruatetu Case*);

[8] **NOTING** that the Court of Appeal, in making a determination as to whether Civil Appeal No. 254 of 2019 lodged by Nathaniel K. Lagat was meritorious, observed that both the District Land Registrar and Registrar of Titles clarified that the suit property was not the subject of any pending suits before other courts; that the proper recourse for Nathaniel K. Lagat would have been to file an appeal against the decision of the trial court;

[9] **WE NOW DETERMINE** as follows:

Having carefully considered the application, responses thereto, and submissions by the parties; and guided by the provisions of Rule 24 of the Supreme Court Rules 2020, and the principles established by this Court in the *Mumo Matemu* and *Muruatetu Cases*, we find that Nathaniel K. Lagat, the alleged grantor of the Power of Attorney to the applicants, was at all times an active party to the proceedings before the trial court and at the Court of Appeal. As such, we do not see any basis upon which the applicants, can be admitted as interested parties. The

Power of Attorney cannot be activated on behalf of the very person, who has been and remains a party to these proceedings. The applicants have not set out any personal interest or stake that is clearly identifiable and proximate, or the prejudice they are likely to suffer in case of non-joinder.

**[10] WE THEREFORE MAKE THE FOLLOWING ORDERS:**

- (a) *The Notice of Motion dated 17<sup>th</sup> January 2023 and lodged on 24<sup>th</sup> January 2023, is hereby dismissed;***
- (b) *The costs of this application shall be borne by the applicants.***

**It is so Ordered.**

**DATED and DELIVERED AT NAIROBI this 14<sup>th</sup> Day of July 2023.**

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**M. K. KOOME  
CHIEF JUSTICE &  
PRESIDENT OF THE SUPREME COURT**

.....  
**P. M. MWILU  
DEPUTY CHIEF JUSTICE &  
VICE PRESIDENT OF  
THE SUPREME COURT**

.....  
**M. K. IBRAHIM  
JUSTICE OF THE SUPREME COURT**

.....  
**S. C. WANJALA  
JUSTICE OF THE SUPREME COURT**

.....  
**NJOKI NDUNGU  
JUSTICE OF THE SUPREME COURT**

.....  
**I. LENAOLA  
JUSTICE OF THE SUPREME COURT**

.....  
**W. OUKO  
JUSTICE OF THE SUPREME COURT**

**I certify that this is a true copy of the original**

**REGISTRAR,**  
**SUPREME COURT OF KENYA**

