



REPUBLIC OF KENYA



**KENYA LAW**  
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**Arita v Ndubi & 3 others (Civil Appeal E020 of 2023)  
[2023] KEHC 24578 (KLR) (31 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 24578 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYAMIRA  
CIVIL APPEAL E020 OF 2023  
WA OKWANY, J  
OCTOBER 31, 2023**

**BETWEEN**

**EUNICE KEMUNTO ARITA ..... APPELLANT**

**AND**

**ANDREW NYAUNDI NDUBI ..... 1<sup>ST</sup> RESPONDENT**

**TIMOTHY ARONI NDUBI ..... 2<sup>ND</sup> RESPONDENT**

**STEPHEN KINANGA NDUBI ..... 3<sup>RD</sup> RESPONDENT**

**HON ATTORNEY GENERAL ..... 4<sup>TH</sup> RESPONDENT**

**RULING**

1. This matter came up before me for ruling in respect to the application dated 29<sup>th</sup> June 2023 wherein the Applicant sought orders, inter alia, for stay of execution of the ruling rendered on 16<sup>th</sup> March 2023 in Civil case No. 38 of 2022 until the Civil appeal no. HCCA/20 of 2023 and the respondents pending plaint in ELC E2 of 2020 are heard and determined.
2. The application is supported by the Applicant's Affidavit and the grounds on the face of the application.
3. The Respondents opposed the application through the 3<sup>rd</sup> Respondent's Replying Affidavit sworn on 20<sup>th</sup> July 2023.
4. The application was canvassed by way of written submissions after which this court listed it for ruling on 26<sup>th</sup> October 2023.



5. My perusal of the pleadings filed herein reveals that the predominant subject matter of the suit is land. The Applicant states as follows in paragraphs 4, 5, 6, 7, 8 and 9 of the Supporting Affidavit: -

- “4. That the applicant herein is the legal owner of the parcel under title deed North Mugirango Boisanga/4600 which is prima facie evidence of absolute ownership. Annexed Herewith Is A Copy Of The Applicant Title Deed North Mugirango/boisanga/4600 Labeled C.
5. That the applicant is a bona fide purchaser for value and has enjoyed quiet, open and continuous vacant possession and occupation for over 14 years and the respondents are not party to the applicant sale agreements and lack locus to challenge my title. Annexed Herewith Is A Copy Of The Parties Sale Agreements Labelled D.
6. That the applicant acquired overriding equitable interests over the parcel of land as a purchaser for value that super cede those of the initial legal owner.
5. That the 1, 2 and 3<sup>rd</sup> respondents lack capacity as legal representatives of the deceased Hezron Ndubi Ochenge’s free estate of North/Mugirango/Boisanga/4598 whose bona fide administrator/legal representative is Jane Bochaberi. Annexed herewith is a copy of the gazette No 2368 on Jane Bochaberi letter of administration in succession cause labelled E.
7. That Stephen Kinanga Ndubi is an impostor legal representative without any locus standing on the deceased Hezron o Ndubi using grant ad litem obtained by fraud contradicting the Gazetted legal administrator Jane Bochaberi his wife. Annexed herewith is Stephen kinanga grant ad litem labelled f.
8. That the deceased Hezron Ochenge Ndubi’s free estate upon subdivision in his lifetime before his death in 2012 is annexed herewith is a copy of the green card of the free estate for the deceased dated labelled G.
9. That there is no cause of action of fraud can arise on the mother title deed for said deceased registered legal owner for parcel North/Mugirango/Boisanga/2516 since subdivision was done by the legal owner in his lifetime 2009 before his death in 2012. Annexed Herewith Is A Copy Of The Cancelled And Closed Green Card Of for the 2009 subdivision on Title Deed N/m/boisanga/2516 Labelled H.”

6. The jurisdiction to deal with land matters is now the preserve of the Environment and Land Court (ELC). article 162(2) and (3) of *the Constitution* of Kenya and section 13(2) of the ELC Act No. 19 of 2011. Article 162(2)(b) speak to this jurisdiction and mandate the ELC to hear and determine disputes relating to use and occupation and title to land.

7. In particular the provisions of article 162(2) of *the Constitution* of Kenya 2012 provide as follows: -

- “(1) The superior Courts are the Supreme Court, the Court of Appeal, the High Court and the Courts mentioned in clause (2).
- (2) Parliament shall establish Courts with the status of the High Court to hear and determine disputes relating to—
  - (a) .....; and



- (b) the environment and the use and occupation of, and title to, land.
- (3) Parliament shall determine the jurisdiction and functions of the Courts contemplated in clause (2)".

8. The provisions of section 13(2) of the [ELC Act](#) clearly gives power to ELC to hear and determine disputes relating to inter alia, environment, land use planning, title, boundary disputes, land administration and management, choses in action or other instruments granting enforceable interests in land among other related issues.
9. The above extract of the supporting affidavit is a pointer to the fact that this matter falls within the purview of the Environment and Land Court and not this court.
10. Consequently, I direct that this matter be placed before the ELC at Nyamira for hearing and determination.
11. Mention before ELC on 7<sup>th</sup> November 2023.
12. It is so ordered.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NYAMIRA VIA MICROSOFT TEAMS THIS 31<sup>ST</sup> DAY OF OCTOBER 2023.**

**W. A. OKWANY**

**JUDGE**

