



**Omufwoko v Osabwa & 4 others (Environment & Land Petition  
E001 of 2022) [2023] KEELC 17344 (KLR) (11 May 2023) (Ruling)**

Neutral citation: [2023] KEELC 17344 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT VIHIGA  
ENVIRONMENT & LAND PETITION E001 OF 2022**

**E ASATI, J  
MAY 11, 2023**

**BETWEEN**

**WILSON MUKUNA OMUFWOKO ..... PETITIONER**

**AND**

**JACKSON AYIEKO OSABWA ..... 1<sup>ST</sup> RESPONDENT**

**ZEBEDEE DANSON OSABWA ..... 2<sup>ND</sup> RESPONDENT**

**RUTH ESITOKO OYIA ..... 3<sup>RD</sup> RESPONDENT**

**VELMA ECHELEKA KOLI ..... 4<sup>TH</sup> RESPONDENT**

**THE COUNTY LAND REGISTRAR ..... 5<sup>TH</sup> RESPONDENT**

**RULING**

1. Wilson Mukuna Omufwoko, the Petitioner herein through the undated Petition filed in court on 2<sup>nd</sup> September, 2022 sought for orders that:-
  - a. The purported sale agreement between the 2<sup>nd</sup> Respondent herein on the one part and the 3<sup>rd</sup> and 4<sup>th</sup> Respondents on the other part pertaining to LR East Bunyore/Ebunangwe/1248 amounted to intermeddling and is therefore null and void.
  - b. The grant of Letter of Administration intestate in Succession Cause No.117 of 2018 was obtained illegally and is therefore null and void and same be revoked.
  - c. The Certificate of Confirmation of grant issued to the 3<sup>rd</sup> and 4<sup>th</sup> Respondents herein be and is hereby cancelled.
  - d. The County Land Registrar in charge of Vihiga County be ordered to cancel the title deed to Jackson Ayieko Osabwa in respect of LR East Bunyore/Ebunangwe/1248.



- e. The county Land Registrar in Vihiga County to be ordered to register the Petitioner herein as they proprietor of all that parcel of land known as LR No.east Bunyore/Ebunangwe/1248.
  - f. The Respondents pay the costs and special damages of the petition herein.
2. In opposition to the petition, the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents jointly filed grounds of opposition dated 3<sup>rd</sup> October, 2022, a Notice of Preliminary Objection dated 26<sup>th</sup> September, 2022 and Replying Affidavits of Jackson Ayieko Osabwa, the 1<sup>st</sup> Respondent, of Zebedee Danson Osabwa, the 2<sup>nd</sup> Respondent, of Ruth Esitoko Oya the 3<sup>rd</sup> Respondent and of Enos Okola Ottichilo all sworn on 3<sup>rd</sup> October, 2022.
  3. The 5<sup>th</sup> Respondent did not reply to the petition.
  4. Before the petition could be heard, the Petitioner filed an application dated 27<sup>th</sup> September, 2022 seeking that one Henry Zakayo Angoyia be allowed to act as his agent in the matter. Since the application was not opposed, the same was allowed by consent on 9<sup>th</sup> February, 2023.
  5. This matter is coming up for Ruling on the Petitioner's application dated 4<sup>th</sup> march 2023 brought under certificate of urgency seeking for orders that:
    - i. the application be certified urgent.
    - ii. delivery of the judgement be arrested.
    - iii. Dorcas Nelima Osabwa be ordered to produce her degree certificate to show that she is qualified to practice as an advocate.
    - iv. The person appearing in court for the Defendant who is practicing as Ondieki advocate and/or P.S.I Ondieki & Company Advocates and/or Morigori Ondieki & Company Advocates has no right to submit and is doing so illegally.
    - v. The court expunges submissions filed for the Respondent by the said person.
    - vi. The appearance of Dorcas Nelima Osabwa and/or Osabwa Sandys & Co. Advocates in this matter contravenes section 4 of the *Oaths and Statutory Declarations Act*.
    - vii. That the advocate known as J. M. Aunga & Commissioner for Oaths and whose address is P.O Box 952 Kisii is not the same as Joseph Momanyi Aunga whose address is P. O Box 971 Kisii and whose practice status is inactive.
    - viii. The Replying Affidavit's were commissioned by an unqualified person and/or person whose practicing license is not valid.
    - ix. The address for service provided by the Defendants is fictitious and strike out the appearance and defence filed
    - x. The court grants the prayers in the Petition.
    - xi. Respondents be ordered to pay the costs of the application.
  6. I have carefully considered the application, the grounds in support thereof as contained in the Supporting Affidavit and the annexures thereto. I have considered the entire petition. The first issue to consider in this matter is whether or not the court has jurisdiction to entertain it. As held in Joseph Njuguna Mwansa & 2 Others v Republic 2013, jurisdiction is the first test that a court must address before it embarks on its decision making functions and in its absence, disqualify itself from



determination of the questions before it, lest its decision be a nullity. The Environment & Land Court is a specialized court created by Article 162(2)(b) of *the Constitution* of Kenya. Although it is established as Superior Court of record, its jurisdiction is limited to matter of the Environment and the use and occupation of and title to land. Section 13 of the Environment and *Land Act* expounds the extent of the jurisdiction. Probate and administration is not part of it.

7. From the pleadings filed, it is clear that the core complaint of the Petitioner herein is the transfer of the suit land from the deceased to the 1<sup>st</sup> Respondent who is the current registered owner. It is also not disputed that the said transfer was effected vide orders/grant obtained in a succession cause. The Petitioner complains that the succession was done unlawfully and the Letters of Administration were obtained fraudulently and by concealing material facts from the court. His claim is premised on Section 31 of the *Law of Succession Act* on gifts in contemplation of death and Section 76 of the same Act on revocation of Grants. The prayers he sought were, inter alia, for revocation of Grant of Letter of Administration Intestate in Vihiga Succession Cause No.117 OF 2018, cancellation of Certificate of Confirmation of Grant made in the Succession Cause, cancellation of title issued pursuant to the Succession cause and for registration of the suit land in his name as the rightful heir of the estate of the deceased. These matters are predominantly concerned with probate and administration. Though the subject matter is land, the complaint made and the relief sought fall within the ambit of the *Law of Succession Act* hence within the jurisdiction of the High Court or the Magistrate's Court (subject to gazettelement and pecuniary jurisdiction of the presiding Magistrate). Hence the matter ought to have been instituted in the appropriate court.
8. As held in The *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* [1989] KLR 1, jurisdiction is everything and that being so, the only option I have is to down my tools. I find that the court has no jurisdiction. I give directions that the file be placed before the High Court Judge Vihiga for further directions and/or orders.

Orders accordingly.

**RULING, DATED AND SIGNED AT VIHIGA AND READ VIRTUALLY THIS 11TH DAY OF MAY, 2023 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.**

**E. ASATI,**

**JUDGE.**

In the presence of:

Neville- Court Assistant.

The Petitioner present

Muhavi Advocate holding brief for Ondieki for the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents

