



Odhiambo v Oyaya & 2 others (Environment and Land Court Judicial Review Application 5 of 2021) [2023] KEELC 18108 (KLR) (12 June 2023) (Ruling)

Neutral citation: [2023] KEELC 18108 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY
ENVIRONMENT AND LAND COURT JUDICIAL REVIEW APPLICATION 5 OF 2021
GMA ONGONDO, J
JUNE 12, 2023
IN THE MATTER OF ARTICLE 22(1), AND 23(I) OF THE
CONSTITUTION OF KENYA
AND
IN THE MATTER OF ORDER 53 OF THE CIVIL PROCEDURE RULES
AND
IN THE MATTER OF APPLICATION FOR LEAVE TO APPLY FOR RIGHTS
OF CERTIORARI, PROHIBITION AND MANDAMUS

BETWEEN

MAK'ANYENGO, KEPHER ODHIAMBO APPLICANT

AND

LINUS OYAYA 1ST RESPONDENT

MINISTER FOR LANDS 2ND RESPONDENT

DISTRICT COMMISSIONER NDHIWA OFFICE 3RD RESPONDENT

RULING

1. The applicant through Wakiaga and Company Advocates lodged a Notice of Motion dated July 22, 2021 further to leave granted on November 1, 2021. He is seeking the following orders:
 - a. That the court be pleased to grant an order of Certiorari of being quashed, the decision of the 3rd Respondent made on November 29, 2020 Reference: Conf/ds/hb Sub/dc/vol1/10 in appeal number on Land Appeal Case Number 125 of 2009.



- b. That the Court be pleased to grant an order of Prohibition to prohibit and restrain the Respondent either by itself, agents, employees or whatsoever from taking any steps, actions, and measures to enforce its decision contained in the letter dated November 29, 2020. Reference Conf/ds/hb-sub/dc/vol/10 in appeal number on Land Appeal Case No 125 of 2009.
 - c. That the Court be pleased to grant an order of certiorari quashing the decision by the Minister for lands leading to 2 irregular title numbers K/k/karading/830 and K/k/karading/3720.
 - d. That the Court be pleased to grant order of Mandamus to compel the Respondent to reinstate the initial title number K/k/karading/830 and the same be subdivided and written in the names of Appeal and the 1st Respondent.
 - e. That the costs of this application be provide for.
2. On the 24th day of May 2023, the applicant was given final chance for substitution of the 1st respondent or termination of the suit. Further mention was set for today, June 12, 2023.
 3. Ms P Odhiambo instructed by LK Obwanda learned counsel for the 1st respondent has informed this court that the Orders of May 24, 2023 have not been complied with. That thus, the matter be dismissed with costs.
 4. Having noted the orders of May 24, 2023 which have not complied with and in view of Article 159(2) (b) of the [Constitution of Kenya 2010](#), sections 1A, 1B, 3 and 3A of the [Civil Procedure Act](#) (Cap 21 Laws of Kenya) and Section 3 of the [Environment and Land Court Act, 2015](#) (2011), this case is hereby dismissed with costs to the 1st respondent.

DELIVERED, DATED AND SIGNED AT HOMABAY THIS 12TH DAY OF JUNE 2023.

G.MA. ONG'ONDO

JUDGE

PRESENT.

Ms. P. Odhiambo holding brief for learned counsel, Obwanda for the respondent.

Court Assistant, Okello.

