



Genga v Land Adjudication Officer Migori/Nyatike District & 2 others; Genga (Interested Party) (Environment and Land Petition E025 of 2021) [2025] KEELC 5307 (KLR) (17 March 2025) (Ruling)

Neutral citation: [2025] KEELC 5307 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MIGORI
ENVIRONMENT AND LAND PETITION E025 OF 2021
MN KULLOW, J
MARCH 17, 2025**

BETWEEN

PRO RIEWA ONYANGO GENGA PETITIONER

AND

**LAND ADJUDICATION OFFICER MIGORI/NYATIKE DISTRICT 1ST
RESPONDENT**

**CABINET SECRETARY MINISTRY OF LANDS AND HOUSING 2ND
RESPONDENT**

ATTORNEY GENERAL 3RD RESPONDENT

AND

SIMON OYIER GENGA INTERESTED PARTY

RULING

1. By Notice of Motion dated 13/10/2023, the Applicant sought for stay of all further proceedings in the matter inclusive of the delivery of Judgment and, secondly that the interested party be allowed to file his response to the petition in terms of the draft Notice of Preliminary Objection annexed to the Application and lastly, the costs of the Application be provided for.
2. The Application was based on the grounds that the Judgment in the matter was scheduled for 13/8/2023 and the advocate who had the conduct of the matter inadvertently lost track of the hearing date. Secondly that the advocate was bereaved and was attending to the arrangements of the burial of his late father.
3. The Application was further supported by the annexed Affidavit of Sam Onyango advocates who depended on the facts raised in the grounds of opposition.



4. The Application was opposed by the Respondents by way of a Replying Affidavit sworn by Onguti Manglare Advocates on 19/10/2023. In which he stated that the Application should not be entertained as the substitution matter had proceeded to the ultimate and the Applicant cannot introduce a preliminary objection at this stage of petition since the same will delay the matter herein.
5. The Respondent further states that the Application was being made dishonestly and the fact the Applicant hasn't been in touch with his advocates shows the lack of interest in the Application.
6. The Respondent further contents that the Applicant had known at the time when the matter was listed for hearing and the court had been communicating with the parties.
7. I have considered the Application and the Replying Affidavit in opposition to the same. I wish to state on the onset that the parties have not filed submissions in the matter and I will thus rely on the Application and the Replying Affidavit in opposition to make a determination.
8. This is an Application seeking a stay of rendering Judgment in a matter where the Applicant had not participated in the hearing of the substitution petition.
9. I have perused the record of 25/5/2023 when the matter was heard and the same sat down for Judgement. The absence of the Applicant is thus not in contention and since the advocate was mourning the death of his father which caused him not to attend court.
10. And in the interest of justice since the Respondent will not suffer any prejudice and for the reasons stated above, I will allow the Notice of Motion Dated 13/10/2023 on the following terms:
 - i. That the entire proceeding dated 13/10/2023 be and is hereby set aside.
 - ii. That the Interested Party do file and serve Response to the petition and the Preliminary Objection within 7 days of this Ruling.
 - iii. That the Applicant to pay the sum of Ksh.10,000.00 as costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 17TH DAY OF MARCH, 2025

MOHAMMED N. KULLOW

JUDGE

In the presence of:

Vincent Court Assistant

Mr. Odero for Interested Party

For the Plaintiff

For the Defendant

