



REPUBLIC OF KENYA



Owaya v Okuro & another; Ojanga (Objector) (Environment & Land Case 17 of 2021) [2023] KEELC 20252 (KLR) (27 September 2023) (Ruling)

Neutral citation: [2023] KEELC 20252 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY
ENVIRONMENT & LAND CASE 17 OF 2021
GMA ONGONDO, J
SEPTEMBER 27, 2023**

BETWEEN

ISHMAIL OWANO OWAYA PLAINTIFF

AND

LONAH BOL OKURO 1ST DEFENDANT

CLIFF ORIWO OKURO 2ND DEFENDANT

AND

THOMAS OCHIENG OJANGA OBJECTOR

RULING

1. On May 30, 2023, the objector, Thomas Ochieng Okuro who appears in person lodged a notice of objection dated May 29, 2023 on the grounds thus:
 - a. The objector who is the registered owner of parcel number Kanyada/Kanyabala/3647 which was also in contention in said matter was not a party to the suit that was decided in favour of the plaintiff.
 - b. The suit was decided in the absence of the objector and therefore this honourable court to make an order for his inclusion in the suit for due process to prevail.
 - c. The judgement delivered by this honourable court therefore is improper. The rights of the objector to be subjected to due process must be safeguarded by this honourable court.
2. Today, the applicant/objector has sought to withdraw the said objection with no orders as to costs on the grounds that there is an appeal No E030 of 2022 pending at Kisumu Court of Appeal which has been brought to my attention.



3. Mr O. H Bunde learned counsel for the plaintiff/respondent told the court that he has no objection to the application subject to costs.
4. Notably, judgment herein was rendered on March 1, 2022. Stay of execution of the said judgment and decree was granted by this court's ruling delivered on October 18, 2023.
5. There is no dispute that there is existence of civil appeal number E030/2022 at the Court of Appeal, Kisumu.
6. Clearly, it would not be right for this matter to be handled by this court since the same is pending before the Court of Appeal; see [Judicial Commission of Inquiry, into Goldenberg Affair and 3 others v Kilach](#) (2003) KLR 249 at 265/266.
7. I, therefore, find that this court is *functus officio* as defined in [Black's Law Dictionary](#) 10th Edition.
8. Further, this court is devoid of jurisdiction over this matter.
9. In the result, the objector's application for withdrawal of the notice of objection is merited. The same is hereby allowed accordingly.
10. Costs to abide the outcome of the appeal at the Court of Appeal.
11. It is so ordered.

DATED AND DELIVERED AT HOMA BAY THIS 27TH DAY OF SEPTEMBER, 2023.

G.M.A ONG'ONDO

JUDGE

