



**Abwoga v Sdandi & 2 others (Environment & Land Case 170 of 2016)
[2023] KEELC 21218 (KLR) (30 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 21218 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUSIA
ENVIRONMENT & LAND CASE 170 OF 2016
BN OLAO, J
OCTOBER 30, 2023**

BETWEEN

NAMROD ZOWED ABWOGA APPLICANT

AND

HUMPRES WANDERA SDANDI 1ST RESPONDENT

JOSEPHAT PAMBA WANDERA 2ND RESPONDENT

LEONARD BWIRE WANDERA 3RD RESPONDENT

RULING

1. By a judgment delivered on 8th December 2022, this Court decreed, *inter alia*, that:

“1. The Plaintiff has acquired by way of adverse possession a portion of land measuring one (1) acre out of the land parcel No Samia/Luanda/Mudoma/3878 or any other subsequent sub-division being Samia/Luanda/Mudoma/4028 and 4029 registered in the names of the 2nd and 3rd Defendants.”

2. The 2nd and 3rd Defendants were further given 30 days to surrender the original title to the land parcel No Samia/Luanda Mudoma/3878 or any other subsequent sub-division including parcels No Samia/Luanda-mudoma/4028 and 4029 for purposes of cancellation and to facilitate the registration of a portion measuring one (1) acre in the name of the Plaintiff.

3. It is not clear whether those original title deeds were surrendered and cancelled as directed. What is clear however, at least going by the Plaintiff’s Notice of Motion dated 5th October 2023 and which is the subject of this ruling, the title No Samia/Luanda-mudoma/4028 has been cancelled and two new sub-divisions created being Samia/Luanda-mudoma/4854 and 4855. The latter portion is now apparently earmarked for the Plaintiff in satisfaction of this judgment.



4. The Plaintiff has now approached this Court vide the above cited Notice of Motion seeking the following orders:
 1. That the Honourable Court be pleased to authorize the Deputy Registrar to sign all transfer documents in respect of LR Samia/Luanda-mudoma/4855.
 2. That costs of this application be provided for.
5. The application is based on the grounds set out therein and is supported by the Plaintiff's affidavit.
6. The gravamen of the application is that this Court decreed that one (1) acre be excised from the land parcel No Samia/Luanda-mudoma/4028 which has now been done and the parcel No Samia/Luanda-mudoma/4855 has been transferred to the Plaintiff. That the Deputy Registrar should now be authorized to sign the transfer documents in respect to the land parcel No Samia/Luanda/Mudoma/4855.
7. When the matter came up on 24th October 2023, only the 2nd Defendant was present and the application was not opposed though served.
8. Upon further perusal of this file, I have noted that by a Notice of Motion dated 3rd March 2023, the Plaintiff had sought the following orders:
 1. That the Deputy Registrar be authorized to sign documents on behalf of the Respondent in execution of the decree of the Court.
 2. That costs of this application be in the cause.That application was similarly not opposed and I allowed it on 10th May 2023.
9. Having allowed the Plaintiff's earlier Notice of Motion dated 3rd March 2023, it must be obvious that the application dated 5th October 2023 is really res-judicata as it seeks the same orders earlier granted by this Court following the application dated 3rd March 2023. By the orders issued by this Court on 10th May 2023, it follows that all documents that may be required by the Land Registrar to facilitate the registration of one (1) acre portion of land in the Plaintiff's name out of the land parcels No Samia/Luanda/Mudoma/3878, 4028 and 4029 shall be executed by the Deputy Registrar of this Court. There is no limit as to what the Deputy registrar can or cannot sign in order to facilitate the execution of that judgment. The orders issued on 10th May 2023 are sufficient and the Deputy Registrar does not need any further authorization.
10. The Notice of Motion dated 5th October 2023 is superfluous and, most importantly, res-judicata.
11. It is accordingly dismissed with no orders as to costs.

BOAZ N. OLAO

JUDGE

30TH OCTOBER, 2023.

RULING DATED, SIGNED AND DELIVERED ON THIS 30TH DAY OF OCTOBER 2023 IN OPEN COURT.

BOAZ N. OLAO

JUDGE

30TH OCTOBER, 2023.

