



**Bunde v Osoro & 2 others (Environment and Land Appeal
E017 of 2022) [2023] KEELC 20756 (KLR) (17 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 20756 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY
ENVIRONMENT AND LAND APPEAL E017 OF 2022
GMA ONGONDO, J
OCTOBER 17, 2023**

BETWEEN

JOSEPH ODHIAMBO BUNDE APPLICANT

AND

JOHN PHELIX OPIYO OSORO 1ST RESPONDENT

OMONDI OSORO 2ND RESPONDENT

ODONGO OSORO 3RD RESPONDENT

RULING

1. This ruling in lieu of judgment is provoked by the applicant/appellant's Notice of Motion application dated October 9, 2023 and filed herein on October 11, 2023.
2. The applicant through the firm of Nyakwamba & Company Advocates, via the said application, has sought the orders infra:
 - a. That the application herein be certified as urgent.
 - b. That pending the hearing and determination of this application interpartes, the honourable court be pleased to review its orders directing that the hearing of the matter had been closed and a judgment in the current suit be delivered on the October 17, 2023.
 - c. The honourable court be pleased to arrest the judgment slated by the honourable court on the October 17, 2023.
 - d. The honourable court be pleased to arrest the judgment slated by the honourable court on the October 17, 2023 pending the hearing and determination of this application interpartes.
 - e. That the honourable court be pleased to issue further or better orders as shall meet the ends of justice.



3. By a memorandum of appeal dated May 6, 2022 and filed herein on even date, the appellant, being aggrieved with the decision of the trial court, lodged this appeal which is anchored on grounds 1 to 11 as set out on the face thereof and the same include:
 - a. The trial magistrate erred in law and fact by finding that the appellant holds L. R. No. Kanyada/Kotieno/Katuma/2511 (the suit land herein) in trust for the respondents.
 - b. The trial magistrate erred in law by ordering the Land Registrar Homabay county to transfer the suit land, at least 4 acres thereof, into the name of the respondents' father Joseph Osoro Buogi, without considering any document disclosing the alleged purchase and the approximate size.
 - c. The learned trial magistrate erred in law and fact in failing to critically analyse and consider the decision of Asego Land Disputes Tribunal which DW1 acknowledged its recommendation.
 - d. The learned trial magistrate erred in law and fact in upholding a sale which was not witnessed by any family members of the deceased despite the respondent confirming that the deceased had a family and it was necessary the family members were involved for this being ancestral land and the deceased held it in trust for the family members.
4. Thus, the appellant sought that the appeal be allowed, the judgment of the trial court be set aside and the appellant be awarded costs herein.
5. Article 48 of the Constitution of Kenya, 2010 anchors the right of access to justice which is applicable to the application. Furthermore, the applicant is entitled to fair hearing of the application as stipulated in article 50 (1) of the same Constitution.
6. To meet the ends of justice pursuant to, inter alia, Sections 1A, 1B, 3 and 3A of the Civil Procedure Act, Chapter 21 Laws of Kenya alongside sections 3 and 19 of the Environment and Land Court Act, 2015 (2011), this court hereby orders and directs that the application takes priority over the main appeal herein.
7. Orders accordingly.

DELIVERED, DATED AND SIGNED THIS 17TH DAY OF OCTOBER, 2023.

G.M.A ONGONDO

JUDGE

Present

1. Mr. Nyakwamba, learned counsel for the appellant
2. Mr. Singei holding brief for Mr. Ochieng, learned counsel for the respondent
3. Appellant- present
4. Respondents- present

