



**Supeyo & 2 others (Administrators of the Estate of Rahab-Kamaso Supeyo) v Onkwani & another (Environment & Land Case 25 of 2020) [2023] KEELC 21739 (KLR) (21 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21739 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT & LAND CASE 25 OF 2020  
MN GICHERU, J  
NOVEMBER 21, 2023**

**BETWEEN**

**EZEKIEL SIMITO OLE SUPEYO ..... 1<sup>ST</sup> PLAINTIFF  
BRIAN MUTUNKEI SUPEYO ..... 2<sup>ND</sup> PLAINTIFF  
MOSES NTIAMASAS SUPEYO ..... 3<sup>RD</sup> PLAINTIFF  
ADMINISTRATORS OF THE ESTATE OF RAHAB-KAMASO SUPEYO**

**AND**

**ROBERT MOSETI ONKWANI ..... 1<sup>ST</sup> DEFENDANT  
ATTORNEY GENERAL (SUED ON BEHALF OF THE REGISTRAR OF LAND  
KAJIADO NORTH, REGISTRY) ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. This ruling is on the notice of motion dated 15/10/2021. The motion which is by the Plaintiffs is brought under Articles 48, 159(2) (d) of *the Constitution* of Kenya, Sections 1A, 1B, 3A, 22(a) and 63 (e) of the *Civil Procedure Act*, order 11 rule 3 (2) (d) of the *Civil Procedure Rules* and all other enabling provisions of law seeks the following orders.
  - a. The first defendant be ordered within 14 days, to produce to the plaintiff for examination and inspection, the original agreement dated 18/3/2014 allegedly executed by Rahab Kumaso Supeyo (the deceased) purportedly conveying L.R. Kajiado/Olchoro-Onyore/16813, suit land, to the first defendant and deed of acknowledgment dated 7/5/2014 whereby the deceased purportedly received the purchase price of the suit land.
  - b. In default of compliance with the above order, the first defendant's defence be struck out with costs to the plaintiff.



- c. The second defendant be ordered, within 14 days to produce to the plaintiff for inspection, and examination, the original transfer form dated 18/3/2014 allegedly executed by the deceased purportedly conveying the suit land to the first defendant and an application for consent of the land control board allegedly executed by the deceased with regard to the suit land.
  - d. In default of the above order, the 2<sup>nd</sup> defendant's defence, if already filed be struck out and if not filed, the second defendant be barred from filing any defence.
  - e. Costs of the application be provided for.
2. The motion is based on 23 grounds, a supporting affidavit and sixteen annexures. The gist of the above material is that the deceased did not sell the suit land to the first defendant and the documents in possession of the first defendant were obtained illegally and unprocedurally.
  3. The motion is opposed by the first defendant who has sworn a replying affidavit dated 30/5/2022 in which he deposes that he bought the land from the deceased after paying valuable consideration of Kshs. 7.5 million and that he complied with all due process. Annexed to the replying affidavit are some of the documents that the plaintiff has asked for.
  4. I have carefully considered the motion dated 15/10/2021 in its entirety including the grounds, affidavits by both sides, the annexures, the submissions dated 10/8/2022 and 7/6/2022, respectively and the law cited therein. I find that the motion has no merit for the following reasons.
  5. Firstly, the burden of proof in this case lies on the plaintiffs. It is them who would fail if no evidence was adduced in this case. By asking the defendants to provide evidence, the plaintiffs are seeking to shift the burden to the defendants. This is not proper.
  6. Secondly, the defendants' defence cannot be struck out because of failure to produce documents which they are by law not bound to produce. The defendants must be heard fully and their defences should stand. It would not be a fair hearing to the defendants if they were denied a hearing for failure to produce documents which may not be in their possession. Let the defendants file the evidence that they wish and the case to proceed to hearing in the usual manner and not to be decided summarily.

**DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 21<sup>ST</sup> DAY OF NOVEMBER, 2023.**

**M.N. GICHERU**

**JUDGE**

