



**Odera & 6 others (Suing on Their Own and on Behalf of all other Members of the Kogony Community Claiming Registerable Interests in the Land Known as C/18 Scheme) v Akinyi & 5 others; Oim & 18 others (Interested Party); G.N.Otieno & 4 others (Applicant) (Environment and Land Case Civil Suit 146 of 2012) [2023] KEELC 22627 (KLR) (16 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 22627 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KISUMU**  
**ENVIRONMENT AND LAND CASE CIVIL SUIT 146 OF 2012**  
**SO OKONG'O, J**  
**NOVEMBER 16, 2023**

**BETWEEN**

**CHRISTABEL ACHIENG ODERA ..... 1<sup>ST</sup> PLAINTIFF**  
**WILSON OGOLA ODENY ..... 2<sup>ND</sup> PLAINTIFF**  
**CARRILUS OLANDO ODARI ..... 3<sup>RD</sup> PLAINTIFF**  
**JOSEPH OMOLLO ..... 4<sup>TH</sup> PLAINTIFF**  
**FLORENCE ATIENO ADERA ..... 5<sup>TH</sup> PLAINTIFF**  
**JOHN OKONGO OGENDO ..... 6<sup>TH</sup> PLAINTIFF**  
**MICHAEL JUMA ADEDE ..... 7<sup>TH</sup> PLAINTIFF**

**SUING ON THEIR OWN AND ON BEHALF OF ALL OTHER MEMBERS OF  
THE KOGONY COMMUNITY CLAIMING REGISTERABLE INTERESTS IN  
THE LAND KNOWN AS C/18 SCHEME**

**AND**

**CHRISTOPHER JUMA AKINYI ..... 1<sup>ST</sup> DEFENDANT**  
**AUGUSTINE GENGA ONDINGO ..... 2<sup>ND</sup> DEFENDANT**  
**VITALIS OURU AKINYI ..... 3<sup>RD</sup> DEFENDANT**  
**JANE KAMBAGA ..... 4<sup>TH</sup> DEFENDANT**  
**COUNTY LANDS REGISTRAR ..... 5<sup>TH</sup> DEFENDANT**  
**HON.ATTORNEY GENERAL ..... 6<sup>TH</sup> DEFENDANT**

**AND**



**DAVID ODERA OIM & 18 OTHERS ..... INTERESTED PARTY**

**AND**

**GEORGE G.N. OTIENO ..... APPLICANT**

**AUMA ABUORO ..... APPLICANT**

**WILLIAM AMAYI ..... APPLICANT**

**RICHARD LEONARD MASIME OGOLA ..... APPLICANT**

**JAMES MASWACHE ..... APPLICANT**

## **RULING**

1. The Applicants filed an application by way of Notice of Motion dated 20<sup>th</sup> September 2023 on 21<sup>st</sup> September 2023 seeking among others, the setting aside of the judgment entered herein on 18<sup>th</sup> March 2022 and their joinder as parties to the suit. The Applicants' application came up for directions on 22<sup>nd</sup> September 2023 when the court directed that the same be served for hearing on 12<sup>th</sup> October 2023. When the matter came up for hearing on 12<sup>th</sup> October 2023, only the advocates for the Defendants and the Applicant appeared in court. The advocates for the Plaintiff and the Interested Party were absent. The advocate for the Applicants informed the court that the advocates for all the parties had been served and he had filed an affidavit of service. The Applicant's advocates relied entirely on the grounds on the face of the application and the supporting affidavit. The advocate for the Defendants told the court that they had no objection to the application. Due to the seriousness of the orders sought the court reserved the ruling for 16<sup>th</sup> November 2023.
2. While perusing the file for the purposes of writing the ruling, I noted that the service was not properly effected. First, I noted that the Interested Parties who had participated in the matter up to the judgment stage and were represented by Amondi & Company Advocates were not served with the application. Secondly, I noted that the e-mail address used to serve the advocates for the Plaintiff, Julius Nyakiangana & Company Advocates was wrong. From the record, the said firm of advocates uses an e-mail address: juliusnyakiangana@gmail.com. The email address used by the Applicants' advocates to serve the firm was: juliasnyakiangana@gmail.com. The said e-mail could not have reached the firm and I believe the Applicant's advocates must have received a notification from Gmail that the email address did not exist. Having come to the conclusion that some of the parties in the matter were not served, I stopped preparing the ruling.
3. Due to the foregoing, I hereby set aside the proceedings of 12<sup>th</sup> October 2023 and direct that the Notice of Motion application dated 20<sup>th</sup> September 2023 be served a fresh upon all the parties for hearing on a date to be given by the court.

**DELIVERED AND DATED AT KISUMU THIS 16<sup>TH</sup> DAY OF NOVEMBER 2023**

**S. OKONG'O**

**JUDGE**

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform in the presence of:

N/A for the Plaintiffs

Mr. Ojuro for the Defendants



N/A for the Interested Parties  
Ms. Omondi for the Applicants  
Ms. J.Omondi-Court Assistant

