



**Munialo & another v County Government of Bungoma & another (Environment & Land Case 95 of 2015) [2023] KEELC 22146 (KLR) (11 December 2023) (Ruling)**

Neutral citation: [2023] KEELC 22146 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA  
ENVIRONMENT & LAND CASE 95 OF 2015  
EC CHERONO, J  
DECEMBER 11, 2023**

**BETWEEN**

**AGNES NASAMBU MUNIALO ..... 1<sup>ST</sup> PLAINTIFF**

**ROBINSON JUMA MUKHON ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**THE COUNTY GOVERNMENT OF BUNGOMA ..... 1<sup>ST</sup> DEFENDANT**

**THE ST. MATHEWS ACK WEBUYE PARISH CATHEDRAL  
COMMITTEE ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. What is before me is the Notice of Motion application dated 3<sup>rd</sup> June 2023 and filed in court on 3/7/2023 seeking the following 23 orders;
  1. That, pending determination hereof; It pleases this Hon. Court to dispense with this application in the first instance, and stay the sale of the livestock attached on 30<sup>th</sup> June, 2023; due to the utmost urgency hereof, for executing justice pursuant to Article 50; clause 1 up to 6 of *the Constitution* and order 5; Rule 12 up to 17 of the *Civil Procedure Act* Cap21.
  2. That, pending determination hereof; it pleases this Hon. Court to issue ex parte orders to stay the sale of livestock attached on the 30<sup>th</sup> day of June, 2023; since the main case is not yet finalized, because when 2<sup>nd</sup> witness was not invited to witness, the trial judge recused from handling matters where the said witness is directly or indirectly involved.
  3. That, pending determination hereof; it pleases Hon. Court to stay the sale of livestock attached on the 30<sup>th</sup> day of June, 2023; since the main case is not finalized, because the trial judge recused from making any orders on matters where the 2<sup>nd</sup> witness is directly or indirectly involved.



4. That, it pleases this Hon. Court to stay the sale of livestock attached on the 30<sup>th</sup> day of June, 2023; since the main case is not finalized, because the trial judge opted for ruling, instead of transferring Application for substitution of witnesses before the Environment and land court at Kakamega, after recused from hearing cases where the 2<sup>nd</sup> witness is directly or indirectly involved.
5. That, it pleases this Hon. Court to stay the sale of livestock attached on the 30<sup>th</sup> day of June, 2023; because the 1<sup>st</sup> Defendant /Decree Creditor, never served the Bill of costs, Notice of Taxation, Order, Decree, Notice of public Auction, or proclamation upon both plaintiffs in person, or through their adult neighbour (the 2<sup>nd</sup> witness herein); whom they authorized to serve the M/S A.W. Kituyi & Co. Advocates for the 1<sup>st</sup> Defendant/Decree creditor and M/S Khakula & Co. Advocates for 2<sup>nd</sup> Defendant herein.
6. That, it pleases this Hon. Court to issue Ex Parte Vesting Orders compelling the Agunja Traders Auctioneers of P.O BOX 2362-50200, Bungoma; to avail the livestock Valuation officer for assessing the value and file valuation Report of the five heads of cattle retained under the Auctioneers' custody without serving the Bill of costs, Notice of Taxation, Order, Decree, Notice of Public Auction, or proclamation and the livestock Officers' valuation Report.
7. That, it pleases this Hon. Court to issue vesting Orders compelling the Agunja Traders Auctioneers of P.O Box 2362-50200, Bungoma; to return or compensate for the five heads of cattle (Three milking cows and two calves) attached and ferried from the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs' home, without being served with the Bill of costs, Notice of Taxation, Order, Decree, Notice of public Auction, or proclamation and the Officer's valuation Report.
8. That, it pleases this Hon. Court to issue orders declaring L.R Ndivisi/Muchi/1384 adversely owned by Alfayo Wakalikha Namisiko after the 1895 colonial Chetambe war, was scandalously registered in the name of Bungoma County Council on 2<sup>nd</sup> October, 1970; during compulsory land compensation for the pulp and paper Mill Factory, through Kenya Gazette NO.1710 of 12<sup>th</sup> June, 1970.
9. That, it pleases this Hon. Court to issue orders declaring L.RNo.Ndivisi/Muchi1384 adversely owned by Alfayo Wakalikha Namisiko after the 1895 colonial Chetambe war, is not part –portion of the lands bought by the Government of Kenya on behalf of Bungoma County Council; through Kenya Gazette NO.1710 of 12<sup>th</sup> June, 1970.
10. That, it pleases this Ho. Court to issue orders declaring L.RNo.Ndivisi/Muchi/1384 is duly developed by the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs by building rental houses and 180 eucalyptus trees among other vegetations.
11. That, it pleases this Hon. Court to issue orders declaring L.RNo.Ndivisi/Muchi/1384 is the property of the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs herein; similar to the verdict made by Muchi first land Adjudication Team, after Biketi Wanambisi Mutinyu accepted selling of L.R No.Ndivisi/Muchi/1233 to Meshack Wanjala on adverse possession.
12. That, it pleases this Hon. Court to issue orders declaring L.RNo.Ndivisi/Muchi/1384 is the property of the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs herein; similar to the verdict made by Muchi First Land Adjudication Team, after Cheloti Kisaka accepted selling part-portion of LR.No.Ndivisi/Muchi/1307 to Paulo Wafula.



13. That, it pleases this Hon. Court to issue orders compelling the 1<sup>st</sup> and 2<sup>nd</sup> Defendant/ Respondents herein, to pay costs awarded to the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs for the application which enjoined the 2<sup>nd</sup> Defendant in this case.
14. That, it pleases this Hon. Court to issue orders declaring LR.No.Ndivisi/Muchi/1384 adversely owned by Alfayo Wakalikha Namisiko after the 1895 Colonial Chetambe War, is not part-portion of the Bungoma County Council LR.No.Ndivisi/Muchi/7996 registered in the name of Bungoma County Council on 19<sup>th</sup> September, 1976; and approved by the commissioner of Lands on 8<sup>th</sup> February, 1977.
15. That, it pleases this Hon. Court to issue orders declaring the plaintiffs herein cannot sue Alfayo Wakalikha Namasiko, adversely owned LR.No.Ndivisi/Muchi/1384 after the 1895 Colonial Chetambe War, thereafter sold to the 1<sup>st</sup> plaintiff on 16<sup>th</sup> February, 1967; before the Bungoma County Council registered its legal Trading Centre LR.No.Ndivisi/Muchi/7996 on 19<sup>th</sup> September, 1976; and approved by the National Commissioner of Lands on 8<sup>th</sup> February, 1977.
16. That, it pleases this Hon. Court to issue vesting orders directing the 1<sup>st</sup> Defendant to investigate the subdivision exercise and hive off the 900 acres bought by the National Government through Kenya Gazette NO. 1710 of 12<sup>th</sup> June, 1970 and made a letter on 22<sup>nd</sup> November, 1973 convincing our Ancestors to execute the transfers before investigating subdivision cases for determine uncompensated plots.
17. That, it pleases this Hon. Court to issue orders declaring the Statute of accrual of Limitation of Actions for both National Government and County Government, has never accrued as at 22<sup>nd</sup> November, 1973; because LR.No.Ndivisi/Muchi/1384 among the many not bought by the National and or County Government of Bungoma, pursuant to Kenya Gazette NO. 1710 of 12<sup>th</sup> June, 1970.
18. That, it pleases this Hon. Court to issue orders declaring the County Land Surveyor Mr. Brian Kubwa, concealed to the court of something material to the case; while knowing that both National and County Governments are still investigating the subdivision and compensation disputes for complying with the 22<sup>nd</sup> November, 1973 pursuant to Kenya Gazette NO. 1710 of 12<sup>th</sup> June, 1970.
19. That, it pleases this Hon. Court to issue orders declaring the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs are equally beneficiaries of LR.No.Ndivisi/Muchi/1384, just like both National and County Governments; compensated, pursuant to Kenya Gazette NO. 1710 of 12<sup>th</sup> June, 1970.
20. That, it pleases this Hon. court to issue orders declaring the accrual of Limitation of Actions has never accrued as at 22<sup>nd</sup> November, 1973 because the High Court of Kenya at Nairobi, partially determined and returned 1.9 acre out of LR.No.Ndivisi/Muchi/1265(Measuring approximately 9.25 acres, falsely procured by the 1<sup>st</sup> Defendant/Respondent herein, contrary to Kenya Gazette NO.1710 of 12<sup>th</sup> June, 1970.
21. That, it pleases this Hon. Court to issue orders declaring the accrual of Limitation of actions has never accrued as at 22<sup>nd</sup> November, 1973 because the High Court of Kenya at Nairobi, partially determined and returned 1.75 acres out of LR.No.Ndivisi/Muchi/1288 (Measuring approximately 13.25 acres, falsely procured by the 1<sup>st</sup> Defendant/Respondent herein, contrary to Kenya Gazette NO. 1710 of 12<sup>th</sup> June, 1970.



22. That, it pleases this Hon. Court to issue orders declaring the Statute of accrual of Limitation of Actions as 22<sup>nd</sup> November, 1973, was arrested by the 1<sup>st</sup> Defendant herein, who Subdivision of LR. Ndivisi/muchi/1265 between 22<sup>nd</sup> November, 1973 and 1977 pursuant to Kenya Gazette NO. 1710 of 12<sup>th</sup> June, 1970; then issued the Land Certificate on 9<sup>th</sup> September, 1981;-
- a. The area marked Town Hall (T. Hall)
  - b. The area indicated with an arrow to be 1265
  - c. The area demarcated as Datum to Access pulp and paper Mill
  - d. The area planned for un-existing public Car-park
  - e. The area planned for un-existing 11 shops
  - f. The area demarcated as Nyange street
  - g. The area planned for the now existing 20 modern shops
  - h. The area demarcated as the Back street
  - i. The Broderick African shops planned for the existing 20 modern existing shops
  - j. The unplanned first demarcated Isosceles Triangle
  - k. The half of unplanned second demarcated Isosceles Triangle
  - l. The half of the area preserved as 410
  - m. The three quarters of the unplanned area demarcated as Trapezium Triangle
  - n. The Roads of Access demarcated around the Town Hall (T. Hall) compound.
  - o. The Rhombus Rectangular behind the Town Hall and part-portion of Area 01
  - p. The letter made on 22<sup>nd</sup> November, 1973 by the Government of Kenya for further investigation about subdivision and compensation.
  - q. The Compulsory Compensation of LR.No.Ndivisi/Muchi/1238, made on 26<sup>th</sup> February, 1977
  - r. The recovered 0.76 H(1.9 acres) on 9<sup>th</sup> September, 1981; out of LR.No.Ndivisi/Muchi/1265 Measuring approximately 9.25 acres on the ground
  - s. The Judgment verdict delivered through HCCC NO. 1145 of 1987 (judgment delivered at Nairobi on 1<sup>st</sup> July, 1991)
  - t. The High Court Misc. Civil Application NO, 256 of 1995 Ruling delivered at Eldoret on 4<sup>th</sup> December, 1995
  - u. The HCCC NO.1145 of 1987 judgment delivered at Nairobi on 1<sup>st</sup> July, 1991
  - v. The HCCC NO.1145 of 1987 Decree issued at Nairobi on 2<sup>nd</sup> July, 1991
  - w. The HCCC NO.1145 of 1987 judgment at Nairobi on 23<sup>rd</sup> July, 2002
  - x. The HCCC NO.1145 of 1987 judgment made at Nairobi on 23<sup>rd</sup> July, 2002
  - y. The HCCC NO.1145 of 1987 Final Decree at Nairobi on 23<sup>rd</sup> April, 2004



- z. The High Court Misc. Application NO. 448 of 2006 Ruling delivered at Nairobi on 26<sup>th</sup> March, 2009
  - aa. The High Court Misc. Application NO. 448 of 2006 Ruling delivered at Eldoret on 12<sup>th</sup> March, 2010
  - ab. The High Court Misc. Application NO. 448 of 2006 Order issued at Nairobi on 31<sup>st</sup> January, 2014
  - ac. The High Court Misc. Application NO.448 of 2006 Order issued at Nairobi on 24<sup>th</sup> February, 2014.
  - ad. The Environment and Land Case NO.116 of 2017 Ruling delivered on 28<sup>th</sup> March, 2018
23. That, it pleases this Hon. Court to issue orders under the Registered Land Act NO. 6 of 2012; Section 157 (1 a-c (i-iii), compelling the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Respondents herein, to pay Kshs 10,000/= (Kenya shillings ten million only); due to knowingly and fraudulently; assisting and helping the 2<sup>nd</sup> Defendant/Respondent herein, to procure LR.No.Ndivisi/Muchi/1384 falsely. Through written and oral information.
2. The application is supported by the affidavit of Benjamin Barasa Wafula, herein referred to as the 1<sup>st</sup> witness sworn on even date. The supporting affidavit contains two annexures in further support of the application.
  3. By way of a response, the 1<sup>st</sup> Respondent through the Firm of A.W. Kituyi & Company Advocates filed Grounds of Opposition dated 10<sup>th</sup> July, 2023 and filed in court on 13<sup>th</sup> July, 2023 respectively. The 2<sup>nd</sup> Respondent through the Firm of J.S Khakula & Company Advocates also opposed the application vide Grounds of Opposition dated 19<sup>th</sup> July, 2023 and filed in court on even date.
  4. When the application came up for directions on 27/7/2023, the parties agreed to dispose the same by written submissions.

### **Applicants' Summary Of Facts**

5. The brief background to this case is that Agness Nasambu Munialo (Paintiff) filed the suit herein against Bungoma County Government (defendant) vide a Plaint dated 10<sup>th</sup> August 2015 seeking for a substantive order directing the Land Registrar, Bungoma County to transfer L.RNo.Ndivisi/Muchi/1384 in the names of the plaintiff, Agnes Nasambu Munialo. The defendant filed a statement of defence denying the plaintiff's claim. On 10<sup>th</sup> February 2017 the plaintiff Amended the plaint by adding one Robinson Juma Mukhongo and Webuye Parish A.CK ST. Mathew's Parish as 2<sup>nd</sup> plaintiff and 2<sup>nd</sup> defendant respectively. The suit was heard between 7<sup>th</sup> October 2019 and 21<sup>st</sup> January 2020. On 12<sup>th</sup> March, 2020 this Honourable court dismissed the suit with costs to the 1<sup>st</sup> defendant. Thereafter, the 1<sup>st</sup> defendant filed its bill of costs at Kshs. 130,946/ and a certificate of taxation was issued on 19<sup>th</sup> June, 2023. The Decree Holder instructed Agunja Traders Auctioneers to recover the said costs. On 19/6/2023, the said Agunja Auctioneers proclaimed moveable properties (cows) belonging to the J/D. On the same date, the said Auctioneers wrote to the Deputy Registrar notifying her of the proclamation and enclosing the inventory of the proclaimed movable properties.
6. On 3<sup>rd</sup> July 2023, the present application was filed by one Francis Wanjal Wakalikha, Benjamin Wafula and John Wanjala Wambeye, otherwise described as 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> witnesses.



7. The application is supported by the affidavit sworn on 03/07/2023 by Benjamin Barasa Wafula and filed in court the same date. I have read through the said affidavit again and again but fail to comprehend what the deponent is stating. I have also seen that the applicants have moved this Honourable court under the provisions of order 22 Rules 22, 25, 58, 84 & 86; order 37 Rules 3, 8 & 11 CPR. I also note that the applicants are seeking 23 orders, some of which are permanent in nature.

### **1<sup>st</sup> Defendant/Decree Holder Response**

8. The 1<sup>st</sup> Defendant Decree/Holder through its Advocates on record M/S A.W. Kituyi & Company Advocates filed grounds of opposition raising the following issues;
1. That the application dated 3<sup>rd</sup> June 2023 is fatally defective, bad in law as the purported 2 witnesses/objector/applicant do not have locus standi to bring the claim or represent any party thereof.
  2. That the application is overtaken by time as the livestock had already been sold and part proceed of Kshs. 20,000/ paid to the 1<sup>st</sup> Respondent and returns filed.
  3. That the orders sought by the so-called 2<sup>nd</sup> witness/objector/applicant are not known in law and cannot be granted by the court.
  4. That the suit against the 1<sup>st</sup> and 2<sup>nd</sup> Respondent was properly determined on 12<sup>th</sup> March, 2020 by dismissing with costs against the plaintiff's claim hence any averment contrary to the same is imaginary and uncalled for.
  5. That the 1<sup>st</sup> Respondent's bill of costs was taxed on 10<sup>th</sup> May, 2023 at Kshs. 130,946/= by the Deputy Registrar and Certificate of costs duly issued on 19<sup>th</sup> June, 2023 and no appeal or reference filed against the said taxation.
  6. That the 2<sup>nd</sup> witness/objector/applicant's claim is untenable, imaginary and weird hence cannot be awarded by the court and the same should be struck out.
  7. That the application is not merited and should be dismissed as it is frivolous, vexatious and/or otherwise an abuse of the due process of this honourable court.

### **2<sup>nd</sup> Defendant/Respondent's Response.**

9. The 2<sup>nd</sup> Defendant/Respondent through the firm of J.S Khakula & Co. Advocates filed grounds of opposition raising the following grounds;
1. The application is misconceived and of no merit whatsoever.
  2. The applicant has no locus standi to bring this application.

### **2<sup>nd</sup> Witness/objector/Applicant's Written Submissions**

10. Benjamin Barasa Wafula, otherwise described as 2<sup>nd</sup> witness/objector/applicant alone filed submissions on various issues under the Civil Procedure Act Cap. 21) and the Rules made thereunder, the constitution of Kenya 2010, the independence of the judiciary as an arm of Government, Judicial service Act, ownership of land and the Bill of rights. The 2<sup>nd</sup> witness/objector/applicant also raised a myriad of issues touching on the code of conduct and Ethics for Judges, Compulsory land acquisition by the Government of Kenya and service of court processes under Order 5 Rule 12 & 22 of the Civil Procedure Rules.



## **1<sup>st</sup> Defendant/Respondent's Written Submissions**

11. The Firm of A.w. Kituyi & Company Advocates submitted that the 2<sup>nd</sup> witness/objector/applicant's application dated 3<sup>rd</sup> June 2023 is fatally defective, bad in law and ought to be struck out as the purported 2<sup>nd</sup> witness/objector/applicant do not have locus standi to bring the claim or represent any party thereof. He argued that the 2<sup>nd</sup> witness/objector/applicant is not known in law and has no locus standi to bring this application before the Honourable court. He submitted that the defendant/Decree Holder upon dismissing the plaintiff's case herein with costs gave instructions to Agunja Auctioneers to proceed and attach the plaintiff's property and make good costs of Kshs. 130,946/= which was taxed against her in May, 2023 and a certificate of costs duly issued on 19<sup>th</sup> June, 2023.
12. The learned counsel further submitted that the Auctioneers proceeded and proclaimed the plaintiffs' property on 19/6/2023 and sold the same on 4<sup>th</sup> July 2023 after attachment. He submitted that the Auctioneers upon sale got Kshs. 46,000/= and forwarded to the 1<sup>st</sup> defendant/Decree Holder's advocate Kshs. 20,000/= and retained Kshs.26,000/= as their costs as evident by the return of sale on proceed.
13. He submitted that the applicant herein has no authority to act on behalf of the plaintiff and neither has he demonstrated that the attached animals which were sold belonged to him as required by the law. He stated that the applicant herein purports and endorsed himself as a 2<sup>nd</sup> witness after judgment had been delivered which is a serious digression from the issue before court and clear misplacement of facts and that the applicant herein has no locus standi to have filed this application as there is no window or platform which he can use to litigate from to get any orders. He stated that the prayers sought herein are not known in law and hence the applications herein should be dismissed with costs or struck out with costs for being filed by a stranger not known in law.
14. The learned counsel further submitted that the application is overtaken by events as the livestock have been sold and proceeds of Kshs. 20,000/ paid to the 1<sup>st</sup> Respondent as per returns filed and that the application before court serves no purpose and should be dismissed with costs.

## **Legal Analysis and Decision**

15. I have considered the application by the 2<sup>nd</sup> witness/objector/applicant dated 3<sup>rd</sup> June 2023, the supporting affidavit and the annexures thereto. I have also considered the grounds of opposition by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, the proceedings, the rival submissions and the applicable law. From the proceedings on record, the following facts are not in dispute;
  - i. This suit was heard on merit and judgment delivered on 12<sup>th</sup> March 2020.
  - ii. The finding of this Honourable court is that the plaintiff's suit lacked merit and dismissed with costs to the 1<sup>st</sup> defendant.
  - iii. The plaintiffs did not prefer any appeal against the said judgment delivered on 12/03/2020
  - iv. The 2<sup>nd</sup> witness/objector/applicant was not a party in this suit until judgment was delivered on 12/03/2020.
16. The 1<sup>st</sup> and 2<sup>nd</sup> defendants in their respective grounds of opposition have challenged the applicant's capacity or locus standi to bring the present application. Locus standi is a point of law that touches on jurisdiction of the court which once raised should be resolved at the earliest opportunity as a



preliminary point as was discussed in the case of Law Society of Kenya v Commissioner of Lands & Others, Nakuru High Court Civil Case NO. 464 of 2000 where it was held;

“Locus standi signifies a right to be heard, a person must have sufficiency of interest to sustain his standing to sue in court of law”. Further in the case of Alfred Njau and Others v City Council of Nairobi (1982) KAR 229, the court also held that;

“the term locus standi means a right to appear in court and conversely to say that a person has no locus standi means that he has no right to appear or be heard in such and such proceedings.”

17. The present application dated 3<sup>rd</sup> June 2023 is expressed to be brought under the Judiciary Service Act Cap.185 “B” Rule 21; 1 (d & g) and 2, *Judicial Service Act* (Code of Conduct & Ethics) Regulations 2020 part ii – Code of Conduct and Ethics for Judges, Order 22 Rules 22, 25, 58, 84 & 86 and Order 37; Rules 3, 8 & 11 of the *Civil Procedure Act* Cap 21)
18. The suit herein was instituted by Agness Nasambu Munialo and later Amended to add Robinson Juma Mukhongo as the 2<sup>nd</sup> plaintiff against the County Government of Bungoma and The ST. Mathews A.C.K Webuye Parish Cathedral Committee as 1<sup>st</sup> and 2<sup>nd</sup> defendants respectively. The plaintiffs’ claim against the defendants was for an order of transfer of land parcel No. Ndivisi/Muchi/1384 in the name of Agness Nasambu Munialo who has occupied and developed the same since 1967. The plaintiffs’ suit was dismissed on 12<sup>th</sup> March, 2020.
19. I agree with Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Respondents that this is a strange application brought by strangers seeking strange orders. The said application is expressed to be brought by the 2<sup>nd</sup> witness/objector/applicant who is not known in law. The applicants have unlawfully and unprocedurally assumed the proceedings herein without leave after delivered judgment on 12/03/2020.
20. For the reasons aforesaid, I find Benjamin Barasa Wafula otherwise described as the 2<sup>nd</sup> witness/objector/applicant lacks capacity/locus standi to bring the application dated 3<sup>rd</sup> June, 2023.
21. In the upshot, the said application is hereby struck out being frivolous, vexatious or otherwise an abuse of the court process with costs to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Respondents.
22. Orders accordingly

**READ, DATED, DELIVERED AND SIGNED IN THE OPEN COURT /VIRTUALLY AT BUNGOMA THIS 11<sup>TH</sup> DECEMBER, 2023**

**HON. E.C.CHERONO**

**ELC JUDGE**

In the presence of;

Benjamin Barasa Wafula/applicant

1<sup>st</sup> Respondent/advocate-absent

2<sup>nd</sup> Respondent/advocate-absent

