



**Achola & another (Both suing as the Legal Representatives of the Estate of the Late Jeckonia Oliver Achola Ndinya) v Otachi & 3 others (Environment & Land Case 361 of 2017) [2023] KEELC 22084 (KLR) (6 December 2023) (Ruling)**

Neutral citation: [2023] KEELC 22084 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 361 OF 2017  
BM EBOSO, J  
DECEMBER 6, 2023**

**BETWEEN**

**JOY JENIPHER ADERO ACHOLA ..... 1<sup>ST</sup> PLAINTIFF  
EVERLYN ODETE ACHOLA ..... 2<sup>ND</sup> PLAINTIFF  
BOTH SUING AS THE LEGAL REPRESENTATIVES OF THE ESTATE OF THE  
LATE JECKONIA OLIVER ACHOLA NDINYA**

**AND**

**KIBAGENDI ROBERT OTACHI ..... 1<sup>ST</sup> DEFENDANT  
FREDRICK KIMEMIA KIMANI ..... 2<sup>ND</sup> DEFENDANT  
REGISTRAR OF TITLES, NAIROBI LAND REGISTRY ..... 3<sup>RD</sup> DEFENDANT  
ADEN HUSSEIN MAHAD ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. The estate of the late Jeckonia Oliver Achola Ndinya initiated this suit in June 2017 through a plaint dated 31/5/2017. The plaint was amended on 28/8/2017. Among other reliefs, the estate seeks orders nullifying various entries that were made in the land register relating to title number Nairobi/Block [particulars withheld], situated in Mugoya Estate, South C, Nairobi. It is important to note that one of the impugned registrations was effected during the subsistence of this suit, at a time when the Land Registrar was already seized of a court order barring him/her against registering any instrument disposing an interest in the property.
2. M/s Mwangi Mwangi Associates Advocates filed a notice of appointment dated 27/6/2017 on behalf of the 1st and 2nd defendants. The said firm subsequently filed a joint statement of defence dated 15/2/2018 on behalf of the 1st and 2nd defendants.



3. Pre-trial proceedings were conducted. Trial subsequently commenced in October 2018. The plaintiff called four witness and closed their case on 28/1/2020. Hearing of defences case started in January 2021. The 2nd defendant tendered evidence and closed his case in January 2021. The 4th defendant too tendered evidence and closed his case. At that point, the Judge presiding over the case [Eboso, J] was transferred. The Chief Justice subsequently formally requested the Judge to conclude the part-heard matter.
4. Towards the tail end of the trial, the 1st defendant filed a fresh statement of defence, witness statement and documentary evidence. This attracted a motion from the 2nd defendant, seeking an order striking out the new documents that the 1st defendant had filed. Subsequent to that, the 1st defendant filed a notice of motion dated 24/2/2023, seeking an order striking out the pleadings that had been filed on his behalf by M/s Mwangi Mwangi Associates Advocates. He also sought leave to file pleadings and trial documents in the suit. The said application dated 24/2/2023 is the subject of this ruling.
5. The application was supported by the 1st defendant's affidavit of even date. The application was canvassed through brief oral submissions tendered in the virtual court. The case of the 1st defendant [the applicant] is that he never instructed the firm of Mwangi Mwangi Associates Advocates and he is not privy to the pleadings and documents which they filed on his behalf.
6. The plaintiff termed the application as a delaying ploy but has elected not to oppose the application.
7. The only party who opposes the application is the 2nd defendant. He filed a replying affidavit dated 10/3/2023. His counsel tendered oral submissions on 14/7/2023. The case of the 2nd defendant is that fresh pleadings and fresh trial bundle by the 1st defendant will prejudice him and will trigger amendments to his defence. He contends that the 1st defendant's application is an abuse of the court process and is intended to delay and frustrate the determination of the suit. The 2nd defendant adds that they jointly instructed M/s Mwangi Mwangi Associates Advocates, contending that the 1st defendant has all along been in communication with him, his counsel and the 4th defendant.
8. I have considered the application, the response to the application and the parties' submissions. The key question which the court is invited to determine is whether the 1st defendant [the applicant] instructed the firm of Mwangi Mwangi Associates Advocates.
9. On 17/2/2023, the court directed that the application under consideration be served on M/s Mwangi Mwangi Associates Advocates. The said firm did not file any affidavit in response to the application. None of the parties to this suit presented evidence of formal instructions given to the firm of Mwangi Mwangi Associates Advocates by the 1st defendant. All that the 2nd defendant tendered is evidence indicating that the 1st, 2nd and 4th defendants in this suit have been in communication.
10. In the absence of any evidence indicating that the 1st defendant instructed the firm of Mwangi Mwangi Associates Advocates to file the papers that the 1st defendant has now disowned, the court will give the 1st defendant the benefit of doubt and will allow the application dated 24/2/2023. The 1st defendant's entire trial bundle to be filed and served within 7 days.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 6<sup>TH</sup> DAY OF DECEMBER 2023**

**B M EBOSO**

**JUDGE**

In the presence of: -

Mr Mungla for the Plaintiffs

