



**Ongele v Obano (Environment & Land Case 45 of 2021)
[2022] KEELC 88 (KLR) (28 April 2022) (Ruling)**

Neutral citation: [2022] KEELC 88 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY
ENVIRONMENT & LAND CASE 45 OF 2021
GMA ONGONDO, J
APRIL 28, 2022
FORMERLY MIGORI ELCC NO. 778 OF 2017**

BETWEEN

CHARLES JUMA ONGELE PLAINTIFF

AND

CONSOLATA OGONDI OBANO DEFENDANT

RULING

1. The present ruling is pursuant to this court’s perusal of the pleadings, evidence and submissions of the respective parties during preparation of judgment in the instant suit which was generated by way of an Originating Summons dated 12th May 2014 and filed herein on 16th May 2014.
2. In paragraph 5 of the plaintiff’s affidavit in support of the Originating Summons, a decree in Homa Bay Senior Resident Magistrate’s Court Misc.Application No. 34 of 2009 (PExhibit 2 herein), is discerned.
3. Similarly, paragraphs 5, 7, 13, 14, 15 and 19 of the amended replying affidavit filed in court on 19th November 2020, disclose the said miscellaneous application as well as Kisii High Court Land case No. 336 of 2013.
4. Moreover, on 26th January 2021, the defendant, Consolata Ogondi (DW1) stated in examination in chief, in , *inter alia*;

“.....I rely on my amended replying affidavit sworn on 20th December 2020 as part of my evidence (Replying affidavit adopted accordingly).

I rely on documents marked(DExhibits 1 to 5 admitted accordingly).....”

5. Clearly, pure points of law including res judicata are raised at this stage of the suit which call for perusal of the records of the cases pointed out in paragraphs 2 and 3 hereinabove before the determination of



this suit in the best ends of justice. I am guided by Articles 10 and 159 (2) (b) of the Constitution of Kenya, 2010 as well as sections 1A, 1B, 3, 3A, 6 and 7 of the Civil Procedure Act (Chapter 21 Laws of Kenya) as read with section 3 of the Environment and Land Court Act, 2015 (2011) accordingly.

6. It must be noted that the main concern of the court is to do justice to the parties; see *Patel-vs- E.A cargo Handling services Limited* (1974) E.A 75
7. In the foregone, I order and direct that;
 - a. The Deputy Registrar of this Court to urgently call for the original record and certified typed copies of the proceedings and determination, if any, in regard to Homa Bay Senior Resident Magistrate's Court Miscellaneous application number 34 of 2009 and Kisii Environment and Land Court land case number 336 of 2013, for perusal by this court before delivery of judgment in the instant suit.
 - b. This matter is fixed for Judgment on 31st May 2022.
8. It is so ordered.

DATED, DELIVERED AND SIGNED AT HOMA BAY THIS 28TH DAY OF APRIL 2022.

G.M.A ONG'ONDO

JUDGE

Present:

Plaintiff, present in person

Defendant-Present. No appearance for him

Terence, court assistant.

