



**Bwire & another v Bwire (Environment and Land Appeal
E019 of 2021) [2022] KEELC 3622 (KLR) (18 May 2022) (Judgment)**

Neutral citation: [2022] KEELC 3622 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT AND LAND APPEAL E019 OF 2021**

DO OHUNGO, J

MAY 18, 2022

BETWEEN

WYCLIFFE OMENDA BWIRE 1ST APPELLANT

JOHN ANYEMBE BWIRE 2ND APPELLANT

AND

WILLIAM ANYEMBE BWIRE RESPONDENT

*(Being an appeal from the ruling of the Senior Resident Magistrate's Court at Butere
(Hon. F. Makoyo, Senior Resident Magistrate) delivered on 10th June 2021 in MCELC
No. 8 of 2018 Wycliffe Omenda Bwire & John Anyembe Bwire v William Anyembe Bwire)*

JUDGMENT

1. The appellants herein filed the subordinate court suit seeking partition and transfer of the parcel of land known as Marama/Lunza/387 which they averred that the respondent inherited from their late father to hold in trust for himself and for the appellants. The subordinate court heard the matter and rendered judgment on November 12, 2019 as follows:
 - a. That an order do hereby issue for the equal partition of land parcel MARAMA/LUNZA/387 between William Bwire Anyembe, Wycliffe Omenda Bwire and John Anyembe Bwire;
 - b. That the cost of partitioning and transfer of the suit land shall be shared equally by the said William Bwire Anyembe, Wycliffe Omenda Bwire and John Anyembe Bwire.
 - c. That in the interest of settling the dispute each party shall bear their own costs.
2. There then ensued a number of applications, the last of which was Notice of Motion dated May 20, 2021, through which the respondent urged the Subordinate Court to order the Kakamega Land



Registrar to remove a caution which he claimed had been registered against the suit property by the 1st appellant on December 29, 2019. The 1st appellant opposed the application.

3. Upon hearing the application, the Subordinate Court (F. Makoyo, Senior Resident Magistrate), delivered a ruling on June 10, 2021 and found that the judgment had effectively disposed of the caution. Further, that pursuant to a report by the Land Registrar dated July 23, 2020, a survey was done which demarcated the land equally between the parties thereby rendering the Notice of Motion dated May 20, 2021 unnecessary. That notwithstanding, the learned magistrate went ahead and ordered, for the avoidance of doubt, that the Kakamega Land Registrar removes the caution forthwith and proceeds to issue titles in line with the aforesaid report. Dissatisfied with the outcome, the appellants filed this appeal through Memorandum of Appeal dated June 14, 2021.
4. The following are the grounds of appeal as listed on the face of the Memorandum of Appeal:
 - i. That the respondent herein one Mr William Anyembe Bwire to kindly and urgently explain the litigation and embroilment affecting the verification of land registration number Marama/lunza/286 vis a vis the green card edition opened 16/02/1967.
 - ii. The Equal Partitioning purportedly carried out by the district land surveyor on Land Parcel Number Marama/lunza/387 in the sharing of 15 acres thereof among the three (3) sons, litigants herein was false.
5. The appeal was canvassed through written submissions. The appellants in their submissions introduced a second parcel of land known as Marama/Lunza/286 and suggested that the acreage of the two parcels should be totalled up then shared equally among the parties. Needless to state, this appeal is not against the judgment but against a ruling delivered subsequently on June 10, 2021. It is thus not open to the appellants to purport to challenge the judgment yet they are not appealing against it. The appellants also argued that the entire dispute can be resolved through the *Law of Succession Act*. Suffice it to state that in hearing and determining the suit as well as Notice of Motion dated May 20, 2021, the subordinate court was not exercising jurisdiction under the *Law of Succession Act* but under Section 26 (3) and (4) of the *Environment and Land Court Act, 2011* as read with Section 9 (a) of the *Magistrates' Courts Act, 2015* which gives subordinate courts jurisdiction to hear and determine claims relating to environment and land generally. Neither the Subordinate Court nor this court have jurisdiction, while exercising jurisdiction under the *Environment and Land Court Act, 2011*, to resolve the dispute under the *Law of Succession Act*.
6. The respondent filed his submissions on November 22, 2021 and argued that adjustment of boundaries was done and the suit property shared equally between the three parties. He further submitted that the 1st appellant removed the boundary after the adjustment and refused to pay for the boundaries he had removed. He added that he delayed to submit to the 1st appellant the title due to those actions. It will be noted that those are not really submissions but attempts to introduce evidence. The respondent concluded his submissions by asking the court “for your advice on this matter and give us the way forward”.
7. I have carefully considered the grounds of appeal and the parties’ respective submissions. As already noted, the dispute between the parties was effectively resolved through the judgment. Additionally, the Subordinate Court in its ruling delivered on June 10, 2021 gave orders to facilitate implementation of the judgment as well as the report by the Land Registrar dated July 23, 2020. The appellants have not in any way shown that the learned magistrate erred in the aforesaid ruling. This appeal is totally devoid of merit.



8. In his submissions, the respondent sought the court's advice on the way forward. All the advice that the parties could ever need has already been given through the judgment dated November 12, 2019 and the ruling dated June 10, 2021, which two decisions must be implemented and titles issued in line with the report by the Land Registrar dated July 23, 2020. The parties must desist from filing unnecessary applications or appeals. Whereas so far, the parties have been spared costs, it may be necessary at some point to impose costs, as a deterrent against pointless litigation. Parties are warned that that stage is imminent.
9. In view of the foregoing, the appeal is dismissed. Each party to bear own costs.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 18TH DAY OF MAY 2022.

D. O. OHUNGO

JUDGE

Delivered in open court in the presence of:

Counsel for appellants absent

1st appellant present in person

Respondent present in person

Court Assistant: E. Juma

