



Wabwire (Suing as the representative of the Estate of Marisiana Nabwire) v Ayienga & 2 others; Okumu (Interested Party) (Land Case E008 of 2024) [2025] KEELC 3193 (KLR) (7 April 2025) (Ruling)

Neutral citation: [2025] KEELC 3193 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUSIA
LAND CASE E008 OF 2024
BN OLAO, J
APRIL 7, 2025**

BETWEEN

FRANCISCA NABWIRE WABWIRE (SUING AS THE REPRESENTATIVE OF THE ESTATE OF MARISIANA NABWIRE) PLAINTIFF

AND

JOSEPH AMOLO AYIENGA 1ST DEFENDANT

THE DIRECTOR REMEMBER NHU-KENYA 2ND DEFENDANT

THE CENTRE CHAIRMAN REMEMBER NHU-KENYA BUSIA BRANCH 3RD DEFENDANT

AND

JOSEPH MANYASA OKUMU INTERESTED PARTY

RULING

1. This ruling is in respect of the following three Notices of Motions. These are:

1. The Notice of Motion by Joseph Manyasa Okumu the Interested Party dated 24th January 2025.
2. The Notice of Motion by Francisca Nabwire Wabwire the Plaintiff dated 14th February 2025 and;
3. The Notice of Motion by The Director Remember Nhu Kenya and The Centre Chairman Remember Nhu Kenya Busia Branch the 2nd and 3rd Defendants respectively dated 26th February 2025.

I shall commence with the 2nd and 3rd Defendants Notice of Motion dated 26th February 2025.



2. The same is anchored on the provisions of Sections 1A, 1B, 3, 3A and 100 of the *Civil Procedure Act* and Order 8 Rules 3 and 5 and Order 51 Rule 1 of the Civil Procedure Rules. The Defendants seek the following orders:
 1. That the 2nd and 3rd Defendants be granted leave to amend their defence as per the draft amended defence annexed herein.
 2. That costs of this application be in the cause.
3. The Motion is premised on the grounds set out in the face of the Motion and supported by the affidavit of Joseph Chege Ngahuon behalf of the 2nd Defendant and also sworn on behalf of the 3rd Defendant.
4. It is the case of the 2nd and 3rd Defendants that the amendment are merely intended to bring before this Honourable Court the real issues in dispute between the parties. Annexed to the Motion is the annexed copy of the draft amended defence and counter-claim.
5. When the Motion came up for directions on 27th February 2025 both MR IPAPU counsel for the Plaintiff, Mr Okutta counsel for the 1st Defendant and Mr Aburuli counsel for the Interested Party did not object to the Motion. That Motion was therefore allowed.
6. However, what has now thrown the spanner in these proceedings are Motions by the Interested Party dated 24th January 2025 and by the Plaintiff dated 14th February 2025.
7. By his Motion dated 24th January 2025 Joseph Manyasa Okumu (the Interested Party) seeks the main remedy that he be enjoined in these proceedings in order, inter alia, to safeguard the land parcel No Bukhayo/Mundika/9905, an order of injunction restraining the Defendants by their agents, or employees from dealing with the land parcels No Bukhayo/Mundika/9904 and 9905. He also seeks that this Court vacates the orders issued herein on 23rd January 2025. By those orders, this Court had stayed the proceedings in Busia CMC ELC Case No E087 of 2023. I had also issued an order of temporary injunction in favour of Francisca Nabwire Wabwire (the Plaintiff herein and suing as the legal Representative to the Estate of Marysiana Nabwire Wabwire – deceased). Those orders were issued pursuant to the Plaintiff's Notice of Motion dated 6th May 2024. In support of that Motion, the Plaintiff had filed a copy of Grant of Letters of Administration Ad Litem issued to her on 19th April 2024 in Busia Chief Magistrates Court Succession Cause No E044 of 2024 in respect to the Estate of Marisiana Nabwire Wabwire.
8. In his Motion seeking to be enjoined in these proceedings as an Interested Party, Joseph Manyasa Okumu has in support of his application annexed a copy of Limited Grant for Letters of Administration issued on 21st January 2025 in Busia Chief Magistrate P&A Cause No E003 of 2025 in respect to the Estate of the same Marisiana Nabwire Wabwire – deceased.
9. What is clear therefore is that both the Plaintiff and the Interested Party describe themselves as legal representatives of the Estate of the deceased. In her plaint, the Plaintiff describes herself as “suing as the legal representative of the Estate of Marisiana Nabwire Wabwire– deceased”. And in paragraphs 3 and 4 of her affidavit in support of her Motion dated 6th May 2024 seeking injunctive reliefs against the Defendants, she stated thus:
 - 3: “That prior to my filing this suit I did obtain Letters of Administration Ad Litem annexed herein as FNW-1”
 - 4: “That I am the daughter to the late Marisiana Nabwire Wabwirewho died domiciled in Kenya on 5/9/1998 and annexed herein in her Certificate of Death marked FNW-2.”



And in his affidavit dated 24th January 2024 in support of his Motion of even date seeking to be enjoined in these proceedings as an Interested Party, Joseph Manyasa Okumu has also deposed in paragraphs 3 and 5 thus:

- 3: “That I am a Grandson to the deceased Marisiana Nabwire Wabwire and the only surviving beneficiary of her Estate.”
- 5: “that I am the legal Administrator and the actual beneficiary of the Estate of Marisiana Nabwire Wabwire by the fact of being son to her on (sic) daughter Francisca Atieno Okumu (deceased) and having been issued with letters of Administration in Estate of my grandmother (see annexure marked JMO-1-Copy of Grant).”

What is clear from the above is that both the Plaintiff as well as Joseph Manyasa Okumu who seeks to be enjoined in these proceedings as an Interested Party claim to be the legal representatives of the Estate of the deceased Marisiana Nabwire Wabwire. They were appointed through two different succession causes. The Plaintiff was appointed on 19th April 2024 vide Busia Chief Magistrate’s Court Succession Cause No E044 of 2024 while the proposed Interested Party was appointed on 21st January 2025 vide Busia Chief Magistrate’s Court Succession Cause No E003 of 2025. There can be no two Grants of Letters of Administration issued in different cases in respect of the Estate of the same deceased person. That in itself is evidence to suggest that there must have been misrepresentation in either one or both of the applications leading to the issuance of the Grants of Letters of Administration being relied upon by the Plaintiff and the Interested Party. And since their respective locus in this case is anchored on their being Legal Representative of the Estate of the deceased, the view that I take of this matter is that it must be stayed to enable both the Plaintiff and the Interested Party address the issue of which of the two Grants is valid. Those are issues to be addressed in the Succession Court and not in this Court. This Court will therefore not make any findings on the Notices of Motions filed by the Plaintiff and the Interested Party for now.

10. Having considered all the issues herein, this Court makes the following orders:

1. The 2nd and 3rd Defendant’s Notice of Motion dated 26th February 2025 is allowed.
2. The Plaintiff’s Notice of Motion dated 14th February 2025 as well as the Interested Party’s Notice of Motion dated 24th January 2025 are both held in abeyance to await confirmation as to who of the two is the proper Legal Representative of the Estate of the deceased Marisiana Nabwire Wabwire.
3. Meanwhile, the orders issued vide this Court’s ruling dated 23rd January 2025 shall, for the avoidance of doubt remain in place until further orders of this Court.
4. Mention on 1st October 2025 for further directions on the pending Motions once the issue of the proper Legal Representative of the Estate of the deceased has been addressed and settled.

BOAZ N. OLAO

JUDGE

7TH APRIL 2025

RULING DATED, SIGNED AND DELIVERED ON THIS 7TH DAY OF APRIL 2025 BY WAY OF ELECTRONIC MAIL.

BOAZ N. OLAO

JUDGE



7TH APRIL 2025

