



**Lunani v Oyatsi (Environment & Land Case 129 of 2013)
[2022] KEELC 12793 (KLR) (28 September 2022) (Ruling)**

Neutral citation: [2022] KEELC 12793 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUSIA
ENVIRONMENT & LAND CASE 129 OF 2013
AA OMOLLO, J
SEPTEMBER 28, 2022**

BETWEEN

JOSEPH RAJULA LUNANI PLAINTIFF

AND

DONALD OYATSI RESPONDENT

RULING

1. The applicant brought the present application under Order 22 rules 84 and 8 [Civil Procedure Rules](#), Article 50 clause 1 and 2 (a-f) of the [Constitution](#) and order 9 rules 11 to 16 of the [Civil Procedure Rules](#) on the February 7, 2022 for orders:
 - a) Spent;
 - b) Spent;
 - c) That this honourable court be pleased to nullify the judgement delivered on the August 12, 2021 due to fraud involved in the purported land sale agreement commenced on the December 3, 1988 against the probate and administration laws which equally contravenes the Statute of Limitations of Accrual of Actions then allow the applicant to commence a good land case for good ends of justice;
 - d) That this honourable court be pleased to issue orders directing the District/County Land Registrar Busia County Lands Registry to avail in this hon. court the original application for subdivision and transfer forms so that they can be taken by this honourable court to the Director of Criminal Investigations Documents Laboratory for confirming the disputed signatures of the late Lambert Obuyu Lunani and the respondent;
 - e) That this honourable court be pleased to issue orders directing the Environment and Land Court Registry in charge or the court manager to avail in this Hon Court the original



succession file No so that they are taken by this Hon Court to the Director of Criminal Investigation Documents Laboratory for confirming the disputed signatures of the late Lambert Obuyu Lunani and the respondent;

- f) That this hon court be pleased to issue orders directing the Kenyatta National Hospital Board of Director through its personnel manager to avail the original attendance registers signed on the daily routine by the respondent herein from 1987 to 1991 which shall be taken to the Director of Criminal Investigation Documents Laboratory for verifying if the land sale agreements purported between 1987 and 1991 were signed by the respondent;
 - g) That this hon court be pleased to issue an order directing the respondent herein under the whim of his M/S Sharpley Barret & Co Advocates to avail to this Hon Court the original Land Sale Agreement made on December 3, 1988, December 4, 1988, April 23, 1990, May 4, 1990 and May 18, 1990 so that they can be taken to the Director of Criminal Investigation Documents Laboratory for confirming the disputed signatures of the late Lambert Obuyu Lunani and the respondent.
 - h) That the costs of this obstruction and resistance be paid to the applicant.
2. The application is supported by the applicant's supporting affidavit and on the following grounds:
- a) That the respondent herein targeted to deprive the illiterate Lambert Obuyu Lunani's land when he secretly entered the land sale agreement on the December 3, 1988;
 - b) The alleged vendor and vendee did not consent the land sale agreement commenced on the December 3, 1988 and finalised on November 13, 1990 without an independent secretary;
 - c) The maker of the land sale agreement purported on the December 3, 1988 who knowingly and fraudulently drafter the said agreement in english while the vendor was totally illiterate;
 - d) The purported vendor herein who beyond no doubt as suggests his christian name is well informed that both godly and judicial acts a language which is not understandable by both parties must be silenced until a translator of such semantic is availed. Therefore, witnesses for the illiterate Lambert Obuyu Lunani;
 - e) The respondent herein was well informed that any land transactions requires witnesses from both sides but he only brought his father Paul Oyatsi to witness how his highly learnt son, Dr Donald Oyatsi made a land sale agreement in a language the illiterate Lambert Obuyu Lunani cannot understand;
 - f) The illiterate Lambert Obuyu Lunani (now deceased) never knew how to hold a pen therefore the literally signature endorsed on the December 3, 1988 was forged at the instigation of the respondent;
 - g) The original signature purported by the respondent on December 3, 1988 for the vendor (now the deceased Lambert Obuyu Lunani) is not the same as endorsed on December 4, 1988, January 13, 1989, January 15, 1989, May 7, 1989, September 3, 1989, January 5, 1990 and November 13, 1990;
 - h) The respondent forged payments in the name of his biological father name Paul Oyatsi purporting to pay the now deceased Lambert Obuyu Lunani on the April 23, 1990, May 4, 1990, May 18, 1990, September 3, 1990, September 30, 1990 and November 13, 1990;



- i) The respondent made an oath on the August 26, 2010 through the 42nd statement of the unknown affidavit that his cross-pay was a maximum of KShs 4,200 per month;
 - j) The oath as sworn on the August 26, 2010 disapproves the respondent to make subsequent payments on December 3, 1988, December 4, 1988, April 23, 1990, May 4, 1990, May 18, 1990 and November 13, 1990
 - k) The respondent herein has not annexed any school fees receipts to demonstrate how he paid school fees for the plaintiff herein between 1988 and 1990;
 - l) The respondent's father, Paul Oyatsi, while being aware that the family among other witnesses must consent a land sale agreement, was witnessed by four witnesses and the assistant chief to buy Peter Lunani Rajula's land on the January 2, 1998;
 - m) The respondent's father, Paul Oyatsi while being aware that any additional payment should be witnessed, availed witnesses on January 19, 1998, May 3, 1998 and May 6, 1998;
 - n) It is in the interests of justice for the Environment and Land Court registry in charge and/or the court manager, to vail in this Hon Court the original file of succession No of so that they are taken by this Hon Court to the Director of Criminal Investigation Documents Laboratory for confirming the disputed signatures of the late Lambert Obuyu Lunani and the respondent herein;
 - o) It is in the interest of justice or the respondent herein under the whim of his M/S Shapley Barret & Co Advocates to avail in this Hon Court the original land sale agreement made on December 3, 1988, December 4, 1988, April 23, 1990, May 4, 1990 and May 18, 1990 so that they can be taken to the Director of Criminal Investigation Documents Laboratory for confirming the disputed signatures of the late Lambert Obuyu Lunani and the respondent.
 - p) The trial judge erred and violated Order 9 rules 11 to 16 of the *Civil Procedure Rules*, 2010 when he nullified the judgement and decree given on the July 2, 2009 the issued on the July 24, 2009 without examining the court process server about his affidavits of service dated April 2, 2008 and February 26, 2009;
 - q) If the pleadings sought are not granted by this hon court, the deceased decree holder's family who are in dire need of a home shall suffer irreparably.
3. The respondent opposed the application on the following grounds filed on the June 9, 2022 and the June 14, 2022:
- a) That the objector is a total stranger who lacks any legal or any other capacity known to the law to enable him completely pursue the application;
 - b) The applicant's application which strangely is made, 'bY way of obstruction....' purports to be making the application at the instigation of Joseph Rajula Lunani without any documents evidencing the granting of the alleged authority by the plaintiff;
 - c) The obstructionist's application has in any event been overtaken by events; and
 - d) The application is based on processes unknown to law and legal processes.
4. The parties canvassed the application by way of written submissions with the applicant filing his submissions on the May 19, 2022 and the respondent filing his on the June 15, 2022.



5. On the issue of *locus*, the applicant submitted that order 22 rule 84 of the [Civil Procedure Rules](#), gives any objector the *locus standi* to obstruct or resist finalized judgement and allows the jurisdiction of the trial court to hear the obstruction and resistance without applying for injunction. The applicant submitted further that section 157 (1) of the [Land Act](#), 2012 and Article 22 clauses 1 and 2 of the [Constitution](#), section 54 (14) if the 5th schedule of the [Law of Succession Act](#) and order 22, rules 84 and 86 gave him *locus standi* to bring the present application. He stated that the respondent maneuvered the late Lunani Rajula's intestate estate and excluded his two sons from the succession proceedings in Succession Cause No 49 of 1994. That the respondent facilitated the petitioning of the estate of Lunani Rajula and Lambert Obuyu Lunani and two other sons were excluded from the estate hence the present application.
6. The applicant listed several particulars of fraud on the part of the respondent including but not limited to failing to cite all the beneficiaries of the deceased's estate and or any genuine purchaser who bought the land from the deceased during his lifetime. He urged this court to issue vesting orders directing the District/County Land Registrar of Busia County to revoke the new titles deeds that emanated from the intestate estate LR No Marachi/Elukhari/1259 then maintain the original status quo for proper execution of the deceased's estate.
7. The respondent in his submissions stated that the applicant was a total stranger to this case and should not be allowed to get away with the grave and unsubstantiated allegation of fraud, corruption and other illegalities against judicial officers and other court registry officials, the Busia Land Registrar as well as advocates in these and other related proceedings. He submitted that the applicant's reliance on Order 22 rules 84 and 86 of the [Civil Procedure Rules](#) is misguided as he deliberately avoids to mention rule 82 of the same order which is the correct order and rule under which the application should have been brought. The applicant stated further that under Order 22 rule 82 it is only a decree holder for possession of immovable property or the purchaser of such property who has the capacity to make an application like this. That this provision exposes his incapacity and that despite the fact that the applicant has stated that he has the authority of the judgment debtor, he has not provided any proof of the same. The respondent urged this court to dismiss the application with costs because the substance of his application to have the decisions in this current case and that of Succession Cause No 49 of 1994 set aside unprocedurally and irregularly without any legal basis.
8. The applicant has brought this application seeking to have the respondent cited for resisting and obstructing him from the suit parcel number LR No Marachi/Elukhari/2611 which land belonged to the plaintiff's father, one Lambert Obuyu Lunani-deceased who sold the suit land to the respondent. Although, the applicant was not a party to this case he brought the application under Order 22 rules 84 and 86 of the [Civil Procedure Rules](#) which provide thus:

“Resistance or obstruction by bona fide claimant [Order 22, rule 84.]

Where the court is satisfied that the resistance or obstruction was occasioned by any person (other than the judgment-debtor) claiming in good faith to be in possession of the property on his own account or on account of some person other than the judgment-debtor, the court shall make such orders as it may deem just.”

Order conclusive subject to regular suit [order 22, rule 86.] Any party not being a judgment-debtor against whom an order is made under rule 83 or rule 84, may institute a suit to establish the right which he claims to the present possession of the property; but, subject to the result of such suit, if any, the order shall be conclusive.



9. The applicant herein is neither the judgement debtor nor the judgement creditor but he brings this application as a bonafide claimant and one of the beneficiaries of the estate of the late Lambert Obuyu Lunani. However, the order 22 rule 84 mandates a party to file a suit and to establish the right that he claims. The applicant brought an application under an already concluded suit instead of filing a fresh claim against the judgement debtor. All the allegations levelled against the judgement debtor and particulars of fraud can only be conclusively canvassed in a fresh suit.
10. This court is being invited to make orders in an undisclosed succession cause and also to issue orders against 3rd parties who are not party to the current proceedings so that those 3rd parties can avail documents to the Directorate of Criminal Investigations for purposes of verifying the land sale agreements executed between Lambert Obuyu Lunani and the defendant. First, it is noteworthy that the DCI is an institution that is mandated by law to carry out investigations without necessarily seeking the assistance of this court. Secondly, this court's jurisdiction is clearly set out in article 162(2)(b) of the Constitution to hear and determine environment and land case. The court is not vested with any supervisory powers to supervise the High Court sitting as a Probate and Administration Court and thus get authority directing that court to avail any documents to the DCI.
11. The applicant can easily access the documents he is demanding for in paragraphs 4, 5, 6, and 7 from the respective agencies without involving this court. In any event, the proper court to approach under the right to information is the High Court and not the Land and Environment Court. Under prayer 3 of the amended chamber summons which urged the court to nullify the judgement delivered due to fraud involved in the purported sale agreement dated December 3, 1988. The determination was reached after hearing parties on merits of the case hence this court cannot sit on appeal on its own judgement so that any party dissatisfied with the judgement rendered on August 12, 2020 has the right of appeal. As it is, the court is functus officio when it comes to the present application.
12. In light of the foregoing, this court finds that this application dated February 7, 2022 as lacking merit and the same is dismissed with costs to the respondent.

DATED, SIGNED AND DELIVERED AT BUSIA THIS 28TH DAY OF SEPT, 2022.

A. OMOLLO

JUDGE

