



**Muthuva (Suing as the Personal Representative of the Estate of James Mathuva Mukewa - Deceased) v Amos (Environment & Land Case 94 of 2017) [2025] KEELC 3004 (KLR) (2 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3004 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI  
ENVIRONMENT & LAND CASE 94 OF 2017**

**EO OBAGA, J  
APRIL 2, 2025**

**BETWEEN**

**RUTH MUNYIVA MUTHUVA (SUING AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF JAMES MATHUVA MUKEWA - DECEASED) ..... PLAINTIFF**

**AND**

**MWANIA NGULUI AMOS ..... DEFENDANT**

**RULING**

1. The Defendant/Applicant filed a Notice of Motion dated 20<sup>th</sup> August, 2024 in which he seeks to have his name struck out from this suit. He states that in this suit, he is sued as Nzavi Ngului which name does not belong to him. He states that his correct name is Mwanias Ngului Amos and according to him he is not the person sued in this case and that the Plaintiff/Respondent’s land is parcel 3488 but the Respondent is trying to mislead the court that his parcel number is 464/1283.
2. The Applicant’s application was opposed by the Respondent through a replying affidavit sworn on 7<sup>th</sup> March, 2025. The Respondent contends that the issue of the correct name of the Applicant arose in 2007 and the same was sorted out in a consent recorded on 5<sup>th</sup> July, 2007 which paved way to amendment of the plaint. The Respondent further contends that the Applicant himself has described himself as Nzavi Ngului in documents filed by him. In the Applicant’s own affidavit sworn on 25<sup>th</sup> September, 2018 he described himself as Nzavi Ngului alias Amos Mwanias Ngului.
3. The Respondent goes on to state that the appearance of the name Nzavi Ngului in the pleadings is an error as the Plaint was amended in 2007 to reflect the correct name of the Applicant. The Respondent therefore contends that the issue of name being raised by the Applicant is res judicata that issue having been raised and was settled in 2007. The Respondent states that this application is an afterthought which is meant to delay the finalization of this case where judgment has been delivered in favour of



the Respondent and the only issue pending is taxation and eviction of the Applicant from the suit property.

4. The application was argued orally, where the Applicant submitted that the person sued as Nzavi Ngului is not himself and that his correct name as per his ID card is Mwanja Ngului Amos. He also submitted that the plot number is not correct. The Respondent through her counsel submitted that what is before court is not on the correct parcel number or ownership but the issue of the name. The counsel submitted that the issue of the name was sorted by consent on 5<sup>th</sup> July, 2007.
5. I have considered the Applicant's application as well as the opposition to the same by the Respondent. I have also considered the oral submissions by the parties. The only issue for determination is whether the Applicant's name should be struck out of this suit.
6. A perusal of the file shows that this suit was filed against Nzavi Ngului on 27<sup>th</sup> March, 2003. The suit proceeded against the said Nzavi Ngului until 2007 when the issue of the correct name of the Defendant arose. The Respondent's husband filed an application dated 14<sup>th</sup> May, 2007 in which he sought to amend the plaint to correct the name of the Defendant. On 5<sup>th</sup> July, 2007 the parties recorded a consent amending the plaint to show the name of the Applicant as Amos Mwanja Ngului.
7. As a result of the consent, the name of the Defendant changed from Nzavi Ngului to Amos Mwanja Ngului. However, due to typing errors, the subsequent pleadings kept on referring the Applicant as Nzavi Ngului. The Applicant himself kept on swearing affidavits referring himself as Nzavi Ngului alias Amos Mwanja Ngului. Even the judgment which was delivered on 19<sup>th</sup> February, 2018 described the Defendant as Nzavi Ngului.
8. The amended plaint which I on record described the Applicant as Amos Mwanja Ngului. Though the Applicant's ID card shows that he is Mwanja Ngului Amos. This is the same person who entered into the consent of 5<sup>th</sup> July, 2007 where his name was identified as Amos Mwanja Ngului. The order in the manner the names appear in the ID and what was recorded in the consent of 5<sup>th</sup> July, 2007 does not change the fact that he is the same person.
9. The Applicant he himself has sworn affidavit where he acknowledges the name of Nzavi Ngului and Amos Mwanja Ngului. Examples are the affidavit sworn on 12<sup>th</sup> May, 2016 where he calls himself Nzavi Ngului. In his witness statement of 14<sup>th</sup> April, 2015, he calls himself Nzavi Ngului. In a replying affidavit sworn on 25<sup>th</sup> April, 2018, he described himself as Nzavi Ngului alias Amos Mwanja Ngului. He cannot therefore turn around and say that he is not the one sued.
10. In the application filed by the Applicant, he has raised the issue of parcel 3488 and 464/1283. The issue of the ownership of the suit property was settled in the judgment of 19<sup>th</sup> February, 2018. The issue cannot therefore be raised in this application. The Applicant having sworn on oath that he is also called Nzavi Ngului alias Amos Mwanja Ngului and having entered into a consent where his name was amended to read Amos Mwanja Ngului, he cannot come to this court to say that he is not the one sued. I find that the Applicant's application is devoid of merit. The same is dismissed with costs to the Respondent.

It is so ordered.

.....

**HON. E. O. OBAGA**

**JUDGE**



**RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 2ND DAY OF APRIL, 2025.**

IN THE PRESENCE OF:

Mr. Moriasi for Applicant.

Defendant in person present.

Court assistant – Steve Musyoki

