



Orega & 2 others (Suing as Legal Administrators of the Estate of Okoth Omondi - Deceased) v Otieno & 2 others (Sued as Purported Administrators of the Estate of Sabina Aromoi - Deceased) (Environmental and Land Originating Summons E001 of 2023) [2025] KEELC 175 (KLR) (24 January 2025) (Judgment)

Neutral citation: [2025] KEELC 175 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT SIAYA
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E001 OF 2023
AY KOROSS, J
JANUARY 24, 2025**

BETWEEN

**CHRISTOPHER ODHIAMBO OREGA 1ST PLAINTIFF
JOSEPH OCHIENG WERE 2ND PLAINTIFF
SAMUEL OTIENO OREGA 3RD PLAINTIFF
SUING AS LEGAL ADMINISTRATORS OF THE ESTATE OF OKOTH OMONDI
- DECEASED**

AND

**BLASIO OMONDI OTIENO 1ST DEFENDANT
MARK OKOTH OTIENO 2ND DEFENDANT
FRANCIS OCHIEG OTIENO 3RD DEFENDANT
SUED AS PURPORTED ADMINISTRATORS OF THE ESTATE OF SABINA
AROMOI - DECEASED**

JUDGMENT

Background

1. This suit was instituted by an originating summons (OS) dated 29/06/2023 in which the plaintiff sought several reliefs over land parcel no. Alego/Usonga/Nyadorera "A"/64 (suit property).
2. The registration number of the suit property is uncertain. It is also unclear if it is registered in the defendant's name.



3. This is so because even though the title deed shows it is registered in the plaintiff's name, the green card and official searches particularise the land in dispute as Siaya/Nyadorera "A"64 with a restriction on entry 2 showing the following remarks: -

"Restriction: No further dealings on this parcel until the parcel numbers rectification is resolved (S.P.File)"

4. The plaintiff Okoth Omondi is deceased having died on 12/04/1986 and by limited grant obtained on 18/04/2023, the legal administrators filed suit.
5. The defendant Sabina Aromo is deceased having died on 3/05/2004. Her legal administrator is Margaret Nyamwenge Otieno (Margaret) and she was so appointed on 23/04/2023.

Parties' cases

6. Turning to the pleadings, the OS was supported by an affidavit deposed on 29/06/2023 by Christopher Odhiambo Orega (Christopher) who is one of the plaintiff's administrators. He also swore a further affidavit on 14/12/2023. In it, the plaintiff sought the following orders: -
 - a. The entry over the suit property that unlawfully registered the defendant as the registered owner of the suit property be cancelled.
 - b. The title deed in the defendant's name be revoked.
 - c. Costs of the suit be jointly borne by the defendants.
7. As deduced from the affidavits, the OS was anchored on the ground that during the land adjudication process, the suit property was initially registered in the plaintiff's name.
8. Nevertheless, upon an objection lodged by Peter Otieno Ouma (Ouma) being dismissed, the suit property was during the land adjudication process re-registered in the plaintiff's name.
9. It was alleged, subsequently thereafter, that the plaintiff bequeathed the suit property to Christopher. It was asserted that it was only in 2022 when they sought to administer the plaintiff's estate, that they discovered the suit property was irregularly registered in the defendant's name.
10. The OS was strenuously opposed by the persons who were allegedly sued as the defendant's administrators. In an affidavit headed "1st, 2nd and 3rd defendants replying affidavit" deposed by Blasio Omondi Otieno on 8/04/2024, they contended the plaintiff was never the registered owner of the suit property.
11. Additionally, they stated the defendant was the 1st registered owner of the suit property after she successfully contested it during the land adjudication process and that some of them were merely beneficiaries of the defendant's estate.
12. They also filed a notice of a preliminary objection that questioned the jurisdiction of this court and it was dated 10/11/2023.

Issues for determination

13. Having heard the evidence of the parties during the hearing, the following issues commend themselves for determination: -
 - I. Whether Mark Okoth Otieno, Blasio Omondi Otieno and Francis Ochieng Otieno were the defendant's legal administrators?



- II. Whether the court was improperly moved.
 - III. Whether the plaintiff specifically pleaded and proved his claim of illegality to the required standards.
 - IV. What appropriate orders should be granted including an order as to costs?
14. Having framed the issues for determination, I shall summarise the parties' evidence as led on these issues.

Plaintiff's evidence

- 15. The matter proceeded for hearing by viva voce evidence and all the plaintiff's administrators testified. Christopher (PW1), Joseph Ochieng Were (PW2) and Samuel Otieno Orega (PW3).
- 16. Their evidence was composed of oral testimonies, affidavits, adopted witness statements and documents that were produced in support of the plaintiff's case and they were marked as Pex.1- 4.
- 17. Christopher reiterated averments contained in his affidavits which were earlier highlighted in this judgment. Moreover, he stated land adjudication took place when he was young and he signed the adjudication records. Further, the defendant was never the 1st registered owner of the suit property.
- 18. PW2 and PW3 corroborated Christopher's line of evidence and maintained that the suit property belonged to the plaintiff as it was initially registered in his name before it was irregularly registered in the defendant's name.

Defendants' evidence

- 19. Blasio Omondi Otieno did not testify but his other alleged co-administrators did. Mark Okoth Otieno testified as DW1 whereas Francis Ochieng Otieno testified as DW2. In support of their evidence, DW1 produced documents which were marked as Dex. 1-6. Their evidence was composed of oral testimonies and affidavits.
- 20. DW1 reiterated averments contained in the affidavit of Blasio Omondi Otieno which were earlier highlighted in this judgment. Additionally, he stated he was unfamiliar with the objection proceedings that took place during the land adjudication process but Ouma was the defendant's son.
- 21. He stated even if Ouma was unsuccessful in his claim, the suit property was registered in the defendant's name but he later stated the plaintiff's claim was unsuccessful. He stated the documents that emanated from the land's office spoke for themselves.
- 22. DW1 stated the alleged defendant's legal administrators were not her administrators. He stated he was unfamiliar with how the defendant became the suit property's registered owner.

Parties' submissions

- 23. Upon closing parties' cases, this court directed parties who were all self-represented to canvass it by written submissions, and in compliance, they filed written submissions.
- 24. The plaintiff's submissions were filed by Christopher and they were dated 26/09/2024. Since they were self-represented, it was understandable that he did not frame issues for determination.
- 25. Nonetheless, it can be deduced the following issues emerged from his submissions; whether Mark Okoth Otieno, Blasio Omondi Otieno and Francis Ochieng Otieno had locus standi, whether the



plaintiff had proved his claim, whether the court should allow them to administer the plaintiff's estate and lastly what about costs?

26. The defendant's submissions were filed by his alleged administrators and they were dated 14/10/2024. They framed the following issues for determination; whether this court has jurisdiction to entertain the suit, whether the plaintiff has proved his case and whether the suit offends the provisions of the *Limitation of Actions Act*.
27. Upon identifying and considering the issues for determination, this court will in its analysis and determination consider the respective parties' arguments on the particular issue and also consider provisions of the law and judicial precedents they relied upon to advance their respective arguments.

Analysis and Determination

28. The issues that were earlier identified for determination shall be dealt with consecutively.

I. Whether Mark Okoth Otieno, Blasio Omondi Otieno and Francis Ochieng Otieno were the defendant's legal administrators?

29. Section 2 of the *Civil Procedure Act* has defined a 'legal representative' as:-

“a person who in law represents the estate of a deceased person, and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued.”

30. Section 82 of the *Law of Succession Act* provides as follows: -

“Personal representatives shall, subject only to any limitation imposed by their grant, have the following powers-

- (a) to enforce, by suit or otherwise, all causes of action which, by virtue of any law, survive the deceased or arising out of his death for his personal representative;
- (b)

31. This court concurs with Kipngetch Kalya Kones (Suing as the Administrator of the estate of Kipkalya Kiprono Kones (deceased) v Wilson Kiplangat Kones [2021] KEELC 241 (KLR) which stated:-

“26. The issue on locus standi is a primary point of law almost similar to that of jurisdiction and since the Plaintiff/Respondent was not an administrator to the deceased's estate herein, he lacked the capacity to sue on behalf of the deceased's estate which renders the suit incompetent.”

32. Both parties' arguments are in consensus Mark Okoth Otieno, Blasio Omondi Otieno and Francis Ochieng Otieno are not the defendant's legal administrators.
33. It is obvious from the limited grant that was produced before the court that Margaret is the defendant's administratrix.
34. Consequently, I must agree with the parties that Mark Okoth Otieno, Blasio Omondi Otieno and Francis Ochieng Otieno lacked the capacity to be sued on behalf of the defendant's estate. I find they lacked locus standi and the suit against them was incompetent.



II. Whether the court was improperly moved.

35. Order 37 of the Civil Procedure Rules (CPR) sets out the nature of cases that can be instituted by originating summons (OS). In this case, the applicant's OS was anchored on Order 37 Rule 8 of the Civil Procedure Rules (CPR).
36. This Order 37 Rule 8 of the CPR specifically bars a party from moving the court by an OS if they seek orders on cautions, inhibitions, and rectification of titles including cancellation of titles. This provision states-
- “An application under the *Land Registration Act*, 2012 other than under Part VII and Part VIII thereof shall be made by originating summons unless there is pending a suit involving the same lands when the application may be made in that suit.”
37. Having closely scrutinized the matter that is in dispute, the matters are complex and quite contentious and challenge the defendant's title document and seek revocation of the suit property's title deed. Under Section 80 of the *Land Registration Act*, such cancellation is a preserve of the court.
38. Expressively, if how a suit is to be instituted is stipulated by a statute, a departure from it is proscribed and unacceptable.
39. As was held in the case of *Ngomeni Swimmers Ltd v The Commissioner of Lands & c18 others* [2013] eKLR, in claims such as those sought in the OS, the plaintiff should have moved the court by a plaint. As a result, I find this court was improperly moved.
40. Before I conclude, I must state it is evident from the restriction contained in the green card that there is a challenge with the registration particulars of the suit property and it would be prudent if the parties would resolve this impasse as the defendant's administrator cannot deal with the suit property unless a resolution of the parcel no. is resolved.
41. Furthermore, Order 4 Rule 3 of the Civil Procedure Rules requires a plaint to sufficiently describe the subject matter of the suit if it is immovable property. In the event the plaintiff decides to file a fresh suit, he must bear in mind this provision of law and it would be in his interest if the particulars of the suit property and/or Siaya/Nyadorera “A”64 are determined by the land's office.
42. Ultimately, since dealing with issue (c) is unnecessary, on issue (d), it is trite law costs follow the event and since the entire suit has been struck out, the plaintiff shall bear the costs of Mark Okoth Otieno, Blasio Omondi Otieno and Francis Ochieng Otieno. This court hereby issues the following final disposal orders: -
- a. The plaintiff's suit is hereby struck out.
 - b. Costs of the suit are awarded to Mark Okoth Otieno, Blasio Omondi Otieno and Francis Ochieng Otieno.

Orders accordingly.

DELIVERED AND DATED AT SIAYA THIS 24TH DAY OF JANUARY 2025.

HON. A. Y. KOROSS

JUDGE

24/01/2025

Judgment delivered virtually through Microsoft Teams Video



Conferencing Platform in the Presence of:

N/A for the plaintiff

N/A for the defendant

Court assistant: Mr. Ishmael Orwa.

