



**Kulali v Stephen (Environment & Land Case 17 of 2019)  
[2022] KEELC 15241 (KLR) (7 December 2022) (Ruling)**

Neutral citation: [2022] KEELC 15241 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA  
ENVIRONMENT & LAND CASE 17 OF 2019  
DO OHUNGO, J  
DECEMBER 7, 2022**

**BETWEEN**

**ANTONY OTINDO KULALI ..... PLAINTIFF**

**AND**

**PAULO MUNYOKHO STEPHEN ..... DEFENDANT**

**RULING**

1. Judgment was delivered in this matter by N A Matheka J on June 24, 2020 in favour of the plaintiff as follows:
  1. Declaration that the defendant holds in trust for the plaintiff a portion measuring approximately one acre from the piece of land known as LR No Butso/14825 measuring approximately 0.74.
  2. That the plaintiff be declared the owner of a portion measuring approximately one acre from the piece of land known as LR No Butso/14825 measuring approximately 0.74 Ha and which he occupies and to which he is entitled to by virtue of adverse possession and which the defendant/respondent be ordered to transfer the said suit land to the plaintiff/applicant within the next 90 (ninety) days from the date of this judgement and in default the Deputy Registrar to sign the transfer documents.
  3. No orders as to costs.
2. The plaintiff later filed notice of motion application dated March 23, 2022, which is the subject of this ruling. The following orders are sought in the application:
  - a. That leave be granted to the firm of Udoto & Company Advocates to come on record on behalf of the applicant herein in place of the firm of KS Ombaye & Company Advocates.



- b. That land parcel number Butsotso/Shikoti/29975, 19976, 19977, 19978 and 19979 be cancelled to reinstate land parcel number Butsotso/Shikoti/14825.
  - c. That upon grant of order (b) above, land parcel number Butsotso/Shikoti/14825 be subdivided into land parcel number Butsotso/Shikoti/21131 and 21132 respectively.
  - d. That upon issuance of order (c) above land parcel number Butsotso/Shikoti/21131 be transferred into the names of the plaintiff/applicant herein, Antony Otindo Kulali.
  - e. That costs of this application be borne by the defendant/respondent herein.
3. The application is supported by an affidavit sworn by the applicant who deposed that he was being represented by the firm of KS Ombaye & Company Advocates who has since passed on thus necessitating the application for leave for change of advocates. The applicant further deposed that on June 24, 2020 judgment was delivered in his favour and that the respondent was ordered to transfer to him a portion of land measuring one acre from land parcel number Butsotso/Shikoti/14825 measuring approximately 0.74 hectares. That the respondent failed to sign the mutation forms necessitating them to be signed by the Deputy Registrar.
  4. The applicant further deposed that he proceeded to obtain consent of the land control board for subdivision of land parcel number Butsotso/Shikoti/14825 and subdivided it into land parcel numbers Butsotso/Shikoti/21131 and 21132 but upon presentation of the mutation forms at the land registry for registration, he found that the respondent had unlawfully caused land parcel number Butsotso/Shikoti/14825 to be subdivided into land parcel numbers Butsotso/Shikoti/19975, 19976, 19977, 19978 and 19979. He annexed copies of certificates of official search showing that the respondent was registered as proprietor of land parcel numbers Butsotso/Shikoti/19975, 19976, 19977, 19978 and 19979 on 30<sup>th</sup> January 2019. The applicant concluded by stating his mutation cannot be registered unless the resultant numbers Butsotso/Shikoti/19975, 19976, 19977, 19978 and 19979 are cancelled and the original number Butsotso/Shikoti/14825 is reinstated.
  5. Although evidence of service of the application upon the respondent was availed, the respondent neither filed a response nor attended the hearing of the application. Counsel for the applicant relied on the material on record and urged the court to allow the application.
  6. I have considered the application and the supporting affidavit. As noted earlier, judgment was delivered herein on June 24, 2020. The record shows that Mr Ombaye of KS Ombaye & Company Advocates was on record for the plaintiff and even attended court on the date of delivery of the judgment. It is not disputed that he passed away. In the circumstances, the plea for leave to be granted to the firm of Udoto & Company Advocates to take over representation of the plaintiff is well grounded under order 9 rule 9 of the Civil Procedure Rules.
  7. Regarding prayers (b) to (d) of the application, I note that the judgment herein was specific to land parcel number Butsotso/Shikoti/14825. Land parcel numbers Butsotso/Shikoti/19975, 19976, 19977, 19978 and 19979 are not mentioned in the judgment. The present application is towards enforcement of the judgment and decree herein. The jurisdiction of the court is thus circumscribed by the existing decree. If I were to venture outside the decree by considering whether to cancel titles that are not mentioned in the decree, I would be acting without jurisdiction. In any case, cancellation of title is a substantive issue that must be sought through a substantive suit as opposed to an application in a concluded matter. I am persuaded that I do not have jurisdiction to consider prayers (b) to (d) of the application. In the absence of jurisdiction, any order or step taken by a court is a nullity. See Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others [2012] eKLR and Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] eKLR.



8. Further, it is trite that any proceedings filed in a court without jurisdiction are dead on arrival and cannot be remedied. See *Phoenix of EA Assurance Company Limited v SM Thiga t/a Newspaper Service* [2019] eKLR. That being the case, prayers (b) to (d) of the application are beyond resuscitation by any means and I will therefore strike them out. The plaintiff/applicant will have to figure out how to validly deal with the issues raised in the said prayers.
9. In view of the foregoing discourse, I make the following orders:
- a. Leave is hereby granted to the firm of Udoto & Company advocates to come on record for the plaintiff/applicant herein in place of the firm of KS Ombaye & Company Advocates.
  - b. Prayers (b) to (d) of notice of motion application dated March 23, 2022 are struck out.
  - c. Since the defendant/respondent did not resist the application, I make no order as to costs.

**DATED, SIGNED, AND DELIVERED AT KAKAMEGA THIS 7<sup>TH</sup> DAY OF DECEMBER 2022.**

**D. O. OHUNGO**

**JUDGE**

Delivered in open court in the presence of:

Ms Olucheli holding brief for Mr Udoto for the plaintiff

No appearance for the defendant

Court Assistant: E. Juma

