



**Singombe (Suing as the administrator of the Estate of Sospeter Manyisa Orwendo - Deceased) v Orwenyo & another; Nanok (Interested Party) (Land Case E007 of 2024) [2025] KEELC 549 (KLR) (12 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 549 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS  
LAND CASE E007 OF 2024  
EM WASHE, J  
FEBRUARY 12, 2025**

**BETWEEN**

**DRUCILLA KERUBO SINGOMBE ..... PLAINTIFF  
SUING AS THE ADMINISTRATOR OF THE ESTATE OF SOSPETER MANYISA  
ORWENDO - DECEASED**

**AND**

**DAVID ORWENYO ..... 1<sup>ST</sup> DEFENDANT  
RODAH MOMANYI ..... 2<sup>ND</sup> DEFENDANT**

**AND**

**HON JOSPHAT NANOK ..... INTERESTED PARTY**

**RULING**

1. The Plaintiff (hereinafter referred to as “the Applicant”) filed a Notice of Motion dated 07.10.2024 (hereinafter referred to as “the present Application”) seeking for the following Orders; -
  - a. That this Application be certified urgent and be heard ex-parte and service thereof be dispensed with in the first instance.
  - b. That this Honourable Court do review and/or set-aside its Ruling and consequential orders issued on 23<sup>rd</sup> March 2024 pending the hearing and determination of this Application.
  - c. That this Honourable Court do review and/or set-aside its Ruling and consequential orders issued on 11<sup>th</sup> March 2021 pending the hearing and determination of this suit.
  - d. That any other or further relief that this Honourable Court may deem fit to grant.



- e. That the costs of this Application be provided for.
2. The prayers in the present Application have been founded on the grounds contained in the body of the said Application as well as the supporting affidavit of the Applicant sworn on the 07.10.2024 and can be summarised as follows; -
- a. The Applicant is aggrieved by the Ruling of this Court pronounced on the 23.09.2024.
- b. According to the Applicant, the Ruling pronounced by this Court on the 23.09.2024 was erroneous in the sense that this Court declared not to have jurisdiction to hear and/or determine the issues contained in the Plaint dated 12.03.2024 yet is the Court that has the requisite jurisdiction.
- c. The Applicant further stated that this Court failed to consider the fact that at the time of distribution of the estate of the late Sospeter Manyinsa Orwenyo, the portion of land known as LR.No.Transmara/Moyoi/344 (hereinafter referred to as “the suit property”) currently in dispute had already been fraudulently and/or unlawfully alienated and/or sold to the Interest Party herein by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents hence could not form part of the estate of the late Sospeter Manyinsa Orwenyo.
- d. In essence, the issues for determination in this suit is the manner and procedure that the suit property was alienated and/or disposed off after the demise of the late Sospeter Manyinsa Orwenyo by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents herein.
- e. The Applicant further pleaded that the proceedings handling the succession process before the High Court Family Division were of the view that due to the alienation of the suit property to the Interested Party by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, it did not have jurisdiction to interrogate and/or make any pronouncements relating to the legality of such an exercise for the reason that such powers are vested in this Court.
- f. From the Ruling pronounced by this Court on the 23.09.2024, it was now not clear as to which Court had the jurisdiction to entertain and determine the issues raised in the Plaint dated 12.03.2024.
- g. The confusion in place is therefore prejudicial and denies the Applicant an opportunity to be heard hence resulting to a miscarriage of justice to the estate of the late Soster Manyinsa Orwenyo regarding the suit property.
- h. The Applicant pleaded that due to the fact the suit property was alienated after the demise of the late Sospeter Manyinsa Orwenyo, then this Court is the one with jurisdiction to hear and determine the procedure and/or manner in which such acts were undertaken keeping in mind that a new title has already been issued to the Interested Party.
- i. The registration of the suit property in the name of the Interested Party makes it impossible for the Applicant to include the said asset in the List of Assets belonging to the deceased Sospeter Manyinsa Orwenyo unless and until this Court declares the same to have been unlawfully and/or fraudulently transferred and reverts the same back to the original owner who is the deceased Sospeter Manyinsa Orwenyo.
- j. In conclusion, the Applicant sought this Court to duly review its Ruling pronounced on 23.09.2024 and find that this Court indeed has jurisdiction to hear and determine the Plaint dated 12.03.2024.



3. The present Application was duly served on the 1<sup>st</sup> and 2<sup>nd</sup> Respondents as well as the Interested Party.
4. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents opposed the present Application by filing Grounds of Opposition dated 29.10.2024 while the Interested Party elected not to participate in this application.
5. The grounds pleaded by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents in their Grounds of Opposition dated 29.10.2024 are as follows; -
  - a. Upon this Court making pronouncing its Ruling dated 23.09.2024, it became functus officio and does not have the jurisdiction to entertain and determine the present Application.
  - b. As pronounced in the Ruling dated 23.09.2024, the issues raised in the Plaint dated 12.03.2024 relate to the succession of the late Sospeter Manyinsa Orwenyo and as such this Court has no jurisdiction to entertain and/or determine the same.
  - c. In the event the Applicant was not satisfied with the Ruling pronounced by this Court on the 23.09.2024, the only recourse would be to file an Appeal against the same.
  - d. Consequently therefore, there was no reason and/or sufficient grounds upon which this Court should grant the prayers sought for in the present Application.
6. The present Application was then canvassed by way of written submissions with the Applicant filing her submissions dated 05.12.2024 while the 1<sup>st</sup> and 2<sup>nd</sup> Respondents filing their submissions on 09.12.2024.
7. The Court has carefully gone through the present Application, the Grounds of Opposition in response thereof and the submissions of the parties and identifies the following issues for determination; -

Issue No. 1- Does this court have the jurisdiction to entertain the present application?

Issue No. 2- Is there sufficient ground for this court to review its ruling pronounced on the 23.09.2024?

Issue No. 3- Is the present application merited?

Issue No.4- Who bears the costs of the present application.
8. The Court having duly identified the issues hereinabove, the same will now be discussed and determined as follows below; -

**Issue No. 1- Does this court have the jurisdiction to entertain the present application?**

9. The first issue for determination is whether this Court has the jurisdiction to entertain and determine the present Application.
10. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents through their Grounds of Opposition have pleaded that this Court having pronounced itself on the 23.09.2024 was now functus officio and can not entertain the present Application.
11. According to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, the only remedy legally available to the Applicant in challenging the Ruling pronounced by this Court on the 23.09.2024 is to file an Appeal thereof.
12. The Applicant did not really touch on this issue in their submissions but it is one that requires the Court's determination because if the Court does not have jurisdiction, then it should down its pen.
13. To resolve this issue of whether or not this Court has jurisdiction to entertain the present suit, the Court needs to look at the provisions that have been invoked by the Applicant in filing the present Application.



14. On the face of the present Application, the Applicant invoked the provisions of Order 45 as read with Order 51 of Civil Procedure Rules, 2010.
15. The provisions of Order 45 Rule 1 states as follows; -
  - “(1) Any person considering himself aggrieved-
    - a. By a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or
    - b. By a decree or order from which no appeal is hereby allowed,  
And who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason desires to obtain a review of the decree or order, may apply for a review of judgement to the Court which passed the decree or made the order without unreasonable delay.”
16. The basic interpretation of the above provision is that a party is at liberty to make an application for review even where a right of appeal exists but elects to make an application for review due to the grounds contained under Order 45 of the Civil Procedure Rules, 2010.
17. Further to that, Order 45 of the Civil Procedures Rules, 2010 identifies the forum upon which an application for review can be made to be the Court which passed the disputed Judgement and/or Order.
18. In the present Application, the Applicant elected to seek a review of the ruling pronounced on the 23.09.2024 by this Court for the reason that it made an error on the issue of jurisdiction which constitutes sufficient reason for review.
19. The only time that a party is barred from filing an Application for Review is provided for under Order 45 Rule 6 of the Civil Procedure Rules, 2010.
20. A perusal of the present Application shows that this Application seeks to review a Ruling pronounced by this Court on the 23.09.2024 of which the Applicant elected to seek a review rather than file an Appeal.
21. The only forum provided by Statute is the same Court which pronounced the Judgement and/or Order to be reviewed.
22. Consequently, this Court having been the same forum which pronounced the Ruling under review was made, then it has the jurisdiction to hear and determine the present Application.

**Issue No. 2- Is there sufficient ground for this court to review its ruling pronounced on the 23.09.2024?**

23. The second issue for determination is whether or not there is sufficient ground to review the Ruling pronounced on the 23.09.2024.
24. The Applicant in the grounds contained in the present Application, the supporting affidavit therein and the submissions pleaded that the Court made an error in stating that it did not have jurisdiction yet the dispute before Court was about a fraudulent and/or illegal alienation of the suit property which



currently is in the name of the Interested Party and does not constitute part of the estate of the late Sospeter Manyinsa Orwenyo.

25. The Applicant therefore is seeking for this Court to relook at its Ruling dated 23.09.2024 and make a finding that indeed this Court has jurisdiction to hear and determine the Complaint dated 13.03.2024 in so far as it deals with the procedure and manner in which the suit property herein was alienated from the name of the late Sospeter Manyinsa Orwendo and registered in the name of the Interested Party.
26. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents were of a contrary view indicating that in fact, the Ruling which the Applicants sought to review dated 23.03.2024 and 11.03.2021 were non-existent.
27. Secondly, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents submitted that the Court was functus officio and lacked jurisdiction to entertain and/or determine the present Application in view of the fact that it had pronounced itself on the issue of jurisdiction through its Ruling dated 23.09.2024.
28. The only available legal recourse for the Applicant was to prefer an Appeal of which option the Applicant has failed to pursue.
29. On the basis of these two arguments, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents sought this Court to dismiss the present Application.
30. To begin with, this Court has already pronounced itself that it has proper and legal jurisdiction to determine the present Application before it.
31. Secondly, it is true that the Applicants in their prayers pleaded to review two applications namely one dated 23.03.2024 and the second one dated 11.03.2021.
32. As to the Application dated 23.03.2024, it is true that this Court did not make any Ruling on that material date.
33. The Only Ruling pronounced by this Court was the one dated 23.09.2024 which dealt with the Preliminary Objection raised on the issue of jurisdiction.
34. The Applicant however has produced the Ruling under Review as annexure DSK 1 in the present Application.
35. Clearly therefore, this Court is of the view that the indication of the Application for Review to be 23.03.2024 is a simple typographical error which should be used to dismiss the present Application when in fact the Ruling being reviewed has been attached in the same application.
36. This Court therefore makes a finding that there indeed exists a Ruling dated 23.09.2024 pronounced by this Court which can be reviewed as sought for by the Applicant.
37. As to the ruling pronounced on the 11.03.2021, this Court is not the one that made the said Order and/or is not familiar with such an Order and therefore the same cannot be reviewed by this Court.
38. The Court having clarified the Ruling to be reviewed under this Application, the next aspect of this issue of whether or not there are sufficient ground to grant the prayer for review.
39. From a perusal of the Ruling pronounced on 23.09.2024, it is clear that the Court made a finding that the suit property herein was disposed off after the death of the late Sospeter Manyinsa Orwendo.
40. The question then is whether this Court has the jurisdiction to hear and determine the issues contained in the Complaint dated 12.03.2024 as alleged by the Applicant or not.



41. A perusal of Clause 45 to 48 of the Ruling dated 23.09.2024 gives various findings that relate to the sequence of events that took place giving rise to the Complaint dated 12.03.2024.
42. Based on these findings, it was clear that the suit property herein was alienated by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents and transferred to the Interested Party after the death of the late Sospeter Manyinsa Orwenyo on the 10.09.2023.
43. The net effect of the above actions is that the suit property is a private property in the name of the Interested Party and can not be dealt with as part of the estate of the late Sospeter Manyinsa Orwenyo.
44. The Complaint dated 12.03.2024 has been instituted by the Administrator of the Estate of Sospeter Manyinsa Orwenyo seeking to challenge and/or cancel the alienation of the suit property to the Interested Party by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.
45. This type of dispute is one that falls within Section 13 of the Environment & Land Court [\*Act, No. 19 of 2012\*](#) and Section 26 of the [\*Land Registration Act\*](#), No. 3 of 2012.
46. In essence, this Court is satisfied that it made a mistake in its Ruling pronounced on the 23.09.2024 by making a finding that it did not have jurisdiction to hear and determine the Complaint dated 12.03.2024.
47. On the appreciation of this mistake, this Court finds that there is sufficient reason for it to review its Ruling dated 23.09.2024 and ensure that the Applicant gets a hearing and the issues contained in the Complaint dated 12.03.2024 dealt with on merit.

#### **Issue No. 3- Is the Present Application Merited?**

48. Based on the finding that there is sufficient reason as to why the Ruling pronounced on the 23.09.2024 was erroneous, this Court makes a finding that the present Application is merited.

#### **Issue No.4- Who bears the costs of the present application.**

49. Costs usually follow the event but in the present Application, orders are to allow both parties present their case and justice to be done.
50. On this understanding, it would not be fair to condemn any parties to pay costs yet the mistake was occasioned by an oversight of the Court.
51. In other words, there will be no orders as to costs on the present Application.

#### **Conclusion**

52. In conclusion, this Court hereby makes the following Orders as appertains the Application dated 07.10.2024; -
  - a. The Notice of Motion application dated October 7, 2024 is merited.
  - b. The ruling and/or orders of this court pronounced on the September 23, 2024 be and are hereby reviewed and/or set-aside.
  - c. The preliminary objection dated May 15, 2024 by the 1<sup>st</sup> and 2<sup>nd</sup> respondents is hereby dismissed with costs.
  - d. The environment & land court has the necessary jurisdiction to entertain and determine the complaint dated March 12, 2024.
  - e. Each party will bear its own costs as relates to the application dated October 7, 2024.



**DATED, SIGNED & DELIVERED VIRTUALLY IN ELDORET ELC COURT ON 12<sup>TH</sup> FEBRUARY 2025.**

**EMMANUEL M. WASHE**

**JUDGE**

In the presence of:

Court Assistant: Brian

Advocate for the Applicant: Ms. Mongare

Advocate for the Respondent: Mr. Onderi holding brief for Mr. Omwenga for 1<sup>st</sup> 2<sup>nd</sup> Defendant/Respondent

-Mr. Kiprotich for Interested Party

