



REPUBLIC OF KENYA



KENYA LAW
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Ghalia & 2 others v Kwale District Land Registrar & 5 others (Environment & Land Case E008 of 2021) [2025] KEELC 1173 (KLR) (6 March 2025) (Ruling)

Neutral citation: [2025] KEELC 1173 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KWALE
ENVIRONMENT & LAND CASE E008 OF 2021**

**LL NAIKUNI, J
MARCH 6, 2025**

BETWEEN

**SALEEM GHALIA 1ST PLAINTIFF
WAHIDA GHALIA 2ND PLAINTIFF
MOHAMMED AYUB MUSSA KHAMISA 3RD PLAINTIFF**

AND

**KWALE DISTRICT LAND REGISTRAR 1ST DEFENDANT
CHIEF LAND REGISTRAR 2ND DEFENDANT
ABDALLAH SAID KUGOTWA 3RD DEFENDANT
MOHAMED RAJAB MBWATA 4TH DEFENDANT
OMAR JUMA MBOGA 5TH DEFENDANT
MWINYI MBATA 6TH DEFENDANT**

RULING

I. Introduction

1. This Honourable Court was called upon to make a determination onto the Notice of Motion application dated 13th February, 2025. It was brought by Abdallah Said Kugotwa, Mohamed Rajab Mbwata, Omar Juma Mboga and Mwinyi Mbata, the 3rd, 4th, 5th and 6th Defendants/ Applicants herein under the provisions of Section 22 of the [Civil Procedure Act](#) and Order 14 Rule 6 of the Civil Procedure Rules Cap 21 Laws of Kenya.
2. Ideally, this was matter whereby the Applicants ought to have just applied for witness summons rather than filing a formal application.



II. The Applicants case

3. The Applicants sought for the following orders: -
 - a. Spent.
 - b. That this Honorable Court be pleased to grant orders ex - parte summoning the Adjudication Officer-Kwale/Galu/Kinondo Adjudication Section to file and produce the Objection Proceedings carried out under Section 26 (1) of the [Land Adjudication Act](#) Cap. 284 Laws of Kenya in respect of the parcel Kwale/Galu/Kinondo/665 during hearing slated for 13/03/2025 or as shall the court otherwise determine.
 - c. That pending the hearing and determination of this application inter-parte this Honorable Court be pleased to grant orders summoning the Adjudication Officer-Kwale/Galu/ Kinondo Adjudication Section to file and produce the Objection Proceedings carried out under Section 26 (1) of the [Land Adjudication Act](#) Cap 284 Laws of Kenya in respect of the parcel Kwale/Galu/Kinondo/665 during hearing slated for 13/03/2025 or as shall the court otherwise determine.
 - d. That this Honorable Court be pleased to grant orders summoning the Adjudication Officer-Kwale/Galu/Kinondo Adjudication Section to file and produce the Objection Proceedings carried out under section 26(1) of the [Land Adjudication Act](#) Cap 284Laws of Kenya in respect of the parcel Kwale/Galu/Kinondo/665 during hearing slated for 13/03/2025 or as shall the court otherwise determine.
 - e. That Costs be in the cause.
4. The application was premised on the grounds, facts and testimony on the face of the application and the averments made out under the 7 Paragraphed annexed affidavit of JOYCE ADHIAMBO, an Advocate of the High Court of Kenya and practicing as such under the auspices of Messrs. Muthoni Ngure and Company Advocates and in personal conduct of the suit on behalf of the 3rd, 4th, 5th and 6th Defendants/ Applicants herein. The Deponent averred that:
 - a. One of the critical aspects that had arisen in this matter and which the court would need to effectively interrogate so as to justly dispose of this case shall be the Objection Proceedings carried out under the provision of Section 26 (1) of the [Land Adjudication Act](#) Cap. 284 Laws of Kenya in respect of the parcel Kwale/Galu/Kinondo/665 and which allegedly resulted in the alteration of the Adjudication Register from Juma Mboga Mwakuyugwa and Rajabu Salimu Ndaragunya to Andrea Wairagu, Rahab Mweru, Cyrus Waruthingo, Elias Mukundi and Afaxisad Mahindu on 24th May, 1974. Annexed in the affidavit and marked as “JAD – 1” was a true copy of the Adjudication Record.
 - b. The question of alteration of the Adjudication Record was material to these proceedings as it would assist the court in determining if the purported transfer on 24th May, 1974 of the interest of the 3rd, 4th, 5th and 6th Defendants parents/grandparents Juma Mboga Mwakuyugwa and Rajabu Salimu Ndaragunya was legitimate.
 - c. On the 11th February, 2025, the 3rd, 4th, 5th and 6th Defendants filed a Notice to Produce seeking that the Land Registrar Kwale does produce the Objection Proceedings carried out under section 26 (1) of the [Land Adjudication Act](#) Cap. 284 Laws of Kenya in respect of the parcel Kwale/Galu/Kinondo/665 and the same was served upon the Registrar of Lands - Kwale on the 12th February, 2025 by having the same so registered at an official fee of a sum of Kenya



Shillings Five Thousand (Kshs. 5,000/-). Annexed in the affidavit and marked as “JAD – 2 (a), (b) and (c)” were true copies of the Notice to Produce dated 11th February, 2025, Ardhi Sasa Invoice of a sum of Kenya Shillings Five Thousand (Kshs. 5000/=) for the Proceedings and Official Receipt of the said amount paid.

- d. On the same day of service upon the Land Registrar being the 12th February, 2025, the Kwale Land Registrar-Madam Susan placed a call upon the Law firm of Messrs. Amondi and Company Advocates which filed the Notice to Produce more specifically Mr. Amondi Advocate wherein she advised that the Land Adjudication Officer was the author and custodian of the said record of proceedings hence was the right persons to file and produce the same in court
- e. The affidavit was sworn in support of the application by the Defendants herein seeking that this court grants orders summoning the Adjudication Officer - Kwale Galu' Kinondo Adjudication Section to file and produce the Objection Proceedings carried out under the provision of Section 26 (1) of the Land Adjudication Act Cap. 284 Laws of Kenya in respect of the parcel Kwale/Galu/Kinondo/665 during hearing slated for 13th March, 2025 or as shall the court otherwise determine.

III. Submissions

5. On 24th February, 2025 while all the parties were present in Court, they were directed to have the Notice of Motion application dated 13th February, 2025 be disposed of by way of written submissions within stringent timelines. Unfortunately, by the time of penning down this Ruling, the Honourable Court had not been in a position to access the submission from any of the parties on the court file nor the Court CTS portal. In the given circumstances, the Court proceeded to deliver its Ruling on its own merit on 6th March, 2025 accordingly.

IV. Analysis and Determination

6. I have carefully read and considered the pleadings herein and the relevant provisions made by the by the parties. In order to arrive at an informed decision, the Honorable Court has framed the following two (2) issues for its determination. These are: -
 - a. Whether the Notice of Motion dated 13th February, 2025 is merited.
 - b. Who will bear the Costs of Notice of Motion application 13th February, 2025.

Issue No. a). Whether the Notice of Motion dated 13th February, 2025 is merited.

7. Under this sub – title, the main issue here is whether 3rd, 4th, 5th and 6th Defendants have made out a case for granting the orders sought out in their application. This court is keen to uphold and safeguard the principle of “fair hearing” under the provision of Article 25 (c); 47 and 50 (1) & 2) of the Constitution of Kenya, 2010; and “the right to be heard” which is anchored on the Latin Maxim principle of “Audi alteram parterm” which basically entails that a party who comes before the court ought to be given an opportunity to tender his evidence in a fair and just manner.
8. Indeed, the provision of Articles 25 (c) and 50 (1) of the Constitution provides that:

“Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body”.



9. According to the Applicants, one of the critical aspects that had arisen in this matter and which the court will need to effectively interrogate so as to justly dispose of this case shall be the Objection Proceedings carried out under Section 26 (1) of the [Land Adjudication Act](#) Cap. 284 Laws of Kenya in respect of the parcel Kwale/Galu/Kinondo/665 and which allegedly resulted in the alteration of the Adjudication Register from Juma Mboga Mwakuyugwa and Rajabu Salimu Ndaragunya to Andrea Wairagu, Rahab Mweru, Cyrus Waruthingo, Elias Mukundi and Afaxisad Mahindu on 24th May, 1974.
10. From the aversons of the Counsel for the Defendants, the summoning of the Land Adjudication Officer - Kwale/Galu/Kinondo Adjudication Section to file and produce the Objection Proceedings carried out under Section 26 (1) of the [Land Adjudication Act](#) Cap. 284 Laws of Kenya will only shade more light to this suit and enable this Court come to a justified conclusion of the case.
11. I therefore find merit in the Notice of Motion application dated 13th February, 2025. Thus, it is hereby allowed.

Issue No. c). Who will bear the Costs of Notice of Motion application 13th February, 2025.

12. It is now well established that the issue of Costs is at the discretion of the Court. Costs meant the award that is granted to a party at the conclusion of the legal action, and proceedings in any litigation. The Proviso of Section 27 (1) of the Civil Procedure Rules Cap. 21 Laws of Kenya holds that Costs follow the events. By the event, it means outcome or result of any legal action. This principle encourages responsible litigation and motivates parties to pursue valid claims. See the cases of “Harun Mutwiri – Versus - Nairobi City County Government [2018] eKLR and “Kenya Union of Commercial, Food and Allied Workers – Versus - Bidco Africa Limited & Another [2015] eKLR, the court reaffirmed that the successful party is typically entitled to costs, unless there are compelling reasons for the court to decide otherwise.
13. I have well stated in previous precedence and most especially in “Sagalla Lodge Limited – Versus - Samwuel Mazera Mwamunga & another (Suing as the Executors of Eliud Timothy Mwamunga – Deceased) [2022] eKLR”, that:

“

“ 58. The Black Law Dictionary defines “Cost” to means, “the expenses of litigation, prosecution or other legal transaction especially those allowed in favour of one party against the other”.

The provisions of Section 27 (1) of the [Civil Procedure Act](#), Cap. 21 holds that Costs follow events. The issue of Costs is the discretion of Courts. From this provision of the law, it means the whole circumstances and the results of the case where a party has won the case. The events in this case is that the Notice of Motion application dated 7th December, 2021 by the Plaintiff has succeeded and hence they are entitled to costs of the application and that of the Defendants dated 21st December, 2021.”
14. The provision of Section 27 (1) of the [Civil Procedure Act](#), Cap. 21 holds that costs follow the events. In the case of “Hussein Muhumed Sirat – Versus - Attorney General & Another [2017] eKLR, the court stated that costs follow the event as a well-established legal principle, and the successful party is entitled to costs unless there are other exceptional circumstances. In the present case, the Honourable Court elects not to award any costs.



V. Conclusion and Disposition

15. In long analysis, the Honorable Court has carefully considered and weighed the conflicting parties' interest as regards to balance of convenience.
16. Having said that much, there will be need to preserve the suit land in the meantime. In a nutshell, I proceed to order the following: -
 - a. That the Notice of Motion application dated 13th February, 2025 be and is hereby found to have merit and is allowed.
 - b. That an order be and is hereby issued summoning the Adjudication Officer-Kwale/Galu/Kinondo Adjudication Section to file and produce the Objection Proceedings carried out under Section 26(1) of the Land Adjudication Act Cap 284 Laws of Kenya in respect of the parcel Kwale/Galu/Kinondo/665 during hearing slated for 13th March, 2025 or as shall the court otherwise determine.
 - c. That the part heard matter to proceed on 13th March, 2025 as scheduled.
 - d. That there shall be no orders as to costs.

IT Is So Ordered Accordingly.

RULING DELIVERED THROUGH THE MICROSOFT TEAM VIRTUAL, SIGNED AND DATED AT Kwale THIS 6TH DAY OF MARCH 2025.

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HON. MR. JUSTICE L. L. NAIKUNI
ENVIRONMENT AND LAND COURT AT
KWALE

Ruling delivered in the presence of:

Mr. Daniel Disii, the Court Assistant.

No appearance for the Plaintiffs/Respondents.

M/s. Adhiambo holding brief for Ngure Advocate for the 3rd, 4th, 5th and 6th Defendants/Applicants.

M/s. Nyambeki holding brief for Mr. Amondi Advocate for the 3rd, 4th, 5th & 6th Defendants/Applicants.

