



**K'Aol v Oloo & another (Environmental and Land Originating Summons
12 of 2021) [2025] KEELC 994 (KLR) (3 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 994 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS 12 OF 2021
GMA ONGONDO, J
MARCH 3, 2025**

BETWEEN

CORNEY PHILEMON AIMO K'AOL PLAINTIFF

AND

**HELLENA ADOYO OLOO (SUED AS THE LEGAL REPRESENTED
ADMINISTRATOR OF THE ESTATE OF ISAYA OYOO OLOO ALIAS OLOO
OMOO DECEASED) 1ST DEFENDANT**

KENNEDY OTIENO OLOO 2ND DEFENDANT

RULING

1. By a Notice of Motion dated 26th July 2024 commenced under, inter alia, Sections 1A, 1B, 3 A of the Civil Procedure Act Chapter 21 Laws of Kenya and Section 13 of the Environment and Land Court Act 2016 (2011), the plaintiff/applicant, Corney Philemon K'aol through M/S Oguttu Mboya, Ochwal & Partners Advocates, is seeking the following orders;
 - a. Spent
 - (b) The Honourable Court be pleased to grant an Order discharging and/or removing the Restriction and the Orders of Status Quo registered on the Register/Title of Lr. No. Central Kasipul/kachieng/619 (The suit land herein) on the 3rd day of February 2022 and 10th day of March 2022 pursuant to the orders of this Honourable Court made on the 15th December, 2021 and 28th day of February, 2022 to pave for the transfer and registration of a portion measuring 2.25 Acres to and in favour of the Plaintiff/Applicant in line with the judgement and Decree of the Court rendered on the 24th day of January 2024.
 - (c) The Honourable Court be pleased to Order and /or Direct the Land Registry Rachuonyo East South and North sub Counties to dispense with the surrender of the Original Title Deed over and in respect of the suit land and forthwith register the mutation in respect of same to



pave for the transfer and registration of a portion measuring 2.25 Acres to and in favour of the Plaintiff/applicant in line with the Judgement and Decree of the Court rendered on the 24th of January,2024.

- (d) The Honourable Court be pleased to Order /or Direct the Land Registrar , Rachuonyo East, South and North sub- Counties to forthwith register the Transfer instrument and issue Title Deed over and in respect of a portion measuring 2.25 Acres out of the suit land, in favour of the Plaintiff/Applicant Corney Philemon Aimo K'aol without the necessity of surrendering original Title Deed for the resultant portion in compliance with the judgement and Decree of this Honourable Court rendered on the 24th day of January,2024.
 - (e) Costs of this Application be borne by the Defendant /Respondent.
 - (f) Such further and/or other orders be made as the court may deem fit and expedient.
2. The application is premised upon the applicant's supporting affidavit of twenty paragraphs together with the accompanying documents inclusive of a copy of the decree (CPAK 1) and copies of court orders (CPAK 2 (a) and (b) alongside grounds (a) to (p) which include;
- (a) Pursuant to the judgment and Decree the Honourable Court inter-alia decreed on Order for the transfer and registration of a portion measuring 2.24 Acres out of the suit land to and in favour of the Plaintiff/applicant.
 - (b) Besides the Deputy Registrar of this Honourable Court was ordered to execute al the Transfer instrument /Documents to facilitate transfer and registration of the said portion of the suit property in favour of the Plaintiff/Applicant.
 - (c) However, prior to the determination of the suit herein the Honourable Court had on the 15th day of December,2021 and 28th day of February 2022 issued orders of inhibition and status quo touching and /or concerning the suit property.
 - (d) Following the issuance of the said orders, same were duly extracted sealed and thereafter lodged with the Land Registry at Kosele culminating into the registration of a restriction and orders of status on the Register/Title of the suit property on the 3rd day of February,2022 and 10th day of March 2022 respectively.
3. Briefly, the applicant claims that he sued the respondent for adverse possession over 2,25 acres of the suit land and subsequently, obtained court orders (CPAK 2 (a) and (b) herein. That he is entitled to the orders sought in the application pursuant this court's judgment delivered on 24th January 2024 and the subsequent decree (CPAK 1) to enable him acquire title in respect of the suit land.
4. It was the duty of the court to ensure the respondent was made aware of the existence of the application and to have her served with the same to enable her respond to it or decline to do so; see Ogada-vs-Mollin (2009) eKLR.
5. The respondent was duly served as disclosed in, inter alia, affidavits of service sworn on 3rd August 2024, 9th October 2024 and 22nd January 2025 by Mr Brian Mulisa learned counsel for the applicant. However, she failed to respond to the application.
6. On 14th December 2024, the court directed that the application be heard by written submissions.
7. Accordingly, learned counsel for the applicant filed submissions dated 3rd December 2024 in support of the application and urged the court to grant the prayers therein. Counsel set out the background of the matter, identified an issue for determination namely whether the application is merited and



whether the defendants/respondents would suffer any prejudice if the orders sought in the application were allowed. In analysing the issues in favour of the applicant, reference was made to the suit for adverse possession, inhibition and status quo orders and the judgment delivered herein in favour of the plaintiff/applicant. That the judgment and decree of this court was not made in vain and same ought to be realised and or implemented in line with section 34 of the Civil Procedure Act Chapter 21 Laws of Kenya, section 73 of the Land Registration Act 2016 (2011) and the case of Jane Wanjiru Njoroge-vs-Elizabeth Wairimu Mwarenge (2016) eKLR on registration of suit property by Land Registrar in line with decree which has neither been varied nor set aside.

8. On her part, the respondent did not file any submissions in this application.
9. In the foregone, the issue for determination is whether the application is merited.
10. It must be borne in mind that on 15th December 2021, the court granted an inhibition against any dealings, transaction and or disposition relating to the suit land pending the hearing and determination of the application dated 14th July 2021 which was determined on 28th February 2022.
11. This court is not unaware of section 73 (supra) on withdrawal of a caution by the cautioner or removal of it by the order of the court.
12. Besides, status quo order over the suit land was made on 28th February 2022 and notice of motion application dated 14th July 2021 and 14th December 2021 were determined thereby.
13. In that regard, the court granted interim preservation orders under section 13 of the Environment and Land Court Act 2015 (2011). The same were made pending the determination or termination of the suit; see also Ogada case (supra).
14. On 24th January 2024, this court determined the suit by way of the judgment in favour of the applicant for 2.25 acres of the suit land.
15. The applicant has a vested right to the judgment and the subsequent decree which ought to be effectual as held in Shahmad-vs-Shamji Bros and another (1957) EA 438.
16. Section 34 (supra) relates to questions to be determined by court in executing decree. In the instant case, there is a decree (CPAK 1) which has neither been varied nor set aside and it has to be effectual; see Shahmad and Jane Njoroge cases (supra)
17. It is therefore, the finding of this court that the application is steadfast cogent, and meritorious
18. To that end, the application dated July 26, 2024, be and is hereby allowed in terms of prayers 2, 3, 4 and 5 therein as stated in paragraph 1 (b) (c) (d) and (e) hereinabove.
19. It so ordered

DATED AND DELIVERED VIRTUALLY AT KAPSABET THIS 3RD DAY OF MARCH 2025

GEORGE M A ONGONDO

JUDGE

Present;

Mr B. Mulisa learned counsel for the plaintiff/applicant

Walter Kipkorir, court assistant

