



**Bigogo v Marita & others (Environment and Land Case
208 of 2017) [2025] KEELC 4446 (KLR) (11 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4446 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII
ENVIRONMENT AND LAND CASE 208 OF 2017**

**M SILA, J
JUNE 11, 2025**

BETWEEN

KENNEDY KENYANZA BIGOGO PLAINTIFF

AND

CLEMENT NYARIARO MARITA & OTHERS DEFENDANT

RULING

1. When this matter came up before me yesterday, I took submissions on whether the suit should start de novo or continue from where it had reached. Mr. Nyasimi, learned counsel for the plaintiff, proposed that we continue from where we had reached. He urged that this is because the original plaintiff is now deceased and also the 2nd witness, the Land Registrar, is now a party to the suit. Ms. Kebungo, learned counsel for the 1st, 4th, 5th, & 6th defendants was agreeable. Mr. Ndiritu, learned State Counsel, was not agreeable, submitting that the matter should start de novo as they were joined later in the proceedings. I have given the submissions due consideration.
2. I have gone through the record. When the case was filed, on 1st November 2017, it was filed against only 3 defendants. Later the 4th defendant was added on 20 June 2018. With these parties, the matter proceeded for hearing on 2 April 2019, when the plaintiff and one witness (Mr. Steve Mokaya, the Kisii Land Registrar) testified and were cross-examined. The matter was then adjourned. What happened thereafter was a series of applications for joinder and amendment. There was an application dated 29 September 2021 to join Esther Nduko and Charles Nyakeboka as defendants, and an application dated 30 September 2021 by the 1st defendant to amend the defence and introduce a counterclaim. Those two applications were allowed in a ruling delivered on 12 May 2022.
3. The amended defence on its part added other parties through the counterclaim. The new parties are James Bikeri Bigogo (1st defendant in counterclaim), Nyarango Duke, Evalyne Moraa, the County Land Registrar, and the Hon. Attorney General, respectively as 3rd – 6th defendants in the counterclaim. The original plaintiff was sued as 2nd defendant in the counterclaim. Thus, through the counterclaim,



five new parties were added. In total therefore after the hearing of 2 April 2019, seven new parties have been added. They did not participate at the hearing of 2 April 2019. I have looked at the amended pleadings, there are certainly new issues that arise in them which could not have possibly been canvassed at the hearing of 2 April 2019. Part of the issues introduced is a pleading that the original plaintiff, as 2nd defendant in the counterclaim, acted maliciously in collusion with the 1st defendant in the counterclaim to defeat their rights. The counterclaimants have a right to put this to the plaintiff and the plaintiff a right to respond to these allegations. But this is not all, all parties to the suit have a right to put their issues to the plaintiff and also the plaintiff a right to respond to them.

4. Given the nature of the changes in the suit, it is therefore my view that the best course of action is for the matter to start de novo.
5. I am aware that the original plaintiff is now deceased. He has however been substituted. The essence of substitution is to put the person in the shoes of the original litigant. He should be able to conduct the proceedings in the manner that the original plaintiff is expected to have proceeded.
6. My orders, as I have mentioned above, is that the suit starts de novo.
7. Orders accordingly.

DATED AND DELIVERED THIS 11TH DAY OF JUNE 2025

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT KISII

