



**Masika & 3 others v Mulembe Farm Limited & another; Wenyila & 4 others (Interested Parties)
(Environment & Land Case 29 of 1997) [2025] KEELC 4429 (KLR) (10 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4429 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT & LAND CASE 29 OF 1997**

**CK NZILI, J
JUNE 10, 2025**

BETWEEN

**JOHN B. MASIKA 1ST PLAINTIFF
WANYAMA BIKETI 2ND PLAINTIFF
SIMON MASIKA 3RD PLAINTIFF
YOHANA MULAMA 4TH PLAINTIFF**

AND

**MULEMBE FARM LIMITED 1ST DEFENDANT
WALUMOLI WALUKELA MUSUNGU (AS LEGAL REPRESENTATIVE OF
SIMEON MUSUNGU) 2ND DEFENDANT**

AND

**JOHN BARASA WENYILA INTERESTED PARTY
PETER KIMAGUT KIBARNO INTERESTED PARTY
FREDRICK MASIKA WANYONYI INTERESTED PARTY
PAUL WEPUKHULU MASIKA INTERESTED PARTY
PAUL LHAKINA & OTHERS INTERESTED PARTY**

RULING

1. What is before the court is a post-judgment application dated 13/2/2024 seeking that the court determines the entitlement of each of the remaining 15 members of Mulembe Farm Ltd, and upon its determination, the Deputy Registrar of the court to execute the necessary transfer instruments for subdivision of LR No. 9082/1 and transfer the respective shares to the 19 members thereof. The



reasons are contained in whopping 58 grounds on the face of the application and a supporting affidavit of Walumoli Walukela Musungu, sworn on 13/2/2025, replicating the 58 grounds hereof.

2. The applicant deposes that given the history of the matter, starting with the manner of acquisition of the land by the shareholders between 1974 and 1977, each of them is entitled to shares in line with their share contribution. Further, the deponent states that only three original shareholders are alive, the rest leaving behind their families, some of whom have misplaced or lost receipts for the shares, but can only rely on available records to prove their entitlement; more so against the 2nd defendant, who as the chairman of the 1st defendant used his authority and powers to encroach on their shares and prevent them from using, enjoying or cultivating on their shares of land, hence the reason they filed the case, to recover their land.
3. The applicant deposes that even though in the judgment dated 4/10/1996, the plaintiff proved entitled to approximate 117 acres and the court ordered that the shortfall of 64 acres be slashed from the 2nd defendant's share, which judgment was also confirmed by a ruling dated 18/12/2002, which ordered excision of 117 acres out of 586 acres, through the assistance of the Deputy Registrar, who was to work out the entitlement of the remaining 15 shareholders, only 451 acres was available to be share by them. The deponent avers that after the Deputy Registrar Hon. Obina distributed more than 451 acres leaving the 2nd defendant with nothing, the same was set aside by a ruling of this court dated 31/3/2014 to have the 2nd defendant included in sharing the balance of 451 acres, based on un-doctored company records after a fresh shareholding determination is done, by a different Deputy Registrar.
4. The deponent deposes that after the matter was placed before Hon. C.M. Kesse, DR, 10 out of the 15 shareholders, including the 2nd defendant, relied on a consent list dated 26/1/1983 to prove their entitlement, yet this consent was not among the documents before Hon. Justice P.K. Tunoi. The deponent deposes that in a ruling date 25/3/2021, the Deputy Registrar worked out the entitlement of 10 shareholders but left out 5 shareholders, occasioning an application dated 23/6/2021, which set aside the said ruling, and parties were implored to attempt an out-of-court settlement, whose efforts yielded to an agreement wherein 14 members agreed to rely on the proceedings in Eldoret (NKR) HCCC No. 60 of 1978. Unfortunately, 4 members were left out because they had no receipts issued to them by Mulembe Farm Ltd.
5. The deponent avers that the remaining 11 shareholders, including the 2nd defendant, agreed to rely on the consent of 26/1/1983 to prove their contributions, for most of them have no receipts issued to them by the company which also has a Kshs.83,145/= as the shareholding of the 2nd defendant, who going by the judgment, his 64 acres must be slashed from a share of Mulembe Farm Ltd, which based on Kshs.334/= per acre comes to Kshs.21,376/=, and if reduced would leave him with a balance of Kshs.61,769/=, as his shareholding in the 451 acres of land.
6. The deponent blames the Deputy Registrar for awarding erroneous acreages to shareholders; otherwise, if allowed to use the balance shareholdings of Kshs.6,769/=, each of the 15 shareholders will get a fair, just, and equitable share of his entitlement. The deponent, therefore, avers that the resultant shares would be 103.36, 27.58, 27.58, 28.17, 30.38, 30.92, 34.30, 23.09, 19.17, 15.24, 13, 19.39, 17.57, 24.07, 37.21, making a total of 451 acres in favour of, Simeon Masika Musungu, Meshack Bunguswa, Meshack Nyukuri, Reuben Wanyonyi, Luka Makokha, Paul Khakina, Fanuel Wanyonyi, Tela Kisaka, Mwasame Panda, Richard Wandela, Masika Wenyila, Kimagut Kibarno, Sikochi Maikuma, Rasto Wenyila and Vincent Wasakala, respectively.
7. The deponent avers that on the basis of that format, each member of Mulembe Farm Ltd will receive the same percentage share of the land, as the percentage share of money which he contributed toward



- the share capital of the company towards the purchase price value of the 451 acres as tabulated in paragraph 56 of his affidavit.
8. The application is opposed by a replying affidavit of John Barasa Wenyila, sworn on 15/7/2024. It is deposed that while the interested parties have no objection to the 15 shareholders getting a share of their land, the acreage should be determined as per the directions issued in the ruling dated 18/12/002 through the use of receipts only since Hon. Justice P.K. Tunoi in his judgment had ruled out the payment of the lease and crops as irrelevant in computing the acreage entitlement of the parties or on relying on crudely documents and records tendered in court by the 2nd defendant to deceive the court, hence the applicant is estopped from relying on what the court rejected in the first instance in the judgment which is yet to be appealed against,
 9. The interested parties term the application as a back-door attempt to seek review and variation of the judgment. The interested parties insist that the parties should be allowed to avail land purchased receipts per the judgment and the ruling of 1996 and 2002, respectively, and if there are challenges, the same will be dealt with. The interested parties depose that the consent of 28/1/1983 was never alluded to during the hearing and judgment in this suit and in any event, only 7 out of 19 were parties to ELC HCCC No. 2 of 1983. The interested parties aver that while they agree that the court can handle the matter and ascertain the acreage, they are not agreeable to the methodology and documents proposed by the applicant.
 10. It is not in dispute that the judgment dated 4/10/1996 related to 117 acres of land as decreed to the initial plaintiffs after the land was subdivided under arbitration of the local D.O. After the collapse of the arbitration process, by a ruling dated 18/11/1992, the judgment was reviewed that:
 - (1) The District Surveyor excised 117 acres out of 568 acres to be shared among the plaintiffs.
 - (2) The rest of the members to acquire acreage for Kshs.334/= per acre as against receipts for payment of the purchase price only.
 - (3) Receipt for payments of liabilities should not be considered in compiling the share contributions.
 - (4) The Deputy Registrar is to draw up an area list showing the acreage of each member and then forward it to the District Surveyor for translation of the same on the ground.
 - (5) After the translation on the ground, the same list be used to go to the area land control board for issuance of titles.
 - (6) The D.O. and the area OCS to provide security during the exercise.
 11. Following the said review orders, the record will show that the parties have declined the formulae and the guidance of the Deputy Registrar of this court twice. This is confirmed by the averments on oath in paragraph 45 of the supporting affidavit. The principle of finality is hinged on the public interest policy that litigation must come to an end. In *Jasbir Singh Rai & 7 Others -vs- Tarlochan Singh Rai & Others* (2007) eKLR, the court observed that the doctrine enables the court to say litigation must end at a certain point, regardless of what the parties think of the decision which has been handed down.
 12. The principle of finality is based on the background that human beings tend to keep trying until something gives in as held in *William Koross -vs- Hezekiah Kiptoo Kimen & Others* [2015] eKLR. *Functus officio* means that where a court has rendered a verdict on issues that had been canvassed before it, the duty or function of the said court has been accomplished, and therefore it cannot re-open those issues.



13. In this matter, the orders of review made to the judgment on 18/11/2002 have not been appealed against or challenged for any errors, anomalies, or impossibility to implement. Execution of a decree of the court is governed by Section 34 of the Civil Procedure Act and Order 22 of the Civil Procedure Rules. The court, in its considered view, in the judgment gave leeway to the parties to have arbitration on the implementation through the local administration led by the D.O. of the area. After this route became impossible, the court reviewed the judgment and directed the Deputy Registrar to superintend the process. Twice, the parties have declined the services of the Deputy Registrar.
14. The applicant has now come to court for the third time, this time seeking the court to determine the entitlements of each of the remaining shareholders of Mulembe Farm Ltd. To do so will amount to reopening the issues already concluded by a judgment and a ruling of this court. Litigation must come to an end. The court cannot revisit the issues where there is a judgment and a ruling on merits. The law does not allow a party to come back unless through a review and to seek a post-judgment rehearing of the suit after a review application. To do so would be against the law.
15. The application before the court amounts to an abuse of the court process. The court has bent backward to accommodate the parties to the extent of offering twice the Deputy Registrar of this court to undertake post-judgment work to effect the decree of the court. The parties know the formulae formulated by the court with their input. They now want through this application the court to undo all those efforts and resort to a formulae that the court initially rejected as misleading and illegal. The court cannot revisit those issues already determined through a post-judgment hearing of the matter.
16. The upshot is that the application is dismissed for lack of merit and as an abuse of the court process. Parties are directed to finalize the remaining part of the implementation of the decree, otherwise, it shall be caught up by the time limitation.
17. Orders accordingly.

RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 10TH DAY OF JUNE 2025.

In the presence of:

Court Assistant - Dennis

Mr. Maloba for the 2nd Defendant present

Kiarie for the Plaintiff present

Teti for the 1st Defendant/Applicant present

Interested Party present

HON. C.K. NZILI

JUDGE, ELC KITALE.

