



**Osoro & another v Mogeni & 2 others (Land Case Appeal  
E011 of 2023) [2025] KEELC 4302 (KLR) (3 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4302 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISII  
LAND CASE APPEAL E011 OF 2023**

**M SILA, J**

**JUNE 3, 2025**

**BETWEEN**

**DANIEL OMEKA OSORO ..... 1<sup>ST</sup> APPELLANT**

**ALBERT NYAKUNDI OSORO ..... 2<sup>ND</sup> APPELLANT**

**AND**

**DANIEL OMBACHI MOGENI ..... 1<sup>ST</sup> RESPONDENT**

**LAND REGISTRAR, KISII CENTRAL DISTRICT ..... 2<sup>ND</sup> RESPONDENT**

**THE HON ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. The application before me is that dated 24 November 2024 filed by one Paul Moses Osoro. He wants to be admitted as interested party in this appeal and also to be allowed to file current searches which he claims reflect the names Nelly Nyakona Mogeni and Alice Monyangi Mogeni as proprietors of the land in dispute. In addition, he seeks an order to restrain the 3<sup>rd</sup>, 6<sup>th</sup> and 7<sup>th</sup> respondents from subdividing the land parcel West Kitutu/Bomatara/1621 and 1622, and a prohibitory order to be registered against these two titles pending hearing of the appeal. The application is opposed.
2. To put matters into context, the suit was commenced through a plaint filed on 11 March 1999. The plaint was filed by one James Nyangaresi Osoro suing on behalf of the Estate of Osoro Matara (deceased). His claim was that the deceased owned the land parcel West Kitutu/Bogeka/1579 which measured 3.39 Ha. He claimed that the deceased sold land measuring 0.44 Ha to the 1<sup>st</sup> defendant/respondent. He alleged that through fraud, the 1<sup>st</sup> respondent caused the land parcel No. 1579 to be subdivided into three portions, rather than two portions, to bring forth the land parcels West Kitutu/Bomatara/1620, 1621, and 1622. He pleaded that the 1<sup>st</sup> respondent proceeded to cause himself to be registered as owner of the parcel No. 1621 and 1622, and left the deceased only with the parcel No. 1620 measuring 1.43 Ha. He urged that after sale of 0.44 Ha, the Estate of the deceased ought



to have been left with land measuring 2.9 Ha. He thus wished to have an order of cancellation of the title to the parcel No. 1622, rectification of the register for the parcel No. 1621 to reflect 0.44 Ha, and rectification of the title to the parcel No. 1620 in name of the deceased to reflect 2.9 Ha. The 1<sup>st</sup> defendant/respondent resisted the suit.

3. The case was heard culminating in a judgment delivered on 18 September 2023. The trial Magistrate held that the mutation forms had issues. He held for the plaintiff to the extent that the register be rectified so that the parcel No. 1620 reflects 2.32 Ha, the parcel No. 1621 to reflect 0.44 Ha, and the parcel No. 1622 to reflect 0.63 Ha.
4. Aggrieved by this judgment, the plaintiff filed this appeal. The appeal was listed for hearing and argued, but this application was filed before I could deliver judgment. I stayed the judgment pending hearing of this application. However, the 1<sup>st</sup> respondent died on 9 January 2025 before the application could be heard and the case was stayed pending substitution. Substitution has now been done thus paving the way for hearing of this application. I have already pointed out the orders sought in the application.
5. The applicant states that he is one of the sons of Osoro Matara (deceased) and a direct beneficiary of his estate. He thus contends that he has a stake in the outcome of this appeal and has power to challenge the manner in which the appeal is being handled by counsel for the appellants. He claims that the appellants, who are administrators, are colluding with the 1<sup>st</sup> respondent who has transferred the parcels No. 1621 and 1622 to third parties which now renders the appeal moot. In his affidavit he deposes that the land parcels No. 1621 and 1622 have been transferred to the daughters of the 1<sup>st</sup> respondent. He has also gone into issues which appear to me to go to the merits of the appeal and it is not necessary to put them down. He has annexed some documents which I see are actually documents in dispute in the case and were produced at trial.
6. The appellants filed Grounds of opposition to oppose the motion, inter alia, that the applicant has no locus standi.
7. The 1<sup>st</sup> respondent (suit now taken over by Yusuf Orwenyo Mbeche, the legal representative of the original 1<sup>st</sup> respondent), swore a replying affidavit to oppose the motion. He deposed that the appeal has already been heard and is pending judgment and therefore the application is coming late in the day. He points out that the applicant was not a party at the trial court.
8. I invited submissions to be filed towards the application. I have seen the submissions filed and given the same due consideration.
9. I am persuaded that there is no substance in this application. The suit was filed on behalf of the estate of Osoro Matara (deceased). The person who filed that suit was his legal representative. He died and the case is now being pursued by the appellants as the new legal representatives of the estate of Osoro Matara. The applicant claims that he is a son of Osoro Matara and a beneficiary of his estate, and he therefore has a stake in this case. The fact that he is a son of the deceased and/or a beneficiary of the estate does not give him locus standi to come into this case. A case in respect of a deceased person can only be pursued by his legal representative and in this case the legal representative of the estate of the deceased is the appellants. Any other person would be no better than a busy body.
10. In his application, the applicant claimed that the land has been transferred to third parties. However, this remains an empty allegation as the applicant did not annex anything to support the claim.
11. For the above reasons, it will be seen that I find no merit in this application. It is hereby dismissed with costs to the appellant and to the 1<sup>st</sup> respondent. Since the applicant is not a party to this suit, in my



discretion, I straight away assess the costs at Kshs. 5,000/= to the appellants and a similar amount to the 1<sup>st</sup> respondent.

12. Orders accordingly.

**DATED AND DELIVERED THIS 3<sup>RD</sup> DAY OF JUNE 2025**

**JUSTICE MUNYAO SILA**

**JUDGE, ENVIRONMENT AND LAND COURT**

**AT KISII**

Delivered in the presence of :

The applicant acting in person

Ms. Bosire for the appellants

Mr. Omwoyo for the 1<sup>st</sup> respondent

Court Assistant – Michael Oyuko

