



Wafula (Suing as Legal Representative of the Estate of Petero Masinde Waswa alias Petro) v Wekesa (Being Sued as the Personal Representative of the Estate of Peter Masinde Waswa - Deceased); Onyilo & 2 others (Applicant) (Environment and Land Case E019 of 2023) [2025] KEELC 5112 (KLR) (2 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5112 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT AND LAND CASE E019 OF 2023**

A NYUKURI, J

JULY 2, 2025

BETWEEN

LUCIANO ANDREW WAFULA (SUING AS LEGAL REPRESENTATIVE OF THE ESTATE OF PETERO MASINDE WASWA ALIAS PETRO) PLAINTIFF

AND

GEORGE OCHIENG WEKESA (BEING SUED AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF PETER MASINDE WASWA - DECEASED) DEFENDANT

AND

WILLIAM WESONGA ONYILO APPLICANT

ZUBEIDA KASABULI IBRAHIM (SUING IN HER PERSONAL CAPACITY AND ALSO AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF IDRIS MAKOKHA MUSINDALO) APPLICANT

SULEIMAN WAMUKOYA CHITECHI APPLICANT

RULING

Introduction.

1. Fredrick Manase H. Watsula, Mathias Kweyu Mulama, Kassim Chitech Ali Abdalah Zacharia Were, Judith Oyuolo Wanjala, Flora Ayoyi Tonde, Clement Muroño Opari and Protus Musumba filed a Notice of Motion dated 25th April 2024 seeking to be joined to this suit as interested parties. Thereafter, by a Motion dated 30th December, 2024, William Wesonga Onyolo, Zubeda Khasabuli Ibrahim and Suleiman Wamukoya Chitech sought for orders that they be joined to this suit as interested parties; that it be declared that parcels numbers N. Wanga/Kholera/9X1, N. Wanga/Kholera/9X8, N.Wanga/



Matungu/1XX3, and N. Wanga/Matungu/9X6 belong to them and that a permanent injunction be issued against the plaintiff and defendant herein restraining them from interfering with the said parcels of land. They also sought costs.

2. On 11th February 2025 when both applications came up for directions, all the parties sought that the two applications be heard together. Subsequently on 21st May 2025 this matter was fixed for ruling in regard to the applications dated 25th April 2024 and 30th December 2024 on 2nd July 2025. However, upon perusing the CTS, the court noted that the applicants for the application dated 25th April, 2024 filed Notice of withdrawal dated 11th October, 2024 seeking to withdraw the said application. That being the position, this court allows the Notice of Withdrawal dated 11th October, 2024 and therefore the application dated 25th April, 2024 is hereby marked as withdrawn with no orders as to costs.
3. Therefore, the only application due for determination is that dated 30th December 2025. The said application is anchored on the affidavits sworn by the applicants. In the affidavit sworn by William Wasonga Onyolo the 1st applicant, he stated that he was informed of the existence of this suit by his advocate on record which affect his proprietary rights in regard to the parcel he purchased. That he purchased parcel N. Wanga/Kholera/9X1 from the late IWM who in turn had purchased it from PMW the owner thereof and the land being a sub-division of parcel North Wanga/Kholera/6X4.
4. He further deponed that he was registered as proprietor of parcel 9X1 on 18th July, 1982 which transfer was approved by the Land Control Board on 20.4.1982. He stated that he had developed the said parcel of land where he resides with his family and does farming activities. He maintained that PMW and PMW is one and the same person and that the death certificate referred to by the respondent was fraudulently obtained as the National Identity card of PMW was 79XXX72/70. Further that no any other identification card has been produced to show that PMW was a different person.
5. He stated that his parcel and the parcels of his co-applicants are subdivisions of parcel Nos. North Wanga/Kholera/6X4 and North Wanga/Matungu/3X7 which titles were closed long ago.
6. It was his position that the estate of the late PMW does not comprise parcels North Wanga/Kholera/6X4 and North Wanga/Matungu/3X7 and that the said property is not available for distribution as it is the subject matter in Kakamega ELCA No. E035 of 2023. He averred that the Senior Resident Magistrate at Mumias on 11th February 2020, invalidated transfer of the aforesaid parcels into the names of the late PMW from the name Petro Masinde on 21st November 1980 and 8th February 1980 respectively. That the court held that it lacked jurisdiction and that there is Kakamega ELC Appeal E035 of 2023 seeking to vacate orders of 11.2.2020. That the plaintiff and defendant are grandson and stepson of the deceased and have no knowledge of what transpired in 1980 and have colluded to deceive the court which will affect over 15 households. He stated that the parties herein did not present evidence to show that Petro Masinde Waswa is not PMW, not even a birth certificate.
7. Zubeida Ibrahim, administrator of the estate of Idris Masindalo and the 2nd applicant herein, also swore a supporting affidavit dated 30.12.2025. She stated that her late husband Idris Musindalo purchased parcel Nos. N. Wanga/Kholera/9X8 and 9X6 from one Martin Wanyona Waleke in 1989. That Martin had in turn purchased the said portion from PMW. That Ramadhan Wamukoya Murunga, father of the 3rd applicant purchased parcel No. 9X8 from Peter Masinde and obtained title in 199X6. That upon the demise of Ramadhan the 3rd applicant undertook succession process and thereafter transferred the land to his name.
8. The 2nd applicant stated that he had developed the said parcel of land where she resides with her family doing farming activities. That the plaintiff and defendant have illegally grabbed parcel No. 9X8 and



sold it to third parties. That PMW and PMW is one and the same person whose national identity card No. is 79XXX72/70. Further that her property is subject matter in ELCA No. E035 of 2023.

9. Suleiman Wamukoya Chitechi the 3rd applicant also swore a supporting affidavit dated 30th December 2024. He stated that his father the late Ramadhan Wamukoya Murunga purchased parcel No. 9X8 from Petro Masinde alias Peter Masinde before 1977 and appeared before the Land Tribunal for transfer. That he resided on the land with the late PMW. He stated that due process was followed in the acquisition of title by Ramadhan Wamukoya Murunga in 199X6. He also stated that he undertook Succession Cause No. 376 of 2018 and caused the said parcel to be transferred to his name. He reiterated that PMW and PMW was one person and that his land was subject of Appeal Case No. E035 of 2023.
10. The application was opposed Luciano Andrew Wafula the plaintiff filed replying affidavit dated 6th February, 2025. He stated that the application was based on falsehoods and that the same was incompetent and improperly before court. That the applicants have no locus standi to institute the instant application as they are not related to the plaintiff and are not his family members.
11. He stated that PMW a.k.a Petro Masinde who died on 8th May 1977 was the father of PMW who died on 4th December 2014. That the two are two different persons. He stated that in 1980 PMW fraudulently, secretly and irregularly transferred titles of parcel Nos. N. Wanga/Kholera/6X4 and N. Wanga/Matungu/3X7 into his name from Petro Masinde who had died in 1977, without carrying out succession proceedings and proceeded to improperly subdivide the suit property. That the fraud can only be cured by legal parties carrying out succession proceedings so that whoever has a claim over the estate can claim being a liability, thereof in the appropriate forum.
12. He stated that the applicants were mischievous and dishonest as they had not availed a sale agreement and have not stated from whom they purchased their parcel. That the applicant had not shown evidence to show that PMW had conducted succession relating to Petro Masinde in regard to his two parcels of land. That the applicants have never occupied the disputed parcels. That the transfer of land to the applicants was illegal. That the applicants have no locus standi to claim for orders sought. That they should wait for succession proceedings to lay their claim.
13. George Ochieng Wekesa, the defendant filed replying affidavit dated 14th March, 2025. He stated that the application contained falsehoods. That the applicants are not members of his family and do not know his family members. That Peter Masinde was his biological father and he passed on 4th December, 2014 and that Petero Masinde his grandfather died on 8th May, 1977. That Petro Masinde and Peter Masinde are two different people.
14. That his father in 1980 wrote a letter to the Land Registrar for correction of names falsely indicating that Petro Masinde and Peter Masinde was one and the same person and therefore illegally got possession of the two parcels of land. That transferring to 3rd parties by Peter Masinde were irregularly done and should be cancelled. That the applicants had not attached sale agreement and that their titles were acquired illegally. That the applicants should await the succession proceedings to make their claim.
15. Both parties filed submissions, which this court has duly considered.

Analysis and determination.

16. The court has duly considered the application, responses thereto and submissions. Two issues arise for the court's determination, namely;
 - a. Whether the applicants have met the threshold for joinder as interested parties.



- b. Whether the applicants should be declared owners of the parcels registered in their names and whether a permanent injunction should issue as prayed.
17. Order 1 Rule 10 (2) of the Civil Procedure Rules provides for the power of court to order joinder as follows;
- The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.
18. Therefore, where a person demonstrates that their presence in the proceedings pending before court is necessary for the effectual and complete determination of all questions in the suit, then they may to be joined to such proceedings.
19. In the case of *Human Rights Alliance v Mumo Matemu & 5 Others* [2015] e KLR, it was held that for a person to be joined to any proceedings as interested party, they must demonstrate that they have a recognizable stake in the subject matter of the litigation and that they will be affected by the decision of the court and that their interests will be well articulated by their presence in the suit.
20. In the instant case, the applicants have demonstrated that the parcel Nos. N. Wanga/Kholera/9X1, N. Wanga/Kholera/9X8, N. Wanga/Matungu/1XX3, N. Wanga/Matungu/9X6 are registered in their names and are subdivisions of parcel numbers N. Wanga/Kholera/6X4, N. Wanga/Matungu/3X7 originally registered in the name of Petro Masinde Waswa until 1980 and 1982 when the same were respectively transferred into their names. While the applicants maintain that due process was followed in the registration of the suit properties in their names, the respondents argue that the said registration was fraudulent, irregular and illegal.
21. That being the case, and in view of the fact that the applicants are registered proprietors of parcels arising from subdivisions of the suit properties herein, which registration the respondents allege was unlawful, I find and hold that the applicants have demonstrated having recognizable stake in these proceedings hence deserve to be joined as interested parties.
22. On the prayer for declaration of ownership and permanent injunction, I take the view that the question of ownership of the disputed property is yet to be determined and the legality of the applicants' registration is in contention, and therefore the said claim by the applicants at this stage is premature and will have to await the trial.
23. In the premises the Application dated December 30, 2024 partially succeeds and the same is hereby allowed as follows;
- a. The applicants are hereby joined to these proceedings as interested parties.
- b. The applicants are directed to file and serve their pleadings, witness statements and documents in 21 days of this ruling.
- c. Each party shall bear its own costs of the application.
24. It is so ordered.



DATED, SIGNED AND DELIVERED AT KAKAMEGA IN OPEN COURT/VIRTUALLY THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM THIS 2ND DAY OF JULY, 2025

A. NYUKURI

JUDGE

In the presence of;

Mr. Nandwa Hassan for the applicants

Mr. Shiloya holding brief For Mr. Akwala for the plaintiff

No appearance for the defendant.

Court Assistant: M. Nguyai

