



Ogola & another v Ndede & another (Sued as the legal administrators of the Estate of Festo Midega - Deceased) (Environmental and Land Originating Summons 66 of 2019) [2024] KEELC 13609 (KLR) (3 December 2024) (Ruling)

Neutral citation: [2024] KEELC 13609 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MIGORI
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS 66 OF 2019**

**M SILA, J
DECEMBER 3, 2024**

BETWEEN

CHARLES OGOLA 1ST PLAINTIFF

FREDRICK OCHIENG OGOLA 2ND PLAINTIFF

AND

JOHN OBUANGA NDEDE 1ST DEFENDANT

JASON OTUNGA FESTO 2ND DEFENDANT

**SUED AS THE LEGAL ADMINISTRATORS OF THE ESTATE OF FESTO
MIDEGA - DECEASED**

RULING

1. The application before me is that dated 26 September 2024 filed by Fredrick Ochieng Ogola who also happens to be the 2nd plaintiff in this suit. He seeks orders to substitute the 1st plaintiff, Charles Ogola, who is deceased. Upon grant of this prayer, he also seeks that the decree be amended to reflect him as the 1st plaintiff suing on behalf of the estate of Charles Ogola (deceased) to pave way for the transfer and registration of the land parcels Suna East/Area ‘B’ KWA/1155, 1423 and 1242 (the suit lands) in the names of the plaintiffs in line with the judgment. The application is based on grounds inter alia that the plaintiffs have judgment in their favour touching on the suit lands; that the court decreed that the properties be transferred to the names of the plaintiffs; that the 1st plaintiff is now deceased and transfer cannot now proceed; that the applicant is the legal representative of the estate of the 1st plaintiff; that unless the application is granted, the implementation of the judgment and decree will be delayed. In the supporting affidavit, the applicant has deposed that the 1st plaintiff died on 25 December 2023; that judgment was delivered on 29 January 2023; that in the judgment it was ordered that the suit lands be



- transferred to themselves as plaintiffs; that owing to the death of the 1st plaintiff it has not been possible to implement the decree; that he filed and obtained a grant ad litem for the estate of the 1st plaintiff.
2. The respondents oppose the application through the replying affidavit of the 1st respondent. He deposes that the Certificate of Death annexed in the supporting affidavit indicates the name 'Charles Okola Thoma' which names do not match those of the plaintiff i.e 'Charles Ogola'.
 3. At the hearing of the application Mr. Mulisa, learned counsel for the applicant, submitted that the name 'Charles Okola Thomas' is an alias of 'Charles Ogola' and this is shown in the grant ad litem annexed to the application. He further submitted that there will be no prejudice to the respondents. On her part Ms. Agade, learned counsel for the respondents, maintained that they have an issue with the Certificate of Death which shows a different person.
 4. I have considered the application. I am inclined to dismiss it. I think the issue raised as to the identity of the person who is actually deceased is fundamental. It is indeed not clear whether the person who is dead is the 1st plaintiff or another person by name of 'Charles Okola Thoma' as depicted in the Certificate of Death. When it comes to land, everybody, including the court, needs to exercise extra caution to ensure that land is transferred to the right person and not to an abstract name, for that can be recipe for fraud.
 5. In the case at hand, the 1st plaintiff is clearly indicted as 'Charles Ogola' and nowhere in the plaint or in the proceedings was it said that he has any alias. The Certificate of Death shows 'Charles Okola Thoma' and for sure, save only for the name 'Charles', the other names are different from those of the person indicated herein as the 1st plaintiff.
 6. Mr. Mulisa referred me to the Grant Ad Litem which I have looked at. It says that the grant is in respect of one 'Charles Ogola Thomas alias Charles Okola Thoma (deceased).' Again, the 1st plaintiff's name here is only 'Charles Ogola' and nowhere is it said that he goes by the names 'Charles Ogola Thomas' or 'Charles Okola Thoma.' I think more elaboration is needed before this court can be satisfied that the Death Certificate and the Grant Ad Litem relate to the plaintiff herein. For example, where is the Identity Card of the alleged deceased plaintiff? Where did the names 'Charles Ogola' or 'Charles Okola Thoma' or 'Charles Okola Thoma' come from? Are they really the same person? That, I am afraid has not been adequately addressed within this application. I would have thought that given the issue raised by the respondents, the applicant would have gone further to file a supplementary affidavit to elaborate more but none was filed.
 7. As I mentioned, and it is worth repeating, we all have to exercise great caution when it comes to land. Land needs to be transferred to the rightful person in the rightful name which would ordinarily be in accordance with the name in the identity card or passport. I have already said that no Identity Card has been presented before me. The Certificate of Death does not say that 'Charles Okola Thoma' was also known as 'Charles Ogola.' The grand ad litem talks of 'Charles Ogola Thomas alias Charles Okola Thoma' not 'Charles Ogola.' I am afraid that I cannot simply assume, with no documentary evidence in support, that the person described as 1st plaintiff in the name of 'Charles Ogola' is the same person said to be deceased and known as 'Charles Okola Thoma.' Assuming that the 1st plaintiff was not dead, would the land have been transferred to 'Charles Ogola' or to some other name? That is not explained.
 8. I think I have said enough to demonstrate that I am not persuaded to allow this application. It is hereby dismissed with costs.
 9. Orders accordingly.

DATED AND DELIVERED THIS 3RD DAY OF DECEMBER 2024.



**JUSTICE MUNYAO SILA
JUDGE, ENVIRONMENT AND LAND COURT
AT KISII**

Delivered in the presence of :

Ms. Agade for the respondents

N/A on the part of M/s Oguttu Mboya Ochwal & Partners Advocates for the applicant

Court Assistant – Tom Otieno.

