



Republic v Land Registrar, Kajiado North- Land Registry & another; Dwiko (As an Administrator of the Estate of Peter Ndolo Dwiko) (Exparte) (Environment and Land Judicial Review Case E004 of 2022) [2023] KEELC 561 (KLR) (2 February 2023) (Judgment)

Neutral citation: [2023] KEELC 561 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E004 OF 2022
MN GICHERU, J
FEBRUARY 2, 2023**

BETWEEN

REPUBLIC APPLICANT

AND

**THE LAND REGISTRAR, KAJIADO NORTH- LAND
REGISTRY 1ST RESPONDENT**

THE ATTORNEY GENERAL 2ND RESPONDENT

AND

**MUNZA DWIKO (AS AN ADMINISTRATOR OF THE ESTATE OF PETER
NDOLO DWIKO) EXPARTE**

JUDGMENT

1. The Ex Parte Applicant in the Notice of Motion dated May 31, 2022 seeks two orders as here below.
 - a. That the court be pleased to issue an order of Mandamus directed at the Kajiado North Land Registrar to delete Peter Ndolo Ndwiko (deceased) from the register and to register the Applicant Mwuanza Dwiko as the administrator and proprietor of Land Reference Numbers Ngong/Ngong/16184, 29785, 29786 and 29787 and issue certificates of title pursuant reflecting the same.
 - b. The costs of this application be borne by the Respondents.
2. The motion is supported by a verifying affidavit sworn by the ex parte Applicant dated April 25, 2022. The affidavit has fifteen paragraphs, five subparagraphs and ten annexures.



3. In a nutshell, the Ex parte Applicant is saying that he is the lawful heir of his deceased father in respect of the suit property. He has done everything possible to have the suit property registered in his name but the first Respondent has failed to do so. In one of the many visits to the first Respondent's office, the title deeds that had been typed and awaiting execution by the first Respondent were torn up in the presence of the advocate of the Ex Parte Applicant.

The reason given for this, was failure by the advocate, to present the original will of the father of the Ex Parte Applicant.

4. The Notice of Motion is unopposed because the Respondents did not file any replies even though they were served as per the affidavit of service filed on September 5, 2022 and dated September 21, 2022.
5. I have carefully considered the Notice of Motion in its entirety including the affidavit, annexures, statement facts relied upon, submissions and case law cited therein.

I make the following findings.

6. Firstly, I find that the Ex Parte Applicant has the right to be served in an expeditious, efficient, lawful, reasonable and procedurally fair manner. The first Respondent has a duty to serve the Ex Parte Applicant in the above mentioned manner.

This right of the Ex Parte Applicant and the duty of the first Respondent are to be found in Article 47(1) of the Constitution of Kenya.

7. Secondly, the first Respondent has power under Section 14 (1) (c) of the Land Registration Act to refuse to proceed with any registration if a document required for such registration is not produced. The provision is as follows.

' The Chief Land Registrar, County Land Registrars or any other Land Registrars may, in addition to the powers conferred on the office of the Registrar by this Act -

- (C) Refuse to proceed with any registration of any instrument, certificate or other document, plan, information or explanation required to be produced or given is withheld or any act required to be performed under this Act is not performed'.

8. Thirdly, a perusal of paragraph 22 of the affidavit dated March 16, 2022 sworn by Omollo Brian Odhiambo reads as follows, inter alia,

' That instead of signing them, he tore the four title deeds in front of me and told me to produce the original will'

9. Fourthly it is within the powers of the first Respondent to demand for the original will from the Ex Parte Applicant or his counsel.

10. For the above reasons, I find that an order of Mandamus is suitable in all the circumstances of this case which I hereby issue as follows;

- a The first Respondent to consider the Ex Parte Applicant's application for registration as the owner of the suit parcels.
- b. The first Respondent to provide the Ex – Parte Applicant with a check list of the documents that are necessary for such registration and the requisite fees payable by the Ex Parte Applicant.



- c. Thereafter the first Respondent after receiving all the requisite documents to register the suit land in the name of the Ex Parte Applicant within reasonable time and in any case within 30 days.
- d. No order as to costs.

It is so ordered.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 2ND DAY OF FEBRUARY, 2023.

M.N. GICHERU

JUDGE

