



Abich v Amula (Sued as the Legal Representative of Amula Atudo - Deceased) (Environment & Land Case 7 of 2022) [2023] KEELC 16088 (KLR) (14 March 2023) (Ruling)

Neutral citation: [2023] KEELC 16088 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY
ENVIRONMENT & LAND CASE 7 OF 2022
GMA ONGONDO, J
MARCH 14, 2023**

BETWEEN

KENNEDY OCHIENG ABICH PLAINTIFF

AND

**JOSHUA OKINYI AMULA (SUED AS THE LEGAL REPRESENTATIVE OF
AMULA ATUDO - DECEASED) DEFENDANT**

RULING

1. This ruling in lieu of judgment is provoked by the applicant/defendant's Notice of Motion application dated February 7, 2023 and filed herein on March 8, 2023.
2. The applicant through the firm of Aluoch Odera & Nyauke Advocates, via the said application, has sought the orders infra:
 - a. Spent
 - b. The honourable court be pleased to suspend judgment fixed for March 14, 2023 and thereby place this matter again before the court for further orders.
 - c. Upon granting prayer (b) above, the court be pleased to reopen this case for defence to furnish the honourable court with new and compelling evidence to be considered before the final disposal of this matter.
 - d. Further, the honourable court is pleased to admit pleadings in Homa Bay ELC Case No 19 of 2021 and the said Homa Bay ELC Case No 19 of 2021 consolidated with this file for final consideration and disposal.
 - e. The cost of this application be provided for to abide the outcome of the main suit herein.



3. This court subscribes to the Court of Appeal decision in *James Kanyiita Nderitu & another v Marios Philotas Ghikas & another [2016] eKLR* where the court stated that the right to be heard before an adverse decision is taken against a person is fundamental and permeates our entire justice system (see also *Halsbury's Laws of England, 5th Edition 2010 Vol 61 Para 639*).
4. In the interest of justice and pursuant to, inter alia, Articles 48 and 50 (1) of the *Constitution* of Kenya, 2010, this court hereby orders and directs that the application takes priority over delivery of judgment in the main suit.
5. The respondent's counsel to file and serve reply to the application and the applicant's counsel may file further affidavit within 10 days from the date of service of the reply.
6. The application be heard by way of written submissions. So, the applicant's counsel and the respondent's counsel to file and serve submissions within 10 days from the date of service of the reply to the application and 10 days from the date of service of the applicant's submissions respectively.
7. This application is fixed for further directions on April 17, 2023.
8. Orders accordingly.

DELIVERED, DATED AND SIGNED THIS 14TH DAY OF MARCH, 2023.

G.M.A ONGONDO

JUDGE

Present

Odhiambo instructed by Ms. Odera, learned counsel for the defendant/applicant

Ms. Oriche instructed by Mr. Migele, learned counsel for the plaintiff/respondent

Edith and Mutiva- Court Assistants

