



**Odhiambo v Onyango; Okessa & 8 others (Applicant) (Environment & Land Case 139 of 2013) [2023] KEELC 21313 (KLR) (8 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21313 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT BUSIA  
ENVIRONMENT & LAND CASE 139 OF 2013  
BN OLAO, J  
NOVEMBER 8, 2023**

**BETWEEN**

**ERNEST ODHIAMBO ..... PLAINTIFF**

**AND**

**PETER GABRIEL ONYANGO ..... DEFENDANT**

**AND**

**JOACHIM MWANDALE OKESSA ..... APPLICANT**

**PIUS OGAYE ..... APPLICANT**

**JOSEPH AFUBWA ..... APPLICANT**

**PASCAL MWANDALE ANDERA ..... APPLICANT**

**ROBERT OJIAMBO ORIENDO ..... APPLICANT**

**GODFREY GORI OKIMBA ..... APPLICANT**

**JAMES KABA ODHIAMBO ..... APPLICANT**

**ELVIS OUMA ORIEDO ..... APPLICANT**

**KEVIN OJIAMBO ORIEDO ..... APPLICANT**

**RULING**

1. This long standing dispute over the ownership of the land parcel No Bunyala/mudembi/1735 (the suit land) between Ernest Odhiambo (the Plaintiff) and Peter Gabriel Onyango (the deceased Defendant now substituted with Vincent Gadius Onyango) has a long history. It appears to have commenced at Kakamega High Court as Civil Case No 18 of 2006. It was also adjudicated in other fora including in the Land Adjudication Committee of Mudembi as far back as 1972. It was also the subject of litigation



- in the subordinate Court as Busia Chief Magistrate's Court Civil Suit No 116 of 2015. One John Oriedo Anyande subsequently joined the proceedings as an Interested Party.
2. The dispute appeared to be finally heading towards some conclusion when the hearing commenced before me on 13<sup>th</sup> March 2023 following a myriad of applications. The Plaintiff testified and called his witness Sebastian Okello (PW2). It was then adjourned to 26<sup>th</sup> April 2023 to allow counsel for the Plaintiff MS Achala time to file and serve some documents arising out of Busia High Court Succession Cause No 104 of 2015 and the current Green Card to the suit land.
  3. When the hearing resumed on 26<sup>th</sup> July 2023, Ms Achala informed the Court that some Interested Parties had filed a Notice of Motion dated 5<sup>th</sup> June 2023 seeking to be enjoined in these proceedings. That application is the subject of this ruling.
  4. The application has been filed by Joachim Mwandale Okessa, Pius Ogaye, Joseph Afubwaa, Pascal Mwandale Andera, Robert Ojiambo Oriendo, Godfrey Gori Okimba, James Kaba Odhiambo, Elvis Ouma Oriedo And Kevin Ojiambo Oriedo (the 1<sup>st</sup> to 9<sup>th</sup> Applicants/Interested Parties). It is premised under the provisions of Articles 40, 22, 48, 50 and 159 of *the Constitution*, Section 13 of the *Environment and Land Court Act*, Sections 1, 3A and 6 of the *Civil Procedure Act* and Order 51 Rule 1 of the *Civil Procedure Rules*. It is based on the grounds set out therein and supported by the affidavit of the 1<sup>st</sup> Applicant/Interested party dated 5<sup>th</sup> June 2023.
  5. The gravamen of the application is that the Applicants/Interested Parties and their families comprised of over 20 households have lived on the suit land being the only home they have known since birth and therefore they are the original owners thereof. It is therefore wrong for the Plaintiff to have filed this suit by way of Originating Summons while excluding the Applicants/Interested Parties. That this dispute has been litigated severally and in one such case being a special Court presided over by the Special District Commissioner Mr Anthony M Waituka on 15<sup>th</sup> July 1986, it was held that the suit land belongs to Oundo Oriedo and his relatives including the father to the deceased Defendant Gabriel Ombara Anyande now substituted with Vincent Gadius Onyango. Therefore, the Originating Summons by the Plaintiff seeking to dislodge the Applicants/Interested Parties from the suit land amounts to unfair and unjust enrichment and if it succeeds, the families of the Applicants/Interested Parties will be rendered destitute yet some of them are over 60 years old. The Applicants/Interested Parties therefore invite this Court to look at the Historical background of this dispute.
  6. Annexed to the application are the following documents:
    1. Authority signed by the 2<sup>nd</sup> to 8<sup>th</sup> Applicants/Interested Parties authorizing the 1<sup>st</sup> Applicant/Interested Party to sign all documents and testify on their behalf.
    2. Judgement of Anthony M. Waituka Special District Commissioner Busia (K) in Ministers Land Appeal case No 1117 of 1986 involving Oundo Oriedo as Appellant and Peter Onyango as Respondent.
    3. Green card for the land parcel No Bunyala/Budembi/1735.
    4. Letter dated 11<sup>th</sup> May 2015 addressed to the District Surveyor Busia by the Director of Land Adjudication on the implementation of the Appeal No 1117 of 1986 over land parcel of 1735 Mudembi Adjudication Section.
    5. Letter dated 22<sup>nd</sup> January 2010 and addressed to the District Surveyor Busia by the Director of Land Adjudication following the Minister's Appeal No 1117 of 1986 over the land parcel NO 1735 Mudembi Adjudication Section.



6. Grant of Letters of Administration issued to John Oriedo Wanyande as Administrator to the Estate of Thomas Oundo Oriedo on 20<sup>th</sup> November 2018 in BUSIA Chief Magistrate's Court Succession Cause No 584 of 2018.
7. The application is opposed by the Plaintiff who has filed a replying affidavit dated 4<sup>th</sup> August 2023 in which he has deposed inter alia, that he too holds a Grant of Letters of Administration issued to him on 22<sup>nd</sup> November 2004 in respect to the Estate of Thomas Oundo Oriedo and the Applicants/Interested parties are not related to him at all and neither have they lived on the suit land with their 20 households as alleged. That his claim based on adverse possession is filed on behalf of the Estate of Thomas Oundo Oriedo and his family and the Applicants/Interested Parties are trying to arm twist this Court. In any case, the judgment of the Special Commissioner Busia was that the suit land be divided into two parcels so that Oundo Oriedo, Gabriel Mbala Anyando, Zakaria Okello Musumba, Silvasio Inganga and Pius Ongaya are registered as owners of one parcel of land and Absalom Oriedo, Jacob Lubaro, Michael Andera and Christopher Ojiambo Okesa are registered as proprietors of the other parcel of land which judgment has never been implemented. This application is an afterthought after the Applicants/Interested Parties realized that the Plaintiff and his family have been in full use and occupation of the suit land and are entitled to it by way of adverse possession. This application should therefore be dismissed with costs and allow this suit to continue for final determination between the Plaintiff and the Defendant.
8. Annexed to the application is a Limited Grant Ad Litem issued to the Plaintiff in Busia High Court P&a Cause No 3482 of 2004 in respect to the Estate of Thomas Oundo Oriedo for purposes of filing this suit.
9. The Defendant did not file any response to the application.
10. The application has been canvassed by way of written submissions filed by Mr Wangira instructed by the firm of Wangira Okot & Company Advocates for the Applicants/Interested Parties and by Ms Achala instructed by the firm of Abalo & Company Advocates for the Plaintiff.
11. I have considered the application, the rival affidavits and annexures thereto as well as the submissions by counsel.
12. Although not cited by the Applicants/Interested parties, Order 1 Rule 10(2) of the [\*Civil Procedure Rules\*](#) provides that:

“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.” Emphasis mine.

An Interested party is defined in [\*Black's Law Dictionary\*](#) 10<sup>th</sup> Edition as:

“A party who has a recognizable stake (and therefore standing) in a matter.”



In the case of *Francis K. Muruatetu & Another -v- Republic & 5 Others*, Supreme Court Petition No 15 of 2015 as consolidated with Petition No 16 of 2015, the Court identified the following elements that must be demonstrated before a party is enjoined in any proceedings as an Interested Party:

- 1: “The personal interest or stake that the party has in the matter must be set out in the application. The interest must be clearly identifiable and must be proximate enough to stand apart from anything that is merely peripheral.
  - 2: The prejudice to be suffered by the Intended Interested Party in case of non-joinder must also be demonstrated to the satisfaction of the Court. It must also be clearly outlined and not something remote.
  - 3: Lastly, a party must, in its application, set out the case and/or submissions it intends to make before the Court, and demonstrate the relevance of those submissions. It should also demonstrate that these submissions are not merely a replication of what the other parties will be making before the Court.”
13. Having looked at the Applicants/Intended Interested Party’s application together with the supporting affidavit, annexures and submissions, I am persuaded that they have demonstrated an identifiable interest in the suit land by way of occupation thereof. That interest is not remote at all. Indeed they have presented a satisfactory overview of their stake in these proceedings. The Plaintiff and Defendant will not be prejudiced by the enjoinder of the Applicants/Interested parties in these proceedings. If anything, I am satisfied that their participation will assist the Court to “effectually and completely” adjudicate and “settle all questions involved” in this long standing dispute. The Applicants/Interested Parties Notice of Motion dated 5<sup>th</sup> June 2023 is for allowing.
14. Even as this Court allows that application, I must caution the Applicants/Interested Parties of the caveat set out in the case of *Francis Muruatetu -v- Republic* (supra) where the Court said:
- “Therefore, in every case, whether some parties are enjoined as Interested Parties or not, the issues to be determined by the Court will always remain the issues presented by the principal parties, or as framed by the Court from the pleadings and submissions or the principal parties. An Interested Party may not frame its own fresh issues or introduce new issues for determination by the Court. One of the principles for admission of an Interested Party is that such a party must demonstrate that he/she has a stake in the matter before the Court. That stake cannot take the form of an altogether a new issue to be introduced before the Court.” Emphasis mine.
15. The Applicants/interested parties Notice of Motion dated 5<sup>th</sup> June 2023 is merited. I allow it and make the following orders bearing in mind that there is already an earlier Interested party one John Oriedo Anyande enjoined in these proceedings as a 1<sup>st</sup> Interested Party:
1. The Applicants/Interested Parties are enjoined in these proceedings but they will be the 2<sup>nd</sup> to 10<sup>th</sup> Interested Parties respectively.
  2. The hearing of this suit in which only the Plaintiff and his witness had testified will commence de novo to allow the 2<sup>nd</sup> to 10<sup>th</sup> Interested parties articulate their interests in the suit land.



3. The 2<sup>nd</sup> to 10<sup>th</sup> Interested parties should within 7 days of the delivery of this ruling file and serve their respective statements and documents always bearing in mind the caveat set out in the case of Francis Muruatetu -v- R (supra).
4. Joachim Mwandale Okessa now the 2<sup>nd</sup> Interested Party shall file any statement and documents on behalf of the 3<sup>rd</sup> to 10<sup>th</sup> Interested parties as per the authority granted to him.
5. The Plaintiff, Defendant and 1<sup>st</sup> Interested Party shall, if they so wish, file and serve any further additional documents within 7 days of service upon then of the statement and documents by the 2<sup>nd</sup> to 10<sup>th</sup> Interested Parties.
6. The costs shall be in the cause.

7. Mention on 23<sup>rd</sup> November 2023 to confirm compliance and take a date for the hearing de-novo.

**BOAZ N. OLAO**

**JUDGE**

**8<sup>TH</sup> NOVEMBER 2023**

Ruling dated, signed and delivered on this 8<sup>th</sup> day of November 2023 by way of electronic mail with notice to the parties.

**BOAZ N. OLAO**

**JUDGE**

**8<sup>TH</sup> NOVEMBER 2023**

