



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kirai v Onger & another (Civil Case 168 of 2004)  
[2024] KEHC 3972 (KLR) (19 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 3972 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
CIVIL CASE 168 OF 2004  
RE ABURILI, J  
APRIL 19, 2024**

**BETWEEN**

**GEORGE MAKAHIA KIRAI ..... PLAINTIFF**

**AND**

**MESHACK ONGER ..... 1<sup>ST</sup> DEFENDANT**

**KENNEDY OMONDI ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. This suit was initiated in this court on 9<sup>th</sup> November 2004 and amended vide Plaint dated 14<sup>th</sup> February 2005.
2. The Plaintiff was George Wakahia Kirai while the Defendants are Meshack Onger and Kennedy Omondi.
3. The Plaintiff sued the Defendants jointly seeking for orders declaring the Plaintiff to be the absolute proprietor of parcel No Kisumu/Kasule/914 and Kisumu/Kasule/1214, an order of permanent injunction restraining the defendants from using or interfering with the Plaintiff's quiet possession of the said parcels of land; an order directing the District Land Registrar, Kisumu to remove and cancel the caution registered against the title Kisumu/Kasule/914 and general damages for trespass to land.
4. An initial interlocutory injunction was issued by B. K. Tanui J on 14<sup>th</sup> February 2005.
5. The case was heard on 14<sup>th</sup> March 2006 and Judgment was delivered on 21<sup>st</sup> March 2006 by Warsame J granting the prayers sought in the plaint.
6. The Defendants have now filed an application dated 9<sup>th</sup> April 2024 under certificate of urgency seeking to set aside the Judgment entered on 21<sup>st</sup> March 2006, stay of execution of decree and substitution of the Plaintiff with Nicholas Wakahia as the Plaintiff is said to be deceased.



7. From the onset, this matter was concluded and the file was sent to the archives from where it was retrieved.
8. The claim is ownership and title to and occupation of land. As the Defendants seek to relitigate over a matter where jurisdiction of this court ceased to exist in 2010 via Articles 162 (2) (b) and 165 (5) (b) of the Constitution which bars this court from hearing and determining disputes relating to ownership, occupation and title to land, the only order I can make is to refer and transfer this new dispute to the Environment and Land Court for further directions, hearing and final determination.
9. Accordingly, I find that this court is devoid of jurisdiction to resuscitate this case. I decline to certify the application dated 9<sup>th</sup> April 2024 as urgent and direct the file to be transferred to the Environment and Land Court, Kisumu for further consideration.
10. This file is closed from the High Court.
11. I so order.

**DATED, SIGNED AND DELIVERED AT KISUMU THIS 19<sup>TH</sup> DAY OF APRIL, 2024**

**R. E. ABURILI**

**JUDGE**

