



**Ong'ore (Suing as the Administratrix of the Estate of Samuel Ong'ore Obuya) v Okero
(Environment & Land Case 158 of 2015) [2025] KEELC 3901 (KLR) (13 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3901 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII
ENVIRONMENT & LAND CASE 158 OF 2015**

M SILA, J

MAY 13, 2025

BETWEEN

**FLORENCE ATIENO ONG'ORE (SUIING AS THE ADMINISTRATIX OF THE
ESTATE OF SAMUEL ONG'ORE OBUYA) PLAINTIFF**

AND

PETER OTIENO OKERO DEFENDANT

RULING

1. The application before me is that dated 19 February 2025 filed by the plaintiff. She seeks orders to restrain Cyprian Otieno Omollo, Jeremiah Ogola Okumu, the defendant, and the Migori County Surveyor from interfering with the land parcel North Sakwa/Kamresi/15 now subdivided into the land parcels North Sakwa/Kamresi/1367 and 1368. She further seeks to have Cyprian Otieno Omollo, Jeremiah Ogola Okumu, and the Migori County Surveyor to be joined as defendants in the suit. There is also an order to transfer the case herein to the Migori Chief Magistrate for disposal. The application is not opposed.
2. To put matters into context, this suit was commenced through a plaint filed on 24 April 2015. In the plaint, the applicant pleaded to be the widow and legal representative of one Samuel Ongore Obuya who died on 4 June 2000 as the registered proprietor of the land parcel North Sakwa/Kamresi/15. She pleaded that on 17 March 2010, the defendant sued her before the Migori/Rongo District Land Disputes Tribunal in Land Case No. 181 and the award thereof was confirmed in Rongo Senior Resident Magistrate's Court Miscellaneous Application No. 20 of 2010 and a decree issued giving 3 acres of the land to the defendant. It was pleaded that the applicant appealed to the Nyanza Land Disputes Appeals Committee in Appeal No. 059 of 2010 which appeal was dismissed. She pleaded that she challenged the dismissal of the appeal in High Court Petition No. 5 of 2011 which was however dismissed. She then filed an appeal before the Court of Appeal, being Kisumu Appeal Case No. 10 of 2010 which she withdrew. She pleaded that the Land Disputes Tribunal did not have jurisdiction to entertain the dispute and further that she did not have locus standi to be sued at the time. In the plaint,



- she sought orders that the land parcel North Sakwa/Kamresi/15 belongs to the estate of the deceased; a declaration that the award of the Tribunal is null and void; and a declaration that the subdivision of the said land was unlawful; a permanent injunction to restrain the defendant from the parcel North Sakwa/Kamresi/15; general damages for trespass and mesne profits. I have not seen a defence filed.
3. On 24 March 2017 the case was dismissed for want of prosecution. The applicant later applied to reinstate the suit and the application was allowed in a ruling delivered on 6 November 2024.
 4. In this application, the applicant states that the Migori County Surveyor has issued notice to herself, the defendant, and one Cyprian Otieno Omolo, that he will visit the land parcels North Sakwa/Kamresi/1367 and 1368 to identify the boundaries. She avers that this took her aback and she was shocked that the land parcel North Sakwa/Kamresi/15 has been subdivided into the land parcels No. 1367 and 1368. She avers that the defendant transferred the land parcel No. 1368 into the name of Cyprian Otieno Omolo whereas the land parcel No. 1367 was left in name of the deceased. She thus wants to join the said Cyprian Otieno Omolo and the Migori Land Registrar as parties to the suit.
 5. As I mentioned, the application is not opposed. I have given it due consideration. The applicant wants orders of injunction to stop any identification of boundaries, joinder of some parties, and transfer of this case to Migori Magistrates' Court.
 6. I have no issue with granting an order of joinder but this must be based upon an amendment of the plaint. I have not seen any application to amend the plaint nor is there any annexed amended plaint. I will grant the order of joinder but the applicant must proceed to amend the plaint accordingly and I hereby grant leave to amend the plaint within 14 days.
 7. On the prayer for injunction I am unable to grant it based on the pleadings before me. The pleadings before me only mention the land parcel North Sakwa/Kamresi/15. The application for injunction seeks to stop interference with the land parcels North Sakwa/Kamresi/1367 and 1368 but so far there are no pleadings touching on these two parcels of land. Neither can this court proceed to issue an order of injunction to persons who are yet to be made parties and against whom the court has not seen any pleadings against. I would think that the right step is for the applicant to first proceed to amend the plaint then seek an order of injunction based on the amended plaint. I have already stated that I do not even have the benefit of a draft amended plaint to see what the applicant claims. I will therefore only rest at issuing the order of amendment of plaint as I have stated above and it is after amendment that the applicant can now seek orders of injunction if she is inclined to do so.
 8. There is the prayer to transfer the case to the Migori Magistrates' Court. I cannot grant this order. The prayers sought in the plaint include prayers for a declaration that the award before the Land Disputes Tribunal was null and void. The Magistrates Court, just like the Land Disputes Tribunal, is a subordinate court. One subordinate court cannot have jurisdiction to set aside and/or nullify an order of another subordinate court. Such order can only be made by a superior court which in this instance would be the Environment and Land Court.
 9. What I will do is order the transfer the case to Migori Environment and Land Court for reason that the subject matter of the suit is in Migori and there is now an Environment and Land Court in Migori.
 10. There will be no orders as to costs.
 11. Orders accordingly.

DATED AND DELIVERED THIS 13 DAY OF MAY 2025

JUSTICE MUNYAO SILA



JUDGE, ENVIRONMENT AND LAND COURT

AT KISII

Delivered in the presence of :

Ms. Akinyi for the applicant

No appearance for the respondents

Court Assistant : Michael Oyuko

