



REPUBLIC OF KENYA



**KENYA LAW**  
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**Shoka v Ndoro & 3 others (Environment & Land Case  
64 of 2008) [2025] KEELC 4728 (KLR) (25 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4728 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ENVIRONMENT & LAND CASE 64 OF 2008**

**FM NJOROGE, J  
JUNE 25, 2025**

**BETWEEN**

**JONATHAN MSUKO SHOKA ..... PLAINTIFF**

**AND**

**SAMUEL GONA NDORO ..... 1<sup>ST</sup> DEFENDANT**

**JOSEPH KADENGE NDORO ..... 2<sup>ND</sup> DEFENDANT**

**EDWARD MZEE KAREZI ..... 3<sup>RD</sup> DEFENDANT**

**DAVID NYIRO NDORO ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. The application for determination is dated 5/8/2021 and it is seeking the following orders:
  - a. That Jonathan Msuko Shoka do sign or execute mutation forms transfer and any other document to enable Samuel David Ndoro Joseph Kadenge Ndoro and David Nyiro Ndoro obtain title deeds for the respective portions of title number Kilifi/Ngerenyi/621;
  - b. That alternatively, the documents referred to in (1) above be signed or executed by the Deputy Registrar or any officer of this honorable court;
  - c. That the respondent do bear the costs of this application.
2. The application is premised on the grounds at its foot which are also in the supporting affidavit of the 3<sup>rd</sup> defendant applicant. Briefly the grounds are that the respondent is the registered proprietor of the suit land as per the records in the land office; that there exists an award by the Land Disputes Tribunal and a judgment of the Magistrate's court to that effect; that Jonathan Msuko Shoka, the plaintiff/respondent filed this case as well as Malindi Petition Number 5 Of 2013 which suit and petition were dismissed; that Jonathan subsequently declined to execute or sign the mutation forms; that the land



has been subdivided pursuant to the Tribunal Award and Judgment of this court but the process of issuance of title cannot be completed without execution by Jonathan of the requisite forms.

3. The Respondent, Jonathan Msuko Shoka, filed a replying affidavit dated 11/2/2025 opposing the application. He deposes that the application is an abuse of court process, an afterthought, and should be dismissed with costs.
4. The Respondent asserts that the application is filed on behalf of the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> defendants/applicants, allegedly seeking to acquire their respective portions of land parcel KILIFI/NGERENYI/621. However, he contends that the 1<sup>st</sup> and 2<sup>nd</sup> defendants/applicants have been deceased for over 5 years, and the current applicant lacks the legal capacity to represent them.
5. He further states that the application is premised on a Land Disputes Tribunal award which he claims is strange to him. He avers that he was not a party to the Tribunal proceedings, and therefore the award is not binding upon him. Additionally, he denies that the said award was ever forwarded to the Environment and Land Court, putting the applicant to strict proof.
6. The Respondent contends that the reliefs sought in the application were neither part of the main suit nor of the counterclaim, and no substantive suit has ever been filed by the applicants seeking to subdivide or transfer the suit land. He argues that such orders ought to be granted only upon a full hearing.
7. Lastly, he denies the applicant's claim that he acquired the title deed during the pendency of the suit, asserting instead that he was issued the title in 2002, long before the current suit.
8. The Application was canvassed by way of written submissions.

#### **Defendants/applicants' Submissions**

9. Counsel for the Defendants submit that the fact that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants are deceased does not mean that execution of judgment cannot proceed. He states that Section 37 of the *Civil Procedure Act* provides that execution of judgment can proceed, after the judgment debtor has passed on, against his legal representatives. That since the Respondent is still alive, that provision is not applicable in the present case. He adds that the 3<sup>rd</sup> Defendant has authority to plead and give evidence on behalf of the other Defendants.
10. To counsel, that the Respondent was not a party to the case before the Land Disputes Tribunal, does not mean he should not be ordered to execute the necessary documents because the Court made a finding that the Respondent obtained the title deed for the suit property contrary to the provisions of Section 8 of the *Land Control Act* and Section 3 of the *Law of Contract Act*.

#### **Respondent's Submissions**

11. The Respondent framed 4 issues for determination. Firstly, whether the Applicants have locus standi to file the present application. In relation to this, counsel submits that under Order 24 of the Civil Procedure Rules, a deceased person cannot institute or sustain proceedings and another person cannot purport to represent them without the requisite legal authority. To counsel, the application does not meet the threshold as required by law and the same should thus be dismissed with costs.
12. On whether the orders sought should be granted based on the alleged Tribunal award and whether that decision is binding upon the Respondent, counsel argues that the Tribunal had no jurisdiction in the first place to determine ownership or order transfer or subdivision of the suit property. He adds that the Respondent was not a party to the proceedings therein, thus the decision not binding upon him.



13. Counsel urged the court to dismiss the application with costs.

### **Analysis and Determination**

14. Having considered the application dated 5<sup>th</sup> August 2021, the affidavit in support thereof, the replying affidavit, the submissions of both parties, and the applicable law, the court frames the following issues for determination:
- i. Whether the applicants have the requisite locus standi to bring this application;
  - ii. Whether the Respondent should be compelled to execute the documents necessary to give effect to the subdivision;
  - iii. Who should bear the costs of the application.
15. On the issue of locus standi, it is not disputed that the 1<sup>st</sup> and 2<sup>nd</sup> defendants are deceased. Under Order 24 Rule 4 of the Civil Procedure Rules, any proceedings on their behalf ought to be undertaken by a duly appointed legal representative. However, the 3<sup>rd</sup> Defendant, who is alive and was a party to the suit, has sworn the affidavit in support of the application and is entitled to seek implementation of the judgment.
16. As for the Respondent's claim that he was not party to the Land Disputes Tribunal proceedings and that the Tribunal lacked jurisdiction, such arguments were raised and rejected during the hearing of the main suit. The principle of finality in litigation applies. Once a judgment is delivered and is not appealed or set aside, the unsuccessful party cannot reintroduce matters already determined.
17. The effect of the judgment dated 10/12/2010 dismissing the Plaintiff's claim and affirming the validity of the defendants' interests is that execution must follow in terms of the judgment of the Magistrate's Court, which was affirmed by this Court. The Respondent cannot now refuse to give effect to a judgment of the court by declining to sign mutation or transfer forms. In such circumstances, the law allows the Deputy Registrar to execute the required documents on his behalf to ensure the decree is not defeated.
18. In light of the foregoing, the Court finds that the application dated 5/8/2021 is merited. Accordingly, the Court orders as follows:
- a) The Respondent, Jonathan Msuko Shoka, shall within 30 days from the date hereof execute all necessary documents, including mutation and transfer forms, to effect transfer of the relevant portions of land parcel Kilifi/Ngerenyi/621 to the defendants/applicants;
  - b) In default of compliance, the Deputy Registrar of this Court shall execute all such documents in place of the Respondent to facilitate the issuance of title deeds to the respective defendants;
  - c) The costs of this application shall be borne by the Respondent.

**DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 25<sup>TH</sup> DAY OF JUNE 2025.**

**MWANGI NJOROGE**

**JUDGE, ELC, MALINDI.**

