



**Nyawa v Sub-County Land Adjudication & Settlement Officer Kinango & another
(Miscellaneous Application E009 of 2024) [2025] KEELC 5825 (KLR) (19 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 5825 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KWALE
MISCELLANEOUS APPLICATION E009 OF 2024**

**LL NAIKUNI, J
JUNE 19, 2025**

BETWEEN

NYAWA NYALE NYAWA APPLICANT

AND

**THE SUB-COUNTY LAND ADJUDICATION & SETTLEMENT OFFICER
KINANGO 1ST RESPONDENT**

THE HON ATTORNEY GENERAL 2ND RESPONDENT

RULING

I. Introduction

1. This Honourable Court is called to determine the Notice of Motion application dated 21st August, 2024 by Nyawa Nyale Nyawa, the Applicant herein . It was brought under the provisions of order 51 rule 1 of the [Civil Procedure Rules](#) and Sections 3, 3A & 63(e) of the [Civil Procedure Act](#), Cap. 21.

II. The Applicant's case

2. The Applicant sought for the following orders: -
 - a. That the Applicant herein be granted leave to file an Objection with Mazola Land Adjudication Committee on Parcels of land known as Plot No.403 Mazola Adjudication section measuring Approximately 1246.15 Ha.
 - b. That the costs of this Application be provided for.
3. The application by the Applicant was premised on the grounds, testimonial facts and the averments made out under the 9 Paragraphed annexed affidavit of Nyawa Nyale Nyawa, the Applicant herein. The Deponent averred that:



- a. The deponent narrated that he was a resident of Mazola Adjudication section Plot No.403 measuring approximately 1246.15 Hectares. Annexed and Marked as “NN - 1” being the Site plan for Mazola Adjudication section Plot No.403.
- b. The Deponent had obtained Consent from the Sub - County Adjudication Officer Section as outlined under section 30 (1) of [Cap 284](#) to file Land case on Plot No.403-Mazola Adjudication. Annexed and Marked as “NN - 2” was the said Consent letter dated 11th July, 2024.
- c. The deponent learnt from reliable sources that the Adjudication process was in its final stages and hence necessitating this Application.
- d. The Deponent was bound to suffer irreparable loss and damage if these Orders were declined.
- e. The Deponent was not aware of the relevant sections of the law on land hence the delay in filing an objection at the earliest stages of the Adjudication process. (Annexed and Marked “NN-3(a) (b)” Notice issued dated 19th March, 2024 and Response dated 09th April, 2024).
- f. The land in question was community land housing over 200 families and his chances of being rendered homeless were high.

III. Submissions

4. On 11th March, 2025 while all the parties were present in Court, they were directed to have the Notice of Motion application dated 21st August, 2024 be disposed of by way of written submissions and all the parties complied. Unfortunately, by the time of penning down this Ruling, the Honourable Court had not managed to access written submissions by any of the parties herein neither from the Judiciary CTS Portal nor elsewhere. Thus, it proceeded to render the Ruling on its own merit whatsoever.

IV. Analysis and Determination

5. I have carefully read and considered the pleadings herein and the relevant provisions made by the by the parties. In order to arrive at an informed decision, the Honorable Court has framed the following two (2) issues for its determination. These are:-
 - a. Whether the Notice of Motion application dated 21st August, 2024 is merited.
 - b. Who will bear the Costs of Notice of Motion application 21st August, 2024.

Issue No. a). Whether the Notice of Motion application dated 21st August, 2024 is merited.

6. Under this sub – title, the main substratum is whether based on the principles of natural Justice, Equity and Conscience the Applicants would be entitled to lodge their objection before the Land Adjudication process under the provision of the [Land Adjudication Act](#). Cap. 284 of the Laws of Kenya (Hereinafter referred to as “The Act”). The background of this matter, and an analysis of the pleadings indicates that the Applicant is an ordinarily resident within the Mazola Adjudication section Plot No.403 measuring approximately 1246.15 Hectares. As outlined under the provision of Section 30 (1) of the [Act](#), the Applicant obtained a Consent to file Land case on Plot No.403-Mazola Adjudication section from the Sub-County Adjudication officer. The Adjudication process was in its final stages and hence necessitating this Application.



7. The provision of Section 30 (1) of the *Land Adjudication Act* which is couched in mandatory terms states as follows:-

“Except with the consent in writing of the adjudication officer, no person shall institute, and no court shall entertain, any civil proceedings concerning an interest in land in an adjudication section until the adjudication register for that adjudication section has become final in all respects under section 29(3) of this Act.”

8. The effect of the afore – going provision of law is that unless the register has become final under section 29(3) of the *Land Adjudication Act*, all courts are mandatorily prohibited from entertaining disputes concerning land falling within adjudication areas. From the very onset, it is instructive to note that this is one of those unique legislations enacted in the Republic of Kenya that has a full fledged internal self resolving dispute mechanisms and whereby the Court of law is completely kept off form causing any interference. The only exception to this legal position is founded under the provision of Section 30 (1) or should one be aggrieved by the Minister’s appeal under Section 29 of the *Act*, then a party would prefer and seek for prerogative writs in form of either Certiorari; Mandamous or Injunction against the manner in which the process was handled and not its merits. Resultantly, the Honourable Court have been quick to apply the Doctrine of Exhaustion whenever confronted with any disputes instituted without adhering to this Rule. However, the Honourable Court observes that from the instant case, the Applicant has strictly adhered to the laid - down rules.

9. Be that as it may, being mindful of the spirit of our constitution on the principles of “fair hearing” as enshrined under the provision of Articles 25(c), 47, 48 & 50(1) & (2) of the *Constitution of Kenya*, 2010 which provides that: -

“Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body”.

10. It is only fair that this court allows the applicant a right to present his claim. It is trite law that he who seeks equity must do equity and delay defeats equity. The Consent was granted on 11th July, 2024 which was based on the occurrence of events mentioned in this Ruling to institute civil proceedings. The Application has not been contested and in that case there has not been any demonstration of how the Respondents shall suffer any prejudice in the event the orders sought were granted.

11. Arising from the above I find the Notice of Motion application dated 21st August, 2024 has merit and thus it is allowed in terms of prayer 1 of the application.

Issue No. b). Who will bear the Costs of Notice of Motion application 21st August, 2024.

12. It is now well established that the issue of Costs is at the discretion of the Court. Costs meant the award that is granted to a party at the conclusion of the legal action, and proceedings in any litigation. The Proviso of Section 27 (1) of the *Civil Procedure Rules* Cap. 21 Laws of Kenya holds that Costs follow the events. By the event, it means outcome or result of any legal action. This principle encourages responsible litigation and motivates parties to pursue valid claims. See the cases of “*Harun Mutwiri v Nairobi City County Government* [2018] eKLR and “*Kenya Union of Commercial, Food and Allied Workers v Bidco Africa Limited & Another* [2015] eKLR, the court reaffirmed that the successful party is typically entitled to costs, unless there are compelling reasons for the court to decide otherwise.



13. I have well stated in previous precedence and most especially in “*Sagalla Lodge Limited v Samwuel Mazera Mwamunga & another (Suing as the Executors of Eliud Timothy Mwamunga – Deceased)* [2022] eKLR”, that:

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“58. The *Black Law Dictionary* defines “Cost” to means, “the expenses of litigation, prosecution or other legal transaction especially those allowed in favour of one party against the other”.

The provisions of Section 27 (1) of the *Civil Procedure Act*, Cap. 21 holds that Costs follow events. The issue of Costs is the discretion of Courts. From this provision of the law, it means the whole circumstances and the results of the case where a party has won the case. The events in this case is that the Notice of Motion application dated 7th December, 2021 by the Plaintiff has succeeded and hence they are entitled to costs of the application and that of the Defendants dated 21st December, 2021.”

14. The provision of Section 27 (1) of the *Civil Procedure Act*, Cap. 21 holds that costs follow the events. In the case of “*Hussein Mubumed Sirat v Attorney General & Another* [2017] eKLR, the court stated that costs follow the event as a well-established legal principle, and the successful party is entitled to costs unless there are other exceptional circumstances. In the present case, the Honourable Court elects not to award costs.

V. Conclusion and Disposition

15. In long analysis, the Honorable Court has carefully considered and weighed the conflicting parties’ interest as regards to balance of convenience. Having said that much, I now proceed to order the following:-

- a. That the Notice of Motion application dated 21st August, 2024 be and is hereby found to have merit and is allowed.
- b. That the Applicant herein be and is hereby granted leave to file an objection with Mazola Land Adjudication Committee on Parcels of land known as Plot No.403 Mazola Adjudication section measuring Approximately 1246.15 Ha. Within the next 30 days from this date.
- c. That there shall be no orders as to costs.

It is so ordered accordingly.

RULING DELIEVERED THROUGH MICROSOFT TEAM VIRTUAL, SIGNED AND DATED AT KWALE THIS 19TH DAY OF JUNE 2025.

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HON. MR. JUSTICE L. L. NAIKUNI

ENVIRONMENT AND LAND COURT AT KWALE

Ruling delivered in the presence of:-

- a. Mr. Daniel Disii the Court Assistant.
- b. Mr. Nyawa Nyale Nyawa in person as the Applicant.
- c. No appearance for the Respondents

