



**Ogembo v District Land Adjudication & Settlement Suba/Mbita Districts & 4 others
(Environment & Land Petition 4 of 2022) [2025] KEELC 5060 (KLR) (18 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 5060 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY
ENVIRONMENT & LAND PETITION 4 OF 2022
FO NYAGAKA, J
JUNE 18, 2025**

BETWEEN

CHRISTOPHER AMOL OGEMBO APPLICANT

AND

**THE DISTRICT LAND ADJUCATION & SETTLEMENT SUBA/MBITA
DISTRICTS 1ST RESPONDENT**

THE DIRECTOR OF LAND ADJUDICATION 2ND RESPONDENT

**THE DISTRICT LAND REGISTRAR HOMA-BAY/SUBA/MBITA 3RD
RESPONDENT**

THE HONOURABLE ATTORNEY GENERAL 4TH RESPONDENT

**JOSEPHAT OMONDI JUMA (SUED AS THE LEGAL ADMINISTRATORS OF
THE ESTATE OF JOHN JUMA OSORE) 5TH RESPONDENT**

RULING

1. By way of Notice of Motion dated 24/09/2024, the Applicant seeks the following orders;
 1. Spent
 2. The Honourable Court be pleased to Order and/or Direct the Land Registrar, Homa-Bay County to dispense with the surrender of the Original Title Deed over and in respect of LR NO. Lambwe EST/Lambwe West 'B'/217 and forthwith register the Mutation in respect of same to pave way for the transfer and registration of the resultant portions to and/or in favour of the family of Norbert Ogembo Ongus, now Deceased represented by the Petitioner/ Applicant and the family of John Juma Osore, now Deceased represented by the 5th and 6th Respondents herein in terms of the Judgment of the Court and more particularly, the Amended Decree of the Honourable Court made on the 26th day of July 2022.



3. The Honourable Court be pleased to Order and/or Direct the Land Registrar, Homa-Bay County to forthwith register the Transfer Instruments and issue title deeds over and in respect of LR NO. Lambwe EST/Lambwe West 'B'/217 and forthwith register the Mutation in respect of same to pave way for the transfer and registration of the resultant portions to and/or in favour of the family of Norbert Ogembo Ongus, now Deceased represented by the Petitioner/Applicant and the family of John Juma Osore, now Deceased represented by the 5th and 6th Respondents herein in terms of the Judgment of the Court and more particularly, the Amended Decree of the Honourable Court made on the 26th day of July 2022.
 4. Costs of this Application be borne by the 5th and 6th Respondents.
 5. Such further and/or other orders be made as the court may deem fit and expedient.
2. The Application is premised on the grounds on the face of it and the contents of the supporting affidavit sworn by the Applicant. In the affidavit, the Applicant contends that subsequent to the filing of the petition herein, the court rendered judgement and issued an Amended decree on 26/07/2022. The consequence of the same was that 12 acres were awarded to the family of John Juma Osore, represented by the 5th and 6th Respondents and the remainder to the family of Norbert Ogembo Ongus represented by the Petitioner.
 3. The Applicants' case is that the parties have been unable to register the mutation due to the failure of the 5th and 6th Respondents to surrender the original title deed. The Applicant seeks to have the court compel the land registrar to register the requisite mutation and issue the title deed for the decreed portion, the non-surrender of the original title deed notwithstanding.
 4. I note that in the court record there was an Application dated 05/02/2024 where the Applicant sought the following orders;
 1. Spent
 2. The Honourable Court be pleased to order and/or direct the Honourable Deputy Registrar herein, to execute the Mutation. Application for Consent of Land Control Board, together with the Transfer Instrument(s) over and in respect of LR NO. Lambwe West/Lambwe West 'B'/217, respectively, to facilitate the sub-division, transfer and registration of the resultant parcels to and/or in favour of the family of Norbert Ogembo Ongus, now Deceased represented by the Petitioner/Applicant and the family of John Juma Osore now Deceased represented by the 5th and 6th Respondents herein in terms of the Judgment of the Court and more particularly, the Amended Decree of the Honourable Court made on the 26th day of July 2022.
 3. The Honourable Court be pleased to grant such further and/or other orders, as may be just and/or expedient to enable the Petitioner/Applicant and the 5th and 6th Respondents herein, to partake and/or benefit from the Judgment of this Honourable Court and the resultant Amended Decree made on the 26th day of July 2022.
 4. Costs of this Application be provided for.
 5. The Application came before this court for hearing as it was. But before it proceeded for hearing the court issued Summons to the 5th and 6th Respondents to come court to explain the need for the surrender of the title willingly. Unfortunately, the 5th Respondent passed away and the present Application was filed before the former had been determined.



6. Both of the Applications seek similar orders. The only difference is that the second Application seeks to have titles issued and the mutation registered notwithstanding the failure of the Respondents to surrender the original title deed. The earlier application was partly heard. It should have either been heard fully or determined or withdrawn. Otherwise as things are this application ought to have been stayed pending the hearing of the previous one. But in the interest of justice, since the two applications are similar and in the same file, and they cannot proceed simultaneously and or that the instant one or previous one has not been withdrawn, this one ought to give way for the part heard one.
7. The upshot of the foregoing is that the Application dated 24/09/2024 is hereby struck out for similarity with the one dated 05/02/2024.
8. Each party shall bear its own costs.

RULING DATED, SIGNED AND DELIVERED VIA THE TEAMS PLATFORM THIS 18TH DAY OF JUNE 2025

HON. DR. IUR FRED NYAGAKA,

JUDGE

Mulisa for the Applicant.

No Appearance for the Respondent

