



**Achuchi v Ogula & 3 others (Environmental and Land Originating Summons
76 of 2019) [2025] KEELC 6274 (KLR) (24 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6274 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUSIA
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS 76 OF 2019
BN OLAO, J
SEPTEMBER 24, 2025**

BETWEEN

VICTOR OBWOLO ACHUCHI APPLICANT

AND

JOSEPH MALINGU OGULA 1ST RESPONDENT

GODFREY OTIENO OGULA 2ND RESPONDENT

KEVIN OCHIENG MALINGU 3RD RESPONDENT

CHARLES ONYANGO MALINGU 4TH RESPONDENT

RULING

1. Victor Obwolo Achuchi (the Plaintiff herein) filed an Originating Summons dated 27th November 2019 through the firm of Ashioya & Company Advocates in which he impleaded Joseph Malingu Ogula and Godfrey Otieno Ogula (the 1st and 2nd Defendants respectively) seeking the main remedy that he had acquired the land parcel No Bunyala/Bukoma/979 by way of adverse possession.
2. The record shows that the 1st and 2nd Defendant's then counsel Mr J. P. Makokha entered appearance on their behalf on 25th February 2020. However, no response was filed to the Originating Summons. On 25th April 2023, the Originating Summons was dismissed for want of prosecution under Order 17 Rule 2(5) of the *Civil Procedure Rules*. Prior to that, the Plaintiff had filed an amended Originating Summons dated 13th November 2024 in which he added Kevin Ochieng Malingu and Charles Onyango Malingu as the 3rd and 4th Defendants respectively. The land parcel was also amended to read Bunyala/Bukoma/2415, 2414, 2458, 2459, 2504 and 2505. The Plaintiff also filed a Notice to Act in person.
3. He has now moved the Court vide his Notice of Motion dated 11th February 2025 and seeks the following orders:



1. Spent
2. That the High Court be pleased to reinstate the Plaintiff's case which was dismissed on 25th April 2023.
3. That upon order 2 being granted by this Honourable Court, the amended Originating Summons be deemed as duly filed and served upon the Defendants.
4. That costs of this application be in the cause.
4. The Motion is based on the grounds set out therein and supported by the Plaintiff's affidavit dated 11th February 2025.
5. The gravamen of the application is that the Plaintiff filed this suit in 2019 but his counsel did not move the Court to have it heard and determined. That he only discovered this mistake by counsel on 25th April 2023 when he filed the amended Originating Summons following the sub-division of the suit land by the Defendants. He has therefore decided to act in person by filing this application and the Defendants will not suffer any prejudice.
6. Annexed to the application is a copy of the amended Originating Summons dated 13th November 2024.
7. In response to the application, the 1st Defendant filed a replying affidavit dated 2nd April 2025 in which he deposed, inter alia, that the 3rd and 4th Defendants are not parties to this suit and it is unlawful and unprocedural to bring them on board after the suit was dismissed. Further, that the Plaintiff has not sought leave to act in person having previously been represented by the firm of Ashioya & Company Advocates.
8. That the Plaintiff seeks the reinstatement of this suit by the "High Court" yet the same was dismissed by the "Environment and Land Court". In any case, this suit was dismissed on 24th April 2023 and this application has been filed one year and 9 months later which delay has not been explained. The Plaintiff is blaming his advocate for not prosecuting the suit yet he has not explained why he did not prosecute the suit himself. The Plaintiff has also not explained to the Court why he did not attend on 25th April 2023 when the suit was dismissed. In circumstances such as this, the Court of Appeal has held that the litigant must bear the brunt for any mistake by counsel. In any event, the Defendants are the registered proprietors of the suit land and are in occupation thereof. This application is a delay to the Defendants' right of proprietorship and any abuse of the Court process.
9. The application has been canvassed by way of written submissions. The same have been filed by the Plaintiff in person although MR OMERI instructed by the firm of Omondi, Omeri & Mwasaru Advocates filed a Notice to Act for him on 13th March 2025 and by Mr Were instructed by the firm of Fwaya Masakhwe Were Advocates for the 1st and 2nd Defendants.
10. I have considered the application, the rival affidavits and the submissions by the Plaintiff acting in person and by Mr Were on behalf of the 1st and 2nd Defendants.
11. I have also looked at the Original Summons dated 27th November 2019 and filed on the same date as well as the subsequent amended originating Summons dated 13th November 2024. In my view, the answer to this Motion lies in the two Originating Summons.
12. In the Originating summons dated 27th November 2019, the 1st and 2nd Defendants have been sued as the joint Administrators to the Estate of Nyangi Agenge Obamo alias Nyawi Agenge who was the registered proprietor of the land parcel No Bunyala/Bukoma/979. Annexed to the said Originating Summons in the register to the said land parcel showing that it was first registered in the name of Nyani



Agenge on 20th May 1978 before a restriction was lodged thereon on 16th January 2019 as a result of a family dispute. However, there is no document filed to confirm that the 1st and 2nd Defendants are the joint Administrators to the Estate of the said Nyangi Agenge who is named in the register as the proprietor of the land parcel No Bunyala/Bukoma/979. Yet in paragraph 6 of the Plaintiff's supporting affidavit, it is deposed as follows:

6: "That the Respondents are being sued in this Originating Summons as joint administrators to the Estate of Nyangi Agenge Obama alias Nyawi Agenge to whom L.R No Bunyala/Bukoma/979 was registered."

Similarly, in paragraph 2 of the Originating Summons dated 27th November 2019, it is pleaded thus:

2: "Thus the Respondents Joseph Malingu Ogula and Godfrey Otieno Ogula who are joint administrators to the Estate of Nyangi Agenge Obama alias Nyawi Agenge to whom the suit property was registered be ordered to execute all documents of the suit property of the suit property herein referred as L.R No Bunyala/Bukoma/979 in favour of the Applicant failure to which the Deputy Registrar of this Honourable Court be empowered to execute the same on behalf of the said Respondents."

13. Notwithstanding the above averments the Plaintiff did not file any Grant of Letters of Administration issued to the Defendants to demonstrate that they are the Administrators to the Estate of Nyangi Agenge Obama alias Nyawi Agenge who is the registered proprietor of the land parcel No Bunyala/Bukoma/979. Without such Grant of Letters of Administration in respect of the Estate of Nyangi Agenge Obama alias Nyawi Agenge, the 1st and 2nd Defendants have no capacity to sue or defend in any suit relating to the land parcel No Bunyala/Bukoma/979 – See Otieno -V- Ougo & Another 1986-89 EALR 468. Without a Grant, no person can deal with the Estate of a deceased person including being sued as an Administrator. Such a person lacks the necessary locus standi to represent the Estate of a deceased person.
14. It follows therefore that the 1st and 2nd Defendants were not properly impleaded in the Originating Summons dated 27th November 2019 as joint administrators of the Estate of Nyangi Agenge Obama alias Nyawi Agenge. The Plaintiff's suit was a nullity from inception and there is nothing to reinstate. It was null and void ab initio and is for striking out.
15. With regard to the amended Originating Summons dated 13th November 2024, the 1st and 2nd Respondents are still sued as the joint administrators to the Estate of the said Nyangi Agenge Obama alias Nyawi Agenge and together with the 3rd and 4th Defendants, they are sued as holding the land parcels No Bunyala/Bukoma/2415, 2414, 2458, 2459, 2504 and 2505 in trust for the Plaintiff. As already stated earlier, the 1st and 2nd Defendants have no locus standi to be sued as the Administrators to the Estate of Nyangi Agenge Obama alias Nyawi Agenge the registered proprietor of the land parcel No Bunyala/Bukoma/979 which has since been sub-divided to give rise to the land parcels No Bunyala/Bukoma/2415, 2414, 2458, 2459, 2504 and 2505 the subject matter of the amended Originating Summons dated 13th November 2024.
16. More importantly, although the Defendants have been sued as holding the land parcels No Bunyala/Bukoma/2415, 2414, 2458, 2459, 2504 and 2505 "in trust or as trustees" for the Plaintiff, there is no evidence to suggest that any of the four (4) Defendants are registered as proprietors of the said six (6) parcels of land the subject of this suit or indeed the original land parcel No Bunyala/Bukoma/979. In paragraph 4 of the amended Originating Summons, the Plaintiff has pleaded thus:



- 4: “That the Respondent are holding L.R No Bunyala/Bukoma/2415, 2414, 2458, 2459, 2504 & 2505 in trust or as trustees for the Applicant and his entire families and should transfer the suit parcel to the applicant as aforesaid.”

Since the Defendants are not the registered proprietors of any of the above parcels of land nor hold any beneficial interest therein as far as the pleadings herein are concerned, it is difficult to see how this Court can order them to “transfer the suit parcel to the Applicant” as sought in the amended Originating Summons.

17. It is clear from all the above that this suit was incompetent from its inception. It will therefore be futile to issue an order reinstating an incompetent suit. The Plaintiff has the option of filing a competent suit if he is still desirous of pursuing his claim in the suit land.
18. The up-shot of all the above is that the Notice of Motion dated 11th February 2025 is dismissed with costs to the 1st and 2nd Defendants.

BOAZ N. OLAO

JUDGE

24TH SEPTEMBER 2025

RULING DATED, SIGNED AND DELIVERED BY WAY OF ELECTRONIC MAIL ON THIS 24TH DAY OF SEPTEMBER 2025.

BOAZ N. OLAO

JUDGE

24TH SEPTEMBER 2025

