



**Kapa v Masika & 3 others; Mulembe Farm Limited & another (Respondent);
Khakina & 13 others (Interested Party) (Environment and Land Case
29 of 1997) [2025] KEELC 6157 (KLR) (24 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6157 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT AND LAND CASE 29 OF 1997
CK NZILI, J
SEPTEMBER 24, 2025
ORIGINALLY ELDORET HCCC NO. 60 OF 1978**

BETWEEN

MUMALASI KAPA NABIBIA WAMWOMO KAPA APPLICANT

AND

JOHN B MASIKA 1ST PLAINTIFF

WANYAMA BIKETI 2ND PLAINTIFF

SIMEON MASIKA 3RD PLAINTIFF

YOHANA MULAMA 4TH PLAINTIFF

AND

MULEMBE FARM LIMITED RESPONDENT

SIMON MUSUNGU RESPONDENT

AND

PAUL KHAKINA & 13 OTHERS INTERESTED PARTY

RULING

1. Through an application dated 4/7/2025, the court is asked to declare the late Francis Kapa Nabibia (deceased), as one of the legitimate members and shareholders of Mulembe Farm Limited (the Farm); rectify the membership register of the Farm; grant the deceased's estate shares comprised in the Farm's immovable property to wit LR no 9082/1 and in default, the Farm to compensate the estate by way of damages to the tune of the current market price of the land.



2. The grounds are that the deceased was a member of the Farm; the membership list produced in the proceedings does not reflect the true membership of the Farm, as it omitted the name of the deceased, who had 20 acres, whose value is Kshs. 20,000,000/=. The applicant further avers that the Farm officials want to gain the deceased's share fraudulently, hence the estate stands to suffer loss and damages if the register is not rectified.
3. In the supporting affidavit sworn by Wamwomo Kapa, he avers that he has brought the application on his own behalf as the legal representative of the deceased, his late father. He avers that the deceased was not aware of the suit and evidence that he was not a shareholder was not adduced. He attached copies of the death certificate, grant of letters of administration and a copy of the Farm's returns of 1970, showing that the deceased owned 20 shares, as annexures marked WK1-3.
4. Further, the applicant avers that an undated copy of the register, which was prepared by Simeon Musungu and annexed as WK4, does not indicate the name of the deceased. He avers that the Farm had 16 shareholders, but one C.J. Rayan sold his share, making a total of 15 shareholders, but the members were unable to buy the shares and added three more members, bringing the total to 18.
5. The applicant avers that the deceased bought 16 shares out of the shares sold by C.J. Rayan, making a total of 36 shares, equal to 36 acres. Further, the applicant avers that, according to a survey and sketch map drawn, the deceased was entitled to 35.5 acres of the land, as part of his land was used as an access road. Attached as WK5 is a copy of the sketch map.
6. Again, the applicant avers that, as noted in the judgment in the Eldoret Court of Appeal *Civil Appeal No.230 of 2004*, which arose from *Kitale High Court Case No. 29 of 1997*, the late Simeon Musungu, as the chairman of the Farm, corruptly sold part of the Farm. A copy of the judgment is attached as WK6.
7. The applicant avers that the deceased was awarded 20 acres in a ruling attached as WK7. Further, that the records from the registrar of companies indicate that the deceased was a shareholder. The applicant also avers that a member had to give a 3 months' notice in case of a sale of shares, which would be between the member and the Farm.
8. According to the applicant, the Farm was leased for 4 years from 19/10/1964 to 1968, as seen in a copy of the lease attached as WK8 and therefore, Paul Kakina, Meshack Bunguswa and Mwasame Panda, had never been members of the Farm and cannot occupy the deceased's portion. That it is in the interest of justice that the court declares that the deceased was a member of the Farm and the register be amended accordingly.
9. The judgment in this case was rendered on 4/10/1996 in relation to 117 acres. However, the same was reviewed vide a ruling dated 18/11/1992, the parties have severally declined to abide by the formulae or manner of distribution by the Deputy Registrar. The issues raised in this application call for the reopening of issues already determined by the court yet this court is functus officio. None of the members has sought review or setting aside of the review orders of the judgment.
10. Litigation must come to an end and it cannot be conducted on the basis of trial and error as held in *Gerald Kithu Muchanje v Catherine Muthoni Ngare & another* [2020] eKLR. Despite several attempts to finally settle the matter, the parties still want to re-litigate the matter, ultimately causing prejudice to the respondents.
11. The applicants ought to have raised such issues at the hearing or during the application for review. This amounts to an abuse of the court process, as they were involved in formulating the method of distributing the Farm's shares. Invoking the doctrine of finality, this court finds no merit in the



application. This court lacks jurisdiction on matters company law or shareholding in a society. The application is therefore dismissed.

RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 24TH DAY OF SEPTEMBER 2025.

In the presence of:

Court Assistant - Dennis

Teti for the 1st defendant present

Maloba for 2nd defendant present

Athunga for the applicant present

HON. C.K. NZILI

JUDGE, ELC KITALE.

