



**Isatsiro v Mary & 2 others (Environment and Land Case
E003 of 2022) [2025] KEELC 4478 (KLR) (12 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4478 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VIHIGA
ENVIRONMENT AND LAND CASE E003 OF 2022**

**E ASATI, J
JUNE 12, 2025**

BETWEEN

DAVID AMAYI ISATSIRO PLAINTIFF

AND

JANET AKETCH MARY 1ST DEFENDANT

ANDREW IMBEGO 2ND DEFENDANT

EPHRAIM LIVAMBULA 3RD DEFENDANT

RULING

1. This ruling is in respect of the Notice of Motion application dated 24th March 2025 brought by the 1st Defendant under the provisions of section 98 of the *Civil Procedure Act* and Order 22 Rule 29 of the Civil Procedure Rules 2010. The application seeks for orders that;
 - a. The application be certified as urgent and be heard on a priority basis.
 - b. The firm of Wabomba Masinde & Associates Advocates be granted leave to come on record and appear alongside the firm of A.B.L Musiega & Company advocates for the 1st defendant herein.
 - c. This honourable court be pleased to order the Plaintiff to sign all relevant papers and give effect to the decree issued judgement and decreed by this Honourable court on 21st September 2023 and transfer 1 acre in favour of the 1st defendant, half an acre in favour of the 2nd defendant and 75 feet by 24 feet to the 3rd defendant all to be curved out of land parcel KAKAMEGA/ ISHIRU/ 1XX9 and title deeds issued to that effect.
 - d. In default of (c) above, the 1st defendant be authorized by the Honourable Court to solely sign all relevant papers and give effect to the decree issued judgement and decree issued by this Honourable court on 21st September 2023 and transfer 1 acre in in favour of the 1st defendant,



half an acre in favour of the 2nd defendant and 75 feet by 24 feet to the 3rd defendant all to be curved out of land parcel KAKAMEGA/ ISHIRU/ 1XX9 and title deeds issued to that effect.

- e. In the alternative to (c) and (d), the Deputy Registrar, Vihiga Environment and Land Court to be authorized to sign the relevant subdivision and thereafter transfer documents in favour of the parties herein pursuant to judgement and decree issued by this Honourable court on 21st September 2023.
 - f. The honourable court be pleased to order that the Land Registrar and the County Land Surveyor, Vihiga County to visit Land Parcel KAKAMEGA/ ISHIRU/ 1XX9, conduct a survey thereon and subdivide the same as per judgement and decree issued by this Honourable court on 21st September 2023.
 - g. The Honourable court be pleased to issue an eviction order, demolishing any structures on the Applicants parcel of land that have been erected by Plaintiff / Respondent either by himself and or his agents which structures have been recently constructed contrary to this judgement and decree issued by this Honourable court on 21st September 2023.
 - h. The Officer Commanding Station Vihiga Police Station or any other nearest Police Post/ Station to enforce item (f) and (g) above.
 - i. The costs of this application be provided for.
2. The grounds upon which the application was brought are that judgement was delivered herein on 21st September 2023. An appeal by the Respondent to the Court of Appeal vide Civil Appeal No. E005 of 2024 was dismissed, the Respondent has been hostile to the Applicant and is not willing to have the land survey carried out and has declined to sign transfer documents in favour of the defendants/ applicants. That the Vihiga County Surveyor has visited the suit parcel on numerous occasions but the Respondent has been un-cooperative and violent, that the applicant is desirous of getting her share of the suit land. That there will be no prejudice to be suffered as the applicant is only pursuing title to her share.
 3. The application was supported by the averments in the Supporting Affidavit of Janet Aketch Mary and the annexures thereto.
 4. The application was not opposed. Affidavit of the service sworn by Michael Wabomba Masinde on 9th April, 2025 is to the effect that the Respondent was served on 9th April, 2025 via email.
 5. When the application came up for hearing on 12th May, 2025 Mr Wabomba advocate urged that the application be allowed as prayed as the same was unopposed
 6. Perusal of the court file reveals that an application seeking almost similar orders was filed by the defendants. The application was dated 19/8/2024 and sought for orders that; -
 - a. The Vihiga County Land Surveyor to survey and fix beacons to mark boundaries for the subdivision of L.R NO. KAKAMEGA/ISHIRU/1XX9 in execution of the decree in respect of the judgment delivered on 21st day of September 2023.
 - b. The OCS Cheptulu to provide security during the exercise of fixing the beacons.
 - c. Costs be provided.
 7. The court record shows further that the application was allowed by consent on 16/10/2024. The applicant herein was one of the applicants in that application. The present application is therefore res judicata.



8. Be that as it may, a report filed by the surveyor pursuant to the consent order of 16/10/2024 was to effect that the survey revealed discrepancies in the size of the land occupied by the defendants and the size indicated in the judgment.
9. The present application being res judicata is hereby dismissed. No orders as to costs.
Orders accordingly.

RULING, DATED AND SIGNED AT VIHIGA, READ VIRTUALLY THIS 12TH DAY OF JUNE 2025 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.

E. ASATI

JUDGE.

In the presence of:

Ajevi: Court Assistant.

Wabomba for the Applicant

No appearance for the Respondent.

