



**Malaba (Suing as Administrator of the Estate of Edward Tale Nabangi) v Muganda (Environmental and Land Originating Summons E002 of 2025) [2025] KEELC 6241 (KLR) (25 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6241 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA**  
**ENVIRONMENTAL AND LAND ORIGINATING SUMMONS E002 OF 2025**  
**EC CHERONO, J**  
**SEPTEMBER 25, 2025**

**BETWEEN**

**CATHERINE NEKESA MALABA ..... APPLICANT**

**SUING AS ADMINISTRATOR OF THE ESTATE OF EDWARD TALE NABANGI**

**AND**

**MAURICE WILSON MUGANDA ..... RESPONDENT**

**RULING**

1. The Applicant, vide a Notice of Motion under certificate of urgency dated 17<sup>th</sup> June 2025, is seeking the following orders;
  1. That the Directorate of Criminal Investigations (DCI)-Kiambu Head Office be directed to conduct forensic Document and Signature examination of the sale agreement dated 5<sup>th</sup> October 2010 towards establishing the Genuineness of the Sale Agreement and present a report to the Honourable court and the parties.
  2. The Respondent/Applicant's Advocate be directed to provide the Original Sale Agreement dated 5<sup>th</sup> October 2010 to the Directorate of Criminal Investigations-Kiambu Head Office for the purposes of the forensic examination.
2. The application is based on six grounds apparent on the face of the application supported by the affidavit of Maurice Wilson Muganda, the Applicant herein sworn on even date. In the supporting affidavit which is a replica of the grounds on the face thereof, the Applicant deposed that on being served with a further affidavit sworn by Catherine Nekesa Malaba on 6<sup>th</sup> May 2025 and following further consultation with his Advocate, he noted that the Respondent relies on a purported Sale Agreement dated 5<sup>th</sup> October 2010 which he never entered into nor executed. He stated that upon careful examination of the purported Sale Agreement, he observed that the document appears to have



- been created by splicing together two separate documents to give the impression of a single, unified agreement.
3. The Applicant further deposed that the signature in the said sale agreement marked “CNM-4” appears distinct and likely originates from a different document. He stated that from his observation, he would note some striking similarities in the signature section appearing in purported sale Agreement and the signature section of minutes from a meeting held on 9<sup>th</sup> March 2019 which he annexed and marked “MWM-01”.
  4. The Applicant also stated that he was contesting the genuineness and authenticity of the purported Sale Agreement and the irregularities apparent on the face thereof which raise serious questions as to its validity and credibility. He stated that to assist the court, he has prepared a side-by-side presentation comparing the relevant signature sections in the purported sale Agreement and the minutes of the meeting held on 9<sup>th</sup> March 2019 (“CNM-4” and “MWM-01”) marked as “MWM-02”
  5. In conclusion, the Applicant verily believes that owing to the apparent fabrication and manipulation evident in the purported Sale Agreement, it was imperative that the said document be subjected to a thorough forensic document examination by an independent expert to ascertain its authenticity, origin and whether it was indeed created as one document or fraudulently assembled from multiple sources.
  6. The said application is opposed by the Respondent vide a Replying affidavit sworn on 30<sup>th</sup> June, 2025. According to the Respondent, the Sale Agreement dated 5/10/2010 was between the Applicant and deceased and that she was a witness thereto. She stated that when the said Sale Agreement was prepared, she was present and all the parties executed the agreement and her late husband remained with photocopy and the original sale agreement remained with the Applicant who is in possession of it.
  7. She further stated that the said agreement was executed in the presence of other witnesses who are ready and willing to confirm the contents of the same and that there is no dispute that she is in possession and occupation of two and a quarter acres of the suit land where she has fully developed and is currently utilizing with her family.
  8. She stated that she has been in possession and occupation of the two and a quarter acres of the suit land from the time of purchase and even after the demise of her husband Edward Tale Nabangi on 29<sup>th</sup> July 2010.
  9. She deposed that on 24<sup>th</sup> January 2025, the Applicant’s son, one Osborne Waswa Muganda purported to obtain a power of attorney and issued eviction threats vide a letter marked as “CNM-1”. She stated that she is the one in possession of all the documents in respect of the suit property bought by her late husband and that his advocate on record is not in possession of the same.
  10. The Respondent deposed that the Applicant is taking advantage of the demise of her husband, the late Edward Tale Nabangi to take away from her their legally purchased land which they have fully developed and currently in her use, possession and occupation since 2010.
  11. She stated that after her late husband purchased the suit land, they constructed their family home, planted trees and sugarcane and the Applicant did not object until when her husband passed on in the year 2020 and now the Applicant wants to evict them.
  12. She stated that she is aware that the Applicant is aged and that his son, one Osborne Waswa Muganda obtained a power of Attorney and despite being aware of her possession and occupation of the suit land wants to unlawfully evict them from the suit land they lawfully purchased. She stated that the sale Agreement dated 05/10/2010 is genuine and this being a civil case, this court has no authority or power to order for forensic audit or examination as the Applicant has not alleged forgery or fraud to



necessitate forensic examination and that the case before court is not criminal in nature to warrant the court to come to the aid of the Applicant and that he (Applicant) is at liberty to take any documents to any investigating agency without an order of this court.

### **Legal Analysis And Decision.**

13. I have considered the application, the affidavits both in support and in opposition to the said application as well as the pleadings and the applicable law. What the Applicant is seeking is an order by this court directing the Director of Criminal Investigations (DCI)-Kiambu Head Office to conduct forensic document and signature examination of a sale agreement which the Respondent intends to rely in her claim to the suit land. The application is brought under Sections 22, 1A, 1B & 3A of the *civil procedure Act*. Section 22 of the said *Act* provides as follows;

“Subject to such conditions and limitations as may be prescribed, the court may at any time, either of its own motion or on the application of any party-

- a. Make such orders as may be necessary or reasonable in all matters relating to the delivery and answering of interrogatories, inspection, production, impounding and return of documents or other material objects producible as evidence;
- b. Issue summons to persons whose attendance is required either to give evidence or to produce documents or such other objects as aforesaid;
- c. Order any fact to be proved by affidavit.”

14. What the Applicant is seeking in the current application is not an order ordinarily contemplated under Section 22 of the *Civil Procedure Act* but an order directing the Directorate of Criminal Investigations which is another arm of Government to conduct investigation for the current civil disputant in this case. Directorate of Criminal Investigation is a department of the Kenya Police service which is an independent institution charged with the responsibilities of inter-alia conducting forensic analysis. The applicant at paragraphs 3, 4 & 5 of his supporting affidavit denies having entered into the purported sale Agreement dated 05/10/2010 nor ever signing the same. If the Applicant thinks that the said sale agreement is forged, he does not require a court order to report the crime and have it investigated. He simply requires to make a report and investigations will kick off immediately.

15. I therefore agree with the Respondent that this honourable court lacks jurisdiction to direct the Directorate of Criminal Investigations to perform its statutory mandate. Investigations are commenced at the instance of a complain initiated by a complainant. The courts are impartial umpires and cannot assist one party to obtain evidence against the opposite party.

16. In view of the foregoing, I find that the Notice of Motion dated 19<sup>th</sup> June 2025 is without merit and the same is hereby dismissed with costs.

17. Orders accordingly.

**READ, DATED AND SIGNED AT BUNGOMA THIS 25<sup>TH</sup> DAY OF SEPTEMBER, 2025.**

**HON. E.C CHERONO**

**ELC JUDGE**

In the presence of;

1. M/S Nekesa H/B for Wattangah for the Applicant.
2. Mr. Tanui for the Respondent.



3. Bett C/A.

