



Mbalanya v Registrar of Land & another; Oucho (Interested Party) (Environment and Land Case 121 of 2022) [2025] KEELC 6269 (KLR) (25 September 2025) (Ruling)

Neutral citation: [2025] KEELC 6269 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT AND LAND CASE 121 OF 2022
YM ANGIMA, J
SEPTEMBER 25, 2025**

BETWEEN

NOAH NAMBUTE MBALANYA APPLICANT

AND

REGISTRAR OF LAND 1ST RESPONDENT

**LAND ADJUDICATION OFFICER WAITIKI SETTLEMENT
SCHEME 2ND RESPONDENT**

AND

JOHN ABURA OUCHO INTERESTED PARTY

RULING

1. By a notice of motion dated 13.12.2024 filed pursuant to Sections 1A and 3A of the *Civil Procedure Act* (Cap 21) Order 10 Rule 11 and Order 50 Rule 1 of the *Civil Procedure Rules* and all other enabling provisions of the law the interested party sought the setting aside of the consent order recorded between the applicant and the respondent on 12.06.2023. The interested party also sought the costs of the application to be provided for.
2. The application was based upon the grounds set out on the face of the motion and the supporting affidavit sworn by the interested party on 13.12.2024. The interested party pleaded that he was the legitimate owner of plot No.1960- Likoni Settlement Scheme (the suit property) which he alleged to have bought from Mrima Youth Group in 2008.
3. It was the interested party's case that although he had developed the property over the years the applicant had somehow applied for a vesting order of the suit property in his favour which resulted in a fraudulent consent order dated 12.06.2023. It was his case that he was not involved in the said consent even though he was the legitimate owner of the suit property.



4. The applicant filed a replying affidavit sworn on 10.01.2025 in opposition to the application on several grounds. First, he denied that the interested party had bought the suit property from Mrima Youth Group since he had previously filed Mombasa ELC No. 2921 of 2009 -John Abura v Patrick Omondi in which he had pleaded that he bought it from the applicant. Second, that the interested party had lost the said case in 2021 and that his appeal to the Environment and Land Court(ELC) vide ELC Appeal No. 24 of 2022 was also dismissed in 2022. Third, that there was no fraud involved in his acquisition of a vesting order since as a successful litigant he was entitled to the suit property. Fourth, that the application was an attempt to institute an appeal against the earlier judgments through the backdoor. As a result, the court was urged to dismiss the application with costs.
5. When the application was listed for directions it was directed that it shall be canvassed through written submissions. The parties were consequently granted timelines within which to file and exchanger their submissions. The record shows that the interested party's submissions were filed on 24.04.2025 whereasS the applicant's were filed on 17.04. 2025.
6. The court has considered the notice of motion dated 13.12.2024, the replying affidavit in opposition thereto as well as the material on record. The court is of the view that the main question for determination is whether the interested party has made out a case for setting aside the consent dated 12.06.2023 which was recorded in his absence. The ancillary issue is the question of costs.
7. It is evident from the material on record that this is not the first time the interested party and the applicant are litigating over the suit property. It would appear that in a previous suit, the interested party had sued the applicant over the suit property on the basis that he had purchased it from the applicant in 2009 for a sum of 300,000/=. Vide a judgment dated 26.03.2021 the trial court found no evidence of such purchase and proceeded to dismiss his claim.
8. The material on record shows that being aggrieved by the decision of the trial court the interested party filed an appeal to this court against the said judgment. The material on record shows that the appellate court was not satisfied that the interested party had proved the alleged purchase of the suit property. There is no indication on record to show that the interested party ever pursued a further appeal to the Court of Appeal.
9. The gist of the interested party's application was that he was wrongfully deprived of the suit property through a fraudulent consent recorded as between the applicant and the respondent. He, therefore, wanted the consent to be set aside so that he may participate in the suit and contest the applicant's claim to the suit property.
10. The court is of the view that the interested party is essentially seeking to re-litigate a matter which was adjudicated upon by courts of competent jurisdiction and settled with finality. If the interested party was not satisfied with the decision of the ELC in its appellate jurisdiction, the only option which was lawfully available to him was to appeal to a higher court. He could not validly seek to overturn the decision of the ELC via the instant proceedings for a vesting order. As a result, the court finds the instant application untenable and misconceived.
11. The upshot of the foregoing is that the court fails no merit in the interested party's application to set aside the consent order dated 12.06.2023. As a consequence, the notice of motion dated 13.12.2024 is hereby dismissed in its entirety with costs to the applicant.

It is so ordered.

RULING DATED AND SIGNED AT MOMBASA AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS ON THIS 25TH DAY OF SEPTEMBER 2025.



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Y. M. ANGIMA

JUDGE

In the presence of:

Court assistant Gillian

Mr. Kahindi for the applicant

No appearance for the 1st and 2nd respondents

Ms. Amuguno for the interested party

