



REPUBLIC OF KENYA



Wanyonyi & another v Masoni & another (Environment and Land Case 160 of 2017) [2025] KEELC 6251 (KLR) (25 September 2025) (Ruling)

Neutral citation: [2025] KEELC 6251 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA
ENVIRONMENT AND LAND CASE 160 OF 2017
EC CHERONO, J
SEPTEMBER 25, 2025**

BETWEEN

ASHON SIKOLIA WANYONYI 1ST PLAINTIFF

LUKA MAKOKHA WANYONYI 2ND PLAINTIFF

AND

SELINA NAMALWA MASONI 1ST DEFENDANT

BUNGOMA COUNTY GOVERNMENT 2ND DEFENDANT

RULING

1. Vide a Notice of Motion application dated 16th September 2025, the plaintiffs/Applicants seek the following orders;
 - a. That it pleases this honourable court to strike out the counter-claim by the 1st defendant for being incompetent and an abuse of the court.
 - b. That it pleases the honourable court to out rightly indict the 1st defendant/respondent for profiling the Counsel for the applicant and this honourable court and cite her for contempt of court.
 - c. The 1st defendant/respondent lacks capacity to agitate the counter-claim herein as she has not renounced or disclosed her administratrix role in the estate of Reuben Wanyonyi or Ben Masoni.
 - d. The entire counter-claim is statute barred, the initial suit that was withdrawn was filed in 2006 over 15 years ago.



- e. The honourable court lacks jurisdiction to find whether the suit property forms part of the estate of Ben Masoni or Reuben Wanyonyi as it is the premise of the succession court where Bungoma succession cause no. 68 is pending.
 - f. That costs be provided for.
2. The application is premised on five grounds apparent on the face of the application supported by the affidavit of Ashon Sikolia Wanyonyi sworn on 17th September, 2025.
 3. The said application is opposed by the 1st Defendant/Respondent vide Grounds of opposition and a Replying affidavit dated and sworn on 17th September, 2025. When the said application came up for directions on 17th September 2025, the parties agreed to have it disposed of by affidavit evince and written submissions.

Applicants' Summary of Facts

4. The 1st Applicant in his supporting affidavit deposed that the 1st Defendant filed a civil suit against them over the suit property in the year 2006 (over 15 years ago) being Webuye SPM NO. 17 of 2006 which she later withdrew and cannot again institute another suit by way of a counter-claim and merely allege corruption.
5. He stated that they filed a succession cause for the estate of their late father Reuben Wanyonyi being Bungoma Succession Cause NO. 68 of 1997 when the 1st Respondent's late husband was still alive and signed as a beneficiary and plot NO. 74 was duly confirmed as part of the estate of the late Reuben Wanyonyi on 23.04/2025. He deposed that throughout the process, Ben Masoni (deceased) who was their brother never raised the issues the 1st respondent is now raising.
6. The 1st Plaintiff/Applicant further stated that upon the demise of their brother Ben Masoni, the 1st Respondent lodged succession cause no.51 of 2005 and included plot no. 74 as part of his estate and they lodged an objection arguing that the plot was not part of the estate of the late Ben Masoni and the court upheld their objection vide a ruling delivered on 25th April, 2023. He stated that after the judgment was delivered, the 1st Respondent applied to be made a co-administrator in Bungoma Succession Cause NO.68 of 1997 and the court granted her prayer to represent the interests of her late husband, Ben Sikolia. He stated that having been made a co-administratrix with them in the estate of Reuben Wanyonyi, the 1st Respondent cannot again agitate a suit against them after being appointed as a co-administratrix and that he has been advised by his Advocate and he verily believes to be true that the law requires them to act jointly in all actions and matters of the estate.
7. In his further affidavit, the 1st Plaintiff/Applicant stated that the Respondent has never taken matters in this case seriously and that she has been the cause of delaying both the Succession cases and this suit after filing a case in the year 2006 and withdrawing the same after one year in 2017. He stated that the Respondent has never sued her advocates for any misconduct and that she did not have to wait from 2017 and bring a counter-claim in 2025 alleging corruption or misconduct of her own advocate. He deposed that the present application cannot be res-judicata. In conclusion, the applicant deposed that they cannot acquiesce to the jurisdiction of this honourable court as that will mean it is both an Environment and a Succession Court.

1st Defendant/respondent's Summary of Facts

8. The 1st Respondent through the Firm of Oira Ivan Advocates raised nine (9) grounds of opposition to the application as follows;



1. The application offends section 7 of the [Civil Procedure Act](#) and the Rules of Res-judicata as the issue of jurisdiction, Limitation of actions and capacity was determined vide a Ruling delivered on the 14th December 2023, 27th February 2025 and 19th July 2018.
 2. The issue of Administration of the estate of a deceased person and succession is within the jurisdiction of the High Court Civil Division under Article 165 of the [Constitution](#) of Kenya.
 3. That the issue of ownership of property is reserved for the Environment and Land Court under Article 162 of the [Constitution](#) of Kenya 2010.
 4. That the application is an abuse of the entire court process as orders delivered by Justice B.N Olao in his Ruling dated 19th July 2018 were not complied to by the plaintiff/Applicants.
 5. That the High Court ruling in Succession Cause 51 of 2005 dated 25th April 2023 unequivocally states that the Environment & Land Court has the jurisdiction to interrogate the ownership of Webuye Municipality Plot 74.
 6. That a Court with competent jurisdiction is yet to determine ownership of the suit property rendering the application premature and misguided.
 7. That a Counterclaim was duly filed on the 23rd July 2025 according to the courts directions on the 17th July 2025 where the plaintiff's Counsel consented to and agreed to.
 8. That the 1st Defendant has every right to be the Administrator of the estate of the late Ben Masoni who was the registered owner of the suit property.
 9. That the application is frivolous, misconceived, ambiguous and intends to further delay and derail the hearing of this case on merit.
9. In further opposition to the said application, the 1st Defendant/Respondent Filed a replying affidavit of even date reiterating the grounds of opposition and stated that she has never profiled Counsel for the plaintiffs as corrupt or a fraud as alluded in court on the 17th September 2025 and that her main concern is the manner in which Counsel has conducted this proceedings for the last 9 years abdicating his duties as an officer of the court to facilitate fair and expeditious dispute resolution. That on the 16th September 2025, the plaintiff/Applicant filed a defence to the counterclaim dated 28th July 2025 thus complying and making this case ripe for hearing. She stated that this court has powers to deal with disputes relating to Land Administration and Management as in this case where WEBUYE MUNICIPALITY PLOT 74 is highly disputed in terms of ownership. That the Applicants have moved this court with unclean hands by failing to comply with the terms of the order by Justice B.N Olao issued on 19th July 2018 which were unequivocal that this case be heard and determined within twelve months from 20th July 2018. That Bungoma Civil Suit NO. 17 of 2006 where she had sued the Plaintiffs/Applicants herein was withdrawn on 27th September 2016 without her consent. She deposed that the present application is premature as the case is yet to be heard and determined on merits and that her counterclaim raises triable issues which can only be heard and determined on merits.

Legal Analysis and Determination

10. I have considered the application dated 16/09/2025 and the affidavits, both in support and in opposition thereto. I have also considered the pleadings and proceedings in this case as well as the applicable law. The application is brought under Sections 3, 3A and 63 (1) and (2) of the [Civil Procedure Act](#), Article 159(1)(2) of the [Constitution](#) of Kenya and Section 7 of the [Limitation of Actions Act](#) CAP 22 Laws of Kenya.



11. The first prayer being sought by the Applicants is to strike out the counterclaim by the 1st Defendant/ Respondent dated 28th July 2025 for being incompetent and an abuse of the court. Order 2 Rule 15 of the Civil Procedure Rules which is the applicable law for striking out of pleadings provides as follows;
- (1) At any stage of the proceedings the court may order to be struck out or amended any pleading on the ground that-
 - a. It discloses no reasonable cause of action or defence in law; or
 - b. It is scandalous, frivolous or vexatious; or it may prejudice, embarrass or delay the fair trial of the action; or
 - c. It is otherwise an abuse of the process of the court,
And may order the suit to be stayed or dismissed or judgment to be entered accordingly, as the case may be.
 2. No evidence shall be admissible on an application under subrule (1) (a) but the application shall concisely the grounds on which it is made.
 3. So far as applicable this rule shall apply to an Originating Summons and a Petition.”
12. The plaintiffs/Applicants have not cited the above provisions of the law which is the only known provisions under the *Civil Procedure Act* and the rules made thereunder for striking out offending pleadings in a suit. From my perusal of the grounds apparent on the face of the said application, the Applicants appear to be complaining that the 1st Defendant/Respondent’s counterclaim does not contain particulars of allegations of corruption against the advocate. This suit is a dispute over land between the plaintiffs and the Defendants and not about an advocate. The Plaintiffs/Applicants are also complaining that the 1st Defendant/Respondent had filed a similar case being BUNGOMA ELC NO. 17 of 2006 which was later withdrawn and therefore, she cannot again lodge the counterclaim after fifteen years alleging corruption.
13. It is clear from the pleadings herein that this suit was filed by the plaintiffs/Applicants on 17th December 2017 and the 1st Defendant/Respondent entered appearance and fled defence on 20th June 2017. The Plaintiffs/Applicants did not file a response by way of a rejoinder on any of the issues raised by the 1st Defendant/Respondent. By leave of this honourable Court, the 1st defendant filed an Amended defence and counterclaim dated 23rd July 2025 and the Plaintiffs/Applicants filed Defence to counterclaim dated 16th September 2025. At paragraph 6 of the said defence to counterclaim, the plaintiffs/Applicants averred that the 1st Defendant has not sought and obtained leave to file suit out of time hence the entire counterclaim is statute barred, misplaced and bad in law. Though the 1st Defendant/Respondent’s application for amendment and counterclaim of the defence was strenuously opposed, the Plaintiffs/Applicants did not prefer an appeal to the Court of Appeal but elected to file defence to the said counterclaim dated 16th September 2025. I therefore agree with Counsel for the 1st Defendant/Respondent that once the Plaintiffs/Applicants filed defence to the 1st Defendant/Respondent’s counterclaim, this suit became ripe for hearing.
14. The second prayer by the Plaintiffs/Applicants is for committal of the 1st Defendant to civil jail for contempt of court. It is now settled that by dint of Section 5 of the *Judicature Act*, the High court and courts of equal status, the Court of Appeal and the Supreme Court in Kenya exercise the same power to punish for contempt of court the same way the High Court of Justice in England exercise and that power shall extend to upholding the authority and dignity of the subordinate courts. The jurisdiction



of the Superior Courts in matters of contempt of court is provided for in the Rules of the Supreme Court of England. Order 52 rule 2 of the rules provide an elaborate procedure for the institution and prosecution of contempt of court applications. Under rule 2 subrule (3) of order 52 of the Rules of the Supreme Court, it is stated in mandatory terms that the notice of the application for leave is to be given to the Crown Office which in Kenya is equivalent to the office of the Attorney General not later than the preceding day. I have looked at the proceedings of the court and find no leave was sought and obtained by the Plaintiffs/Applicants to bring the present application for contempt of court. The applicants have also failed to cite the relevant provisions of the *Judicature Act*. See Andrew Kamau Mucuha v The Ripples Limited Civil Appeal NO. 19 of 1998 (2001) KLR 75. As such, I find that this Court has not been properly invoked.

15. The third prayer is that the 1st Defendant/Respondent lacks capacity to agitate the counterclaim herein as she has not renounced or disclosed her administratrix role in the estate of Reuben Wanyonyi or Ben Masoni. Looking at item 1 of the 1st Defendant/Respondent's list of documents dated 23rd may 2018, it is clear that she was issued with a Certificate of confirmation of Grant confirming that she was appointed as the sole administration of the estate of Ben Masoni. That certificate of confirmation of grant gives her the capacity to agitate any rights and interest on behalf of the estate of the said Ben Masoni.
16. The fourth prayer is that the entire counterclaim is statute barred, the initial suit filed in 2006 (15 years ago) having been subsequently withdrawn. As observed elsewhere in this Ruling, the amendment to the defence and counterclaim herein was pursuant to leave granted by this honourable court to the 1st Defendant and no appeal has been preferred by the plaintiffs/Applicants. The Plaintiffs have also filed defence to the said counterclaim paving way for this suit to be fixed for hearing.
17. The fifth and last ground is that this honourable court lacks jurisdiction to determine whether the suit property forms part of the estate of Ben Masoni or Reuben Wanyonyi as that is the preserve of the Succession Court. On this ground, it is important to note that the jurisdiction of this court is provided for under Article 162 (2) which provides as follows;
 - (2) parliament shall establish courts with the status of the High court to hear and determine disputes relating to-
 - a. Employment and labour relations; and
 - b. The environment and the use and occupation of and title to land.”
18. Parliament enacted Environment and *Land Act* of 2011 where Section 13 of the Act gives the jurisdiction of the court in the following terms;

Jurisdiction of the court

 1. The court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162 (2) (b) of the *Constitution* and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.
 2. In exercise of its jurisdiction under Article 162 (2) (b) of the *Constitution*, the court shall have power to hear and determine disputes-
 - a. Relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;



- b. Relating to compulsory acquisition of land;
- c. Relating to land administration and management;
- d. Relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and
- e. Any other dispute relating to environment and land.”

19. As can be discerned from the pleadings in this suit, the dispute between the parties is the ownership of land parcel Number Webuye Municipality Plot No. 74 also referred to as 7996/91. The Plaintiffs/Applicants who are the administrators of the estate of Reuben Wanyonyi are claiming ownership of the property as part of his estate while the 1st Respondent claims that the same is a free property of the estate of her late husband Ben Masoni. From the constitutional and statutory provisions cited hereinabove, there is no doubt that the Environment and land court is the proper court seized with jurisdiction to hear and determine the ownership/title dispute between the two parties.
20. Having also reviewed the proceeding in this case, I agree with Counsel for the 1st Defendant/Respondent that the issue of jurisdiction, statute of Limitations and capacity are res-judicata since they were heard and determined vide a Ruling delivered by this court on the 27th February 2025.
21. I have said enough and only wish to state that this is one of the oldest cases in our ELC registry and parties have been employing all tactics to delay the hearing and determination of the case.
22. In view of the foregoing matter, I find that the Notice of Motion application dated 16th September 2025 devoid of merit and the same is hereby dismissed with costs to the 1st Defendant/Respondent.
23. Considering the age of this case, I order the parties to fix the matter for hearing on priority basis and the same to be heard and determined within six (6) months from the date of this ruling.

READ, DELIVERED AND SIGNED AT BUNGOMA THIS 25TH DAY OF SEPTEMBER, 2025.

HON. E.C CHERONO

ELC JUDGE

In the presence of;

1. Mr. Sichangi for the Plaintiffs/Applicants.
2. Mr. Oira for the Defendants/Respondents
3. Bett C/A.

