



**Kololi & 3 others v Sapiri & 5 others (Environment and Land Case 35 of 2012 & Civil Case 89 of 2012 (Consolidated)) [2025] KEELC 7077 (KLR) (9 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7077 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA  
ENVIRONMENT AND LAND CASE 35 OF 2012  
& CIVIL CASE 89 OF 2012 (CONSOLIDATED)**

**EC CHERONO, J**

**OCTOBER 9, 2025**

**BETWEEN**

**GERISHON WANYONYI KOLOLI ..... 1<sup>ST</sup> PLAINTIFF  
AGGREY WAMBULWA KOLOLI ..... 2<sup>ND</sup> PLAINTIFF  
HENRY MASIBO KOLOLI ..... 3<sup>RD</sup> PLAINTIFF  
JULIANA KOLOLI ..... 4<sup>TH</sup> PLAINTIFF**

**AND**

**JOSEPH SAPIRI ..... 1<sup>ST</sup> DEFENDANT  
JAMES NGOSIA NANDOLI ..... 2<sup>ND</sup> DEFENDANT  
DOMINIC WAFULA NANDOLI ..... 3<sup>RD</sup> DEFENDANT  
LENAH MURUNGA CHENJENI ..... 4<sup>TH</sup> DEFENDANT  
DANIEL NAMACHANJA NANDOLI ..... 5<sup>TH</sup> DEFENDANT  
ELIZABETH OKEMA JAIRO ..... 6<sup>TH</sup> DEFENDANT**

**RULING**

1. Elizabeth Okema Jairo, the 8<sup>th</sup> Defendant/Applicant herein has moved this Hon. Court vide a Notice of Motion application dated 24<sup>th</sup> April 2024 seeking the following orders;
  - a. That the Firm of M/s Nabibia & Co. Advocates be and is hereby granted leave to act for and on behalf of 8<sup>th</sup> Defendant /Applicant instead of the Firm of M/s Kraido & Co. Advocates.
  - b. That the Surveyor, Bungoma County to visit, survey and curve out a portion of land measuring 12 acres which the 8<sup>th</sup> Defendant occupies from land parcel NO. Bokoli/Bokoli/286



- c. That the Deputy Registrar to sign land transfer forms transferring the title of the land into the names of the 8<sup>th</sup> Defendant/Applicant.
  - d. That the costs be in the cause.
2. The application is based on grounds apparent on the face of the application to the effect that on 16<sup>th</sup> day of July 2020, this Court issued a decree in favour of the Defendants directing that they be registered as the owners of land parcel NO. Bokoli/Bokoli/286 and that the Defendants who are brothers-in-law to the 8<sup>th</sup> Defendant/Applicant are reluctant and unwilling to execute the decree and transfer title into the names of the defendants. She stated that the 8<sup>th</sup> Defendant/Applicant who is a widow is extremely prejudiced for failing to reap the fruits of the judgment in her favour because the Defendants are not willing to have her obtain title to the land.
  3. In her affidavit in support of the application, the 8<sup>th</sup> defendant/Applicant reiterated the averments contained in the grounds on the face of the application and stated that on 16<sup>th</sup> Day July 2020, this Honourable court issued a Decree to the effect that they as defendants be registered as the owners of the suit land in place of the Plaintiff. She stated that since then, the decree has remained unsatisfied because of unwillingness by her co-defendants who are also her brothers-in-law to transfer the title in their favour.
  4. The deponent believes that her co-defendants have no intention to execute the transfer forms and other statutory documents to enable her get her share of the suit land and that the area of the suit land that she occupies is distinct and demarcated and amounts to approximately 12 acres which she now prays that the same be surveyed by the county Surveyor, demarcated and the Deputy Registrar of this Honourable court to sign separate land transfer forms transferring title in her name.
  5. The Respondents through Dominic Wafula Nandoli filed a Replying affidavit in opposition to the application arguing that the 8<sup>th</sup> defendant/Applicant is bound to cooperate with the rest of the family members so as to complete the execution of the decree herein but instead, she is constantly indolent, abusive to the rest of the members of the family and regards everyone else as inferior. He stated although the 8<sup>th</sup> defendant is their daughter-in-law, she is authoritarian and wants to order and direct everyone according to her whims. That the court decree issued on 10<sup>th</sup> May 2021 has already been registered at the Land Registry at Bungoma after the process of Survey and subdivision of the suit land parcel No. Bungoma/Bokoli/286 had commenced.
  6. In conclusion, the deponent stated that the Applicant had filed a similar application previously dated 3<sup>rd</sup> October 2022 annexed as 'DWN-5' which was dismissed with costs and the Applicant did not appeal against the ruling

### **Legal Analysis And Decision**

7. I have considered the Notice of Motion application dated 24<sup>th</sup> April 2025, the supporting affidavit, the Replying affidavit and the annexures thereto as well as the applicable law. The Applicant who is also the 8<sup>th</sup> Defendant herein seeks orders inter-alia that the Surveyor, Bungoma County be directed to visit survey and curve out a portion of land measuring 12 acres from the suit land parcel NO. Bokoli/Bokoli/286. The Applicant is also seeking an order that the Deputy Registrar of this Court to sign land transfer forms transferring the title of the land into the names of the 8<sup>th</sup> defendant/Applicant.
8. It is not in dispute that this suit was heard and determined vide a judgment delivered by this Honourable court on 16<sup>th</sup> July 2020. For avoidance of doubt, the said judgment read as follows;



- a. The defendants have acquired the land parcel NO. Bokoli/Bokoli/286 by way of adverse and are legally entitled to be registered as proprietors thereof.
  - b. The plaintiffs shall execute all the relevant documents to facilitate that registration within 30 days from the date of this judgment.
  - c. In default of (b) above, the Deputy Registrar shall be at liberty to do so on their behalf.
  - d. Each party shall meet their own costs.
9. It is imperative for this court to address the issue of this application being res judicata to the application dated 3<sup>rd</sup> October 2022 as raised by the Respondents herein. I have perused the said application and the resultant ruling delivered on 12/06/2023 wherein the application was dismissed after this court found that it would be prejudicial for the firm of M/s Were & Co Advocates to act for the Applicant in place of the firm of Ms Kraido & Co Advocates since the former law Firm had represented the Plaintiffs in the main suit. The import of this decision therefore meant that the application as had been presented could not be handled by the court for want of representation. For these reasons therefore, the other prayers sought in the application were not considered on merit. Therefore, this court opines that the current application is not barred by the provisions of Section 7 of the Civil Procedure Act.
10. I shall now proceed to discuss the merits of the application. The Applicant, save for stating that she is aware that the law requires her to seek the leave of the court to change counsel after judgment has been entered, has not provided any substantive explanation as to why she seeks to replace her current advocate. This Court, however, takes cognizance of the fact that the firm of M/s Kraido & Co. Advocates also acts, or has previously acted, for the Respondents in this application. In the circumstances, it was necessary for the Applicant to obtain independent legal representation in order to effectively pursue her alleged proprietary rights. For this reason, the Court is persuaded to allow the Applicant's prayer and grant leave for the firm of M/S Nabibia & Co. Advocates to come on record for the Applicant. It must, however, be emphasized that this order does not absolve the Applicant of her professional or financial obligations, if any, owed to M/s Kraido & Co. Advocates prior to the filing of this application.
11. The Applicant has sought to have the Surveyor, Bungoma County visit the suit land for purposes of surveying and for curving off a portion measuring 12 acres which portion she states she occupies and for the Deputy Registrar to execute the transfer documents transferring to her a title of an equivalent area.
12. It is imperative to note that the current suit was consolidated with Bungoma ELC Case No. 27 of 2013(Formerly HCCC No. 89 of 2005 by an order issued on 22/06/2015 by Mukunya J. In the abovementioned case, the Applicant jointly with the Respondents had filed a claim for adverse possession against the Plaintiffs in the main suit. The pleadings in the said suit were taken to be the defence and from the record, I see no amendments made to the said pleadings. The importance of pleadings cannot be gainsaid. In Joshua Mungai Mulango & Another -vs- Jeremiah Kiarie Mukoma [2015] eKLR the Court of Appeal held as follows:

“Parties are bound by their pleadings. The court is bound to determine a dispute on the basis of the pleadings filed by the parties and the evidence adduced on the basis of such pleadings. In an adversarial system such as ours, it is the parties who set the agenda for the trial by their pleadings. The need for this cannot be gainsaid. For the purpose of ensuring certainty and finality, a party cannot be allowed to resile from its pleadings without due amendment. Each party knows the case he has to meet and cannot be taken by surprise. The purpose and



importance of the rules in this regard clearly is to ensure that litigation is conducted in a framework that will guarantee fair play without prolixity and needless escalation of litigation costs.”

13. Notably in the pleadings, the Applicant and the Respondents herein sought for the whole of the suit land measuring 69 acres stating that they occupied the same in the following manner:
  - a. Joseph Sapiri -10 acres
  - b. James Ngosia Nandoli -10 acres
  - c. Dominic Wafula Nandoli(Representing
  - d. Wycliff Nandoli-Dcd) -14 acres
  - e. Lenah Murunga Chenjeni - 6 acres
  - f. Daniel Namachanja Nandoli - 9 acres
  - g. Dominic Wafula Nandoli - 4 acres
  - h. David Wanjala Nandoli - 4 acres
  - i. Elizabeth Okema Jairo - 12 acres
14. The above position was well captured in the judgment by Justice Olao delivered on 16/08/2020 which judgment is for execution. The Respondents in their replying affidavit attached a mutation form showing the sub-division of the suit land into five portions measuring 5.6ha,4.8ha,3.6ha,2.4ha and 11.2ha respectively. This mode of sub-division does not clearly follow from the pleadings and the judgment of this court.
15. The Court is equally alarmed by the tone adopted in the Respondents’ replying affidavit, which characterizes the Applicant’s decision to file the present application as “sly,” “clever,” and motivated by a desire to outsmart or run ahead of the rest of the family members, while portraying the other widows as “sitting still” and “cooperating.” Respectfully, the Court finds such averments both unnecessary and misplaced. The pursuit of one’s legal rights cannot be equated to disobedience or insubordination to family arrangements, particularly where there is an allegation that the Applicant’s proprietary interest is being undermined. Indeed, why should the Applicant be expected to “sit still” while she perceives that she is being shortchanged in the distribution of property to which she lays claim? Moreover, no plausible explanation has been tendered by the Respondents as to why they resorted to subdividing the land into five (5) portions, contrary to the pleadings in the main suit which clearly referred to eight (8) portions to be allocated to each of the Defendants, from which the judgment itself emanated.
16. The judgment of this Court, once delivered, constitutes a final and binding determination of the rights and obligations of the parties, and it is therefore incumbent upon all parties including the successful ones to comply with it strictly as rendered. A court’s decision is not to be implemented selectively, altered, or interpreted to suit individual convenience or familial arrangements. The authority of the court must be respected, and its orders obeyed in the exact terms pronounced, for to do otherwise would amount to undermining the rule of law and the sanctity of judicial pronouncements. See the case of Kenya Tea Growers Association Vs Francis Atwoli and 5 Others [2012] eKLR where Lenaola J(as he then was) cited with approval the case of Clarke and Others Vs Chadburn & Others [1985] 1All E.R (PC), 211.
17. The upshot of my finding is that the Notice of Motion dated 24<sup>th</sup> April 2024 is merited and the same is hereby allowed as prayed. I shall not make an order for costs, given the relations of the parties herein.



**READ, DELIVERED AND SIGNED AT BUNGOMA THIS 09<sup>TH</sup> DAY OF OCTOBER, 2025.**

**HON. E.C CHERONO**

**ELC JUDGE**

In the presence of;

M/S Mufutu H/B for Kraido for the Respondents.

8<sup>th</sup> Defendant/Applicant-present.

Bett C/A.

