



**Tedmbo & another (Suing or and on behalf of the Late Tembo Mwavuna Tembo) v Gichuhi & 2 others; Sadique (Applicant) (Environment and Land Case 303 of 2018) [2025] KEELC 6716 (KLR) (2 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 6716 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT AND LAND CASE 303 OF 2018  
YM ANGIMA, J  
OCTOBER 2, 2025**

**BETWEEN**

**ESTHER JOHN TEMBO ..... 1<sup>ST</sup> PLAINTIFF**

**JULIUS MWAVITA TEMBO ALIAS JULIUS MWVITA MWARUMBA .... 2<sup>ND</sup>  
PLAINTIFF**

**SUING OR AND ON BEHALF OF THE LATE TEMBO MWAVUNA TEMBO**

**AND**

**ZIPPORAH WAMBUI GICHUHI ..... 1<sup>ST</sup> DEFENDANT**

**THE REGISTRAR OF LANDS, KILIFI ..... 2<sup>ND</sup> DEFENDANT**

**THE HONOURABLE ATTORNEY GENERAL ..... 3<sup>RD</sup> DEFENDANT**

**AND**

**ASHRAF MOHAMED SADIQUE ..... APPLICANT**

**RULING**

1. Vide a notice of motion dated 10.03.2025 the intended interested party (the applicant) sought the following orders;
  - a. Spent.
  - b. That leave be granted to the firm of Ochoki and Ochoki Associates to come on record for the intended interested party in this matter since judgment was delivered on the 22.11.2022.
  - c. Spent.



- d. That this honourable court be pleased to set aside in its entirety the judgment delivered on the 22.11.2022 since the intended interested party was not a party to this Mombasa suit.
  - e. That the draft defence attached herewith be deemed as properly on record upon filing and paying the requisite filing fees.
  - f. The honourable court do visit the locus quo.
  - g. That costs of this application be provided for.
2. The application was based upon the grounds set out on the face of the motion and the contents of the supporting affidavit sworn by Yasvant Sadique on even date. The applicant also filed a supplementary affidavit sworn on 11.06.2025 in support of the application. The applicant pleaded that he was the co-administrator of the estate of the late Anwarala Mohamed Sadique (the deceased) who had an interest in Title No. Kilifi/Kijipwa/205(parcel 205).
  3. The applicant pleaded that the plaintiff in this suit had sued the deceased and another party in Malindi ELC NO. 59 of 2018 (the Malindi suit) claiming ownership of parcel 205. It was contended that when the said suit was struck out on 26.09.2018 the plaintiff crossed over to Mombasa and filed the instant suit which was heard and determined without his knowledge. The rest of the contents of the application go to the merits of the main suit hence fall outside the ambit of the instant application.
  4. The plaintiffs filed a replying affidavit sworn by Justus Tembo on 28.05.2025 and a further affidavit sworn on 10.06.2025 in opposition to the application. It was contended that the instant application was similar to the one filed earlier by the applicant's co-administrator which was dismissed by the court on 27.02.2025. It was contended that the application had no merit and that it was an abuse of the court process. It was contended that the Malindi suit was irrelevant to the instant suit as the earlier suit concerned totally different defendants. The rest of the contents of the response related to the merits of the dispute before court which fall beyond the province of the instant application.
  5. When the application was listed for directions it was directed that the same shall be canvassed through written submissions. The record shows that the applicant filed submissions dated 11.06.2025 whereas the plaintiff's submissions were dated 23.06.2025.
  6. The court has considered the application, the responses thereto as well as the submissions on record. The court is of the view that there are two main issues for determination herein. First, whether the applicant is entitled to be joined in the proceedings. Second, whether the applicant has made out a case for setting aside the decree dated 22.11.2022.
  7. The court has perused the earlier application for joinder dated 20.08.2025 by the applicant's co-administrator to be joined in the suit and for setting aside of the judgment. The said application was dismissed essentially because the applicant in the application did not explain his relationship to the registered owner. The copy of the title document annexed to the application showed that the proprietor was Anwar Mohamed Sadique whereas the applicant was Ashraf Mohamed Sadique. Since the applicant did not explain his connection or relationship to the proprietor, the application for joinder was disallowed.
  8. The court is of the view that the instant application cannot be precluded on the basis of the earlier application especially because the court has a wide discretion to order joinder of a party at any stage of the proceedings either on application or by the court of its own motion under Order 1 Rule 10 of the Civil Procedure Rules. The applicant in this matter has clearly demonstrated his connection to the deceased who appears to have had an interest in parcel 205 which was the subject matter in the Malindi



suit. In the event, the court is inclined to order the joinder of the applicant as the 4<sup>th</sup> defendant of its own motion.

9. The question of setting aside the decree dated 22.11.2022 is fairly straightforward. The court has perused a copy of the plaint in the Malindi suit. It is clear that the plaintiffs had sued the deceased and another party over parcel 205. That suit was struck out without a full hearing by the Hon. Justice Oloa on 26.09.2018.
  10. It is evident from the material on record that upon losing the suit in Malindi the plaintiffs swiftly moved to Mombasa county and filed the instant suit over the same property excluding the administrators of the deceased and obtained judgment in their absence. In the Mombasa suit, the plaintiff sued the AG, the land registrar Kilifi and one Zipporah Gichuhi.
  11. The court is of the view that the plaintiffs' said action was not only irregular but clearly constituted an abuse of the court process. It is evident that the plaintiffs were forum shopping by moving from the ELC Malindi to the ELC Mombasa. To make matters worse, they filed the new suit over the same parcel of land but failed to join the administrators of the estate of the deceased in order to accord them an opportunity of being heard.
  12. The court is thus of the view that the plaintiffs are guilty of gross abuse of the court process hence the judgment and decree dated 22.11.2022 is for setting aside as a matter of right, *ex debito justitiae*. The court shall join the applicant as a defendant to the suit and grant him unconditional leave to defend the suit and file a counter-claim, if need be. The court is also inclined to transfer the suit to the ELC Malindi for trial and disposal since the suit property is located at Kijipwa in Kilifi County.
  13. The court has noted that there was no objection to the applicant's prayer to change advocates. The court takes the view that a litigant has a legal right to engage an advocate of his choice or to change advocates at any stage of the proceedings. As a result, the court has not hesitation in allowing the prayer for leave to appoint new advocates.
  14. The upshot of the foregoing is that the court finds merit in the applicant's notice of motion dated 10.03.2025. As a consequence, the court makes the following orders for disposal thereof;
    - a. That leave is hereby granted to the firm of Ochoki & Ochoki Associates to come on record for Yasvant Sadique.
    - b. That Yasvant Sadique is hereby joined in the suit as a 4<sup>th</sup> defendant in his capacity as the administrator of the estate of the late Anwarali Mohamed Sadique.
    - c. That the judgment dated 22.11.2022 is hereby set aside in its entirety.
    - d. That the 4<sup>th</sup> defendant is hereby granted unconditional leave to defend the suit and shall for that purpose file and serve a defence within 14 days from the date hereof.
    - e. Since the suit property is located in Kilifi County the suit is hereby transferred to the ELC at Malindi for trial and disposal.
    - f. The plaintiff shall serve the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants with a copy of the plaint and all other pleadings and notify them of the transfer order within 21 days and file an affidavit of service.
    - g. The applicant is hereby awarded costs of the application to be borne by the plaintiffs.
- It is so ordered.



**RULING DATED AND SIGNED AT MOMBASA AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS ON THIS 2<sup>ND</sup> DAY OF OCTOBER, 2025.**

.....

**Y. M. ANGIMA**

**JUDGE**

In the presence of:

Court Assistant Gillian

Mr. Kenga for 1<sup>st</sup> defendant

No appearance for 1<sup>st</sup> defendant

No appearance for the 2<sup>nd</sup> and 3<sup>rd</sup> defendants

Mr. Sausi for the applicant

