



Tuwei & 2 others v Tanui & 2 others (Environment and Land Miscellaneous Application E024 of 2025) [2025] KEELC 6700 (KLR) (1 October 2025) (Ruling)

Neutral citation: [2025] KEELC 6700 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E024 OF 2025
GMA ONGONDO, J
OCTOBER 1, 2025

BETWEEN

DAVID KIPLIMO TUWEI 1ST APPLICANT
HENRY KIPKOSGEI TALAM (SUING AS A REPRESENTATIVE OF THE
ESTATE OF KIMUTAI ARAP TOO - DECEASED) 2ND APPLICANT
JULIUS KIPLETING SINGOEI (SUING AS A REPRESENTATIVE OF THE
ESTATE OF MALAKWEN TUWEI KIPTUWEI ALIAS MALAKWEN MITEI
KAPTUWEI -DECEASED) 3RD APPLICANT

AND

KIPTABUT A TANUI 1ST RESPONDENT
HOSEA TABUT 2ND RESPONDENT
PHILIP TABUT 3RD RESPONDENT

RULING

1. In an application by way of Notice of Motion dated 21st July 2025, the three applicants through Cherono Chepkosgey and Company Advocates, are seeking the orders infra;
 - a. Moot
 - b. Moot
 - c. That, a temporary order of injunction do issue restraining the Respondents, his agents, family members, or anyone acting on their behalf from carrying out meetings, and/or harambees, attempting to bury, interring or burying the remains of Tabarno Jepkemei – Deceased on land parcels No. Songhor/Songhor Block 9 (Soy Sitet) 162 and Songhor/Songhor Block 9 (Soy



Sitet) 160 respectively pending execution Kapsabet ELC No. 1 of 2022 David Kiplimo Tuwei & Others Vs Kiptabut A. Tanui & 2 others.

- d. The Officer Commanding Station (O.C.S) Songhor Police Station to ensure compliance.
 - e. That, costs of this application be provided for.
2. The application is coming up for submissions today. Ms Koech learned counsel for the applicants has informed the court that the same has been overtaken by events as the body in issue was interred in another land other than the suit parcels of land. Thus, she urged the court to mark the application as abandoned and file be closed.
 3. On that score, I bear in mind Order 25 of the Civil Procedure Rules 2010 on the withdrawal, discontinuance or adjustment of suits. The term 'suit' is defined under Section 2 of the [Civil Procedure Act](#) Chapter 21 Laws of Kenya.
 4. It is established law that any withdrawal, discontinuance of a matter ought to be allowed as it the right of a party to do so subject to issue of costs which can be claimed by the respondent, if any; see Medical Training College & 2 others Petition 10 of 2021 {2021} KESC 21 KLR(Civ).
 5. The Respondents represented by Kimgung and Company Advocates are aware of this date further to the proceedings of 29th July 2025 herein but are absent without any reason thereof.
 6. In the premises, I find that the applicants have the right to discontinue this matter as the same would not occasion any prejudice to the Respondent thereby.
 7. A fortiori, the application dated 21st July 2025, is hereby marked as discontinued with no orders as to costs taking into account the proviso to section 27 (1) of the [Civil Procedure Act](#) Chapter 21 Laws of Kenya and the holding in Jasbir Singh Rai & 3 others vs Tarlochan Singh Rai Estate & 4 others (2014) eKLR.
 8. It is so ordered.

DATED AND DELIVERED AT KAPSABET THIS 1ST DAY OF OCTOBER 2025.

HON. G M A ONGONDO

JUDGE

In the presence of;

Ms. Koech learned counsel for the Applicants

Walter, Court Assistant

