



**Wekesa v Kasawa (Environment and Land Case E008 of 2024)
[2025] KEELC 7239 (KLR) (16 October 2025) (Judgment)**

Neutral citation: [2025] KEELC 7239 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA
ENVIRONMENT AND LAND CASE E008 OF 2024
EC CHERONO, J
OCTOBER 16, 2025**

BETWEEN

MOSES NANBAFU WEKESA APPLICANT

AND

AMBROSE MULONGO KASAWA RESPONDENT

JUDGMENT

1. The Applicant filed an Amended Originating Summons dated 12/02//2024 seeking determination of the following issues;
 - a. Whether the Applicant is entitled to a vesting order declaring him the owner of land parcel No. Bokoli/Mukuyuni/429 pursuant to the Judgment and Decree in the Sirisia Principal Magistrate's Court ELC CASE No. E007 of 2023.
 - b. Whether the Respondent's name should be cancelled from the register of land parcel No. Bokoli/Mukuyuni/429 and deleted to substitute it with that of the applicant pursuant to the judgment and Decree in the Sirisia Principal Magistrate's Court ELC CASE NO. E007 of 2023.
 - c. Whether the Respondent together with his agents can be restrained in any way from interfering, entering, selling and / or unlawfully subdividing the suit land until determination of this matter.
 - d. Whether the costs are to be in the cause.
2. And for the following Declarations;
 - a. A Declaration that the ownership of the LAND parcel No. Bokoli/Mukuyuni/429 is vested into the applicant's proprietary rights and therefore unlawfully being held in the names of the Respondent.



- b. A Declaration for a vesting order that the applicant be and is hereby declared the proprietor of the LAND parcel no. Bokoli/Mukuyuni/429 pursuant to the judgment and decree in the Sirisia Principal Magistrate's Court ELC Case No. E007 OF 2023.
 - c. A Declaration that the Respondent be and is hereby ordered to execute all documents of transfer in respect of the said land parcel no. Bokoli/Mukuyuni/429 to the applicant failure to which the said documents including the transfer forms and the application for consent to be signed by the authorized officer of the court. 4. 5. A Declaration That The Respondent Registered The Said Land in his names unlawfully and therefore himself together with his agents are hereby restrained from interfering, entering, selling and/or unlawfully sub dividing the suit LAND.
 - d. A Declaration THAT the applicant relies on his affidavit to support the summons and the LAW relied on.
3. The Applicant averred that the court entered judgment in his favour in Sirisia PMC ELC Case NO. E007 OF 2023. That he was advised by the Land Registrar to pursue this vesting order to enable him execute the court's judgment and decree and that it was in the best interest of justice that the orders sought are granted.
 4. The Respondent did not file any response to the application and the matter proceeded for hearing ex-parte.
 5. PW1 Moses Nambafu Wekesa relied on his originating summons dated 12/2/2024 and the supporting affidavit sworn on even date as his evidence-in-chief. He referred the court to the annexures thereto i.e judgment in Sirisia PMC ELC Case NO. E007 OF 2023. He stated that the land in dispute is LR No. Bokoli/Muyuni/429 which is registered in the name of the Respondent. That his mother had previously filed Bungoma HCCC No. 35 of 2006 wherein judgment was entered in her favour.
 6. Once the Applicant closed his case, directions were taken for filing of submissions. The Applicant filed his submissions dated 27/06/2025 reiterating the averments contained in the Originating Summons and the supporting affidavit.

Analysis and determination.

7. The Applicant moved this Court through originating summons dated 12th February 2024 seeking declaratory and vesting orders in respect of land parcel No. Bokoli/Muyuni/429. Despite being duly served, the Respondent failed to Enter Appearance and/or file statement of defence. Consequently, the matter proceeded ex-parte.
8. The Applicant testified that he is the legal representative of the estate of his late Mother, Florence Nasimiyu Wekesa. He stated that in Bungoma High Court Civil Suit No. 35 of 2006, judgment was entered in favour of his late mother, directing that the registration of the Respondent as proprietor of the suit property be cancelled and the register rectified in her favour. Unfortunately, she passed away before executing the decree.
9. The Applicant further stated that in Sirisia Principal Magistrate's Court ELC No. E007 of 2023, judgment was delivered on 25th July 2023 declaring that, as the personal representative of the deceased, he is entitled to inherit the suit property, and ordering cancellation of the Respondent's name from the register. He now seeks vesting orders to facilitate execution of those findings.
10. The Applicant produced before this Court the judgment and decree in Sirisia ELC No. E007 of 2023 in support of his case. This Court takes note that although reference has been made to Bungoma



High Court Civil Suit No. 35 of 2006, no copy of that judgment was placed before this Court. Accordingly, this Court is unable to independently verify and interrogate the terms of the alleged judgment. However, the decree in Sirisia ELC No. E007 of 2023 stands as a subsisting and valid judgment of a court of competent jurisdiction, and it expressly confers entitlement upon the Applicant in his representative capacity.

11. Having considered the uncontroverted evidence, I am satisfied that the Applicant has proved his case on a balance of probabilities. The law under Section 80 of the Land Registration Act, 2012 permits this Court to order rectification of the land register where an unlawful registration is established, while Sections 79 and 82 of the Law of Succession Act, Cap 160 vest the property of a deceased person in the personal representative.
12. I am also persuaded that the Applicant does not claim the land for his personal benefit, but for benefit of the estate of his late mother to hold in trust pending succession proceedings.
13. In the end, the originating summons dated 12/02/2024 is merited and the same is hereby allowed in the following terms;
 - a. A Declaration is hereby made that pursuant to the judgment and decree in Sirisia Principal Magistrate's Court SPM-ELC Case No. E007 of 2023, the Applicant, being the legal representative of the estate of the late Florence Nasimiyu Wekesa, is entitled to be registered as proprietor of land parcel No. Bokoli/Muyuni/429, to hold the same in trust for the beneficiaries of the estate pending succession proceedings.
 - b. An order is hereby issued for cancellation of the register for land parcel No. Bokoli/Muyuni/429 to delete the name of the Respondent herein and substitute it with that of the Applicant in his capacity as legal representative of the estate of Florence Nasimiyu Wekesa.
 - c. The Respondent is ordered to execute all necessary transfer instruments in favour of the Applicant within thirty (30) days, failing which the Deputy Registrar of this Court shall execute the same on his behalf.
 - d. A permanent injunction is hereby issued restraining the Respondent, his servants, agents, or anyone claiming under him from entering upon, dealing with, subdividing, or otherwise interfering with land parcel No. Bokoli/Muyuni/429.
 - e. I make no order as to costs.
14. Orders accordingly.

DATED, SIGNED AND DELIVERED AT BUNGOMA THIS 16TH DAY OF OCTOBER, 2025.

HON.E.C CHERONO

ELC JUDGE

In the presence of;

1. Applicant-present.
2. Respondent/Advocate-absent.
3. Bett C/A

