

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA
ELC CASE NO. 66 OF 2010

**RAYLEIGH W. WANYAMA (suing as the administrator of the
estate of Ezekiel Wanyama
Kayile)-----APPLICANT**

VERSUS

KHISA MUYUNDO alias ZABLON KASISI

MUYUNDO-----1ST
RESPONDENT

LORNA MUKHWANA WANYAMA-----2ND
RESPONDENT

JOSEPH BUSOLO MUKHONE-----3RD
RESPONDENT

RULING

1. The Applicant, Wanambisi Khisa has moved this Honourable court vide a Notice of Motion application dated 21st day of June 2025 seeking the following orders;
 - (1) (SPENT)
 - (2) THAT an order be issued to the applicant Ryleigh Wanjala Wanyama to show cause why he cannot be committed to civil jail for failure to comply with the order dated 17th July 2024 and issued by this court on 22nd July, 2024.
 - (3) THAT the County Surveyor be authorized to visit the land parcel NDIVISI/MUCHI/636 and give effect to the order of the court by ensuring the subdivision of the same into 2

portions measuring 14 acres to be registered in the name of Rayleigh Wanjala Wanyama and Lorna Mukhwana Wanyama and the balance of 5 acres to be transferred in the name of Wanambisi Khisa and Khisa Muyundo and establish the boundaries thereto.

(4) THAT the OCS Matisi Police Station be and is hereby authorized to provide security to the County Survey while carrying out the subdivision exercise,

(5) THAT the Costs of this application be provided for,

2. The application is premised on six grounds apparent on the face of the said application supported by the affidavit of the Applicant sworn on even date. In his supporting affidavit, the Applicant deposed as follows;

1. THAT I have the power of Attorney to represent the 1st Respondent herein competent and duly authorized to swear this affidavit.
2. THAT I know from my own knowledge that a consent order was recorded before this court on 17th July 2024 which lead to the extraction of the order issued on 22nd July 2023, Annexed herewith and marked WK1 is a copy of the order.
3. THAT one of the Orders issued by the court was requirement that the land parcel NO. NDIVISI/MUCHI/636 be subdivided into two portions namely 14 acres and the balance of 5 acres
4. THAT the 14 acres were to be transferred into the names of Rayleigh Wanjala Wanyama and Lorna Mukhwana Wanyama

and the 5 acres were to be transferred in the name of Wanambisi Khisa and Khisa Muyundo,

5. THAT all the efforts to have the order executed has been unfruitful due to the frustration from the applicant herein. Annexed herewith and marked WK2 are letters from the area chief.
 6. THAT it is clear the applicant herein is frustrating the court process and is necessary for him to be summoned before court to show cause why he cannot be punished for disobeying court order,
 7. THAT its imperative and in the interest of justice that the sought orders should be granted so that sanity and tranquillity should be maintained.
3. The application is opposed by the Respondent who filed a Replying affidavit sworn on 14th July 2025 in which he deposed as follows;
1. THAT the application is baseless, frivolous, unmerited and solely intended to waste the courts limited precious resources.
 2. THAT I am aware that this Honourable issued an order on 22nd July 2024. I have been willing to comply with it.
 3. THAT the Orders did not specifically rest the responsibility of implementing it on the Applicants. I understand that both parties have a duty of complying with the orders. Nonetheless, the responsibility of complying with the orders substantially rests upon the 1st Applicant since the Land in

issue is registered in the name of the 1st Applicant. Annexed hereto and marked RWW-1 is a copy of the Certificate of official search.

4. THAT on my part, the only responsibility I have with regard to implementing the Order is to avail myself for the Survey and subdivision and to contribute to the costs attendant to it.
5. THAT the Applicants have not disclosed with specificity how I have failed to comply with the Orders neither have they disclosed the steps they have undertaken in implementing the Orders.
6. THAT I have not been able to comply with the Orders because paragraph 3 of Orders directed that the 5 acres be transferred to Wanambisi Khisa and Khisa Muyundo. These names refer to the same person, the 1st Applicant.
7. THAT I communicated this to the Applicants and explained to them that the reference to the 1st Applicant official and Alias name will make it difficult to register the land in his name.
8. THAT we agreed that since the 1st Applicant is the one who was affected, he was to take action and correct this error. The Applicants were supposed to inform me once the error in name had been corrected for me to take the necessary steps towards complying with the orders.
9. THAT the Applicant never notified me on the progress they had made with regard to the rectification hence I am not even aware if they have already rectified it.

10. THAT the Applicants have never informed me that they have procured the services of a surveyor so that I could make arrangements to participate in the survey exercise.
11. THAT it is clear that my failure to comply with the orders is neither wilful nor intentional. The Applicants are the ones who have failed to comply therefore it will be unfair if I am committed to jail.
12. THAT the Orders sought are draconian as they involve loss of my liberty yet I have always been willing and ready to comply with the consent.
13. THAT in the alternative, the court can exercise its discretion and order that the Registrar executes the transfer forms on behalf of any party who is unwilling to comply with the court order dated 22nd July 2024.
14. THAT it is in the interest of justice that the application be dismissed with costs to me and the Applicants ordered to rectify the errors affecting the 1st Applicant's name.
15. THAT on my part, I am willing to cooperate with the Applicants to fully implement the orders so as to resolve this long-standing land dispute.

RESPONDENTS SUBMISSIONS.

4. The Respondent through the Firm of IBRAHIM ALUBALA ADVOCATES filed submissions dated 29th July 2025 and sought to have the application dismissed arguing that the Applicant has failed to establish that the Respondent has failed to comply with the Orders. They submitted that both

parties bear an equal duty to comply with the orders and that a party alleging noncompliance by the other must, as a minimum, demonstrate the steps they themselves have taken to implement the orders. They argued that orders do not assign responsibility for implementation to any specific party, and it is therefore reasonable to conclude that both parties share equal responsibility for compliance.

5. The Applicants further submitted that the primary responsibility for compliance lies substantially with the Applicants given that the land in question is registered in the name of the 1st Applicant and that the Respondent's role in their view is limited to availing himself for the survey, subdivision and to contributing towards the attendant cots. They submitted that on their part, the Respondent has been unable to comply with the orders because paragraph 3 directs that 5 acres be transferred to 'Wanambisi Khisa and Khisa Muyundo' names that refer to the same individual, the 1st Applicant. Reliance was placed in the case of *Katsuri Limited v Kapurch and Depar shah* (20160 KEHC 6447 (KLR))

APPLICANT'S WRITTEN SUBMISSIONS.

6. By the time this Court withdrew to write this Ruling, the Applicants had not filed their submissions.

LEGAL ANALYSIS AND DECISION.

7. I have considered the Notice of Motion application dated 21/06/2025, the supporting affidavit, the Replying affidavit, the submissions by the Respondent and the Relevant law. The Applicant in the said application is seeking an order directed to the Respondent to show cause why he cannot be committed to civil jail for failure to comply with the order dated 17th July, 2024 and issued by this
8. Court on 22nd July, 2024. The Applicant is also seeking an order that the County Surveyor be authorized to visit the land parcel Ndivisi/Muchi/636 and give effect to the order of the court by ensuring the subdivision of the same into 2 portions measuring 14 acres to be registered in the name of Rayleigh Wanjala Wanyama and Lorna Mukhwana and the balance of 5 acres to be transferred in the name of Wanambisi Khisa and Khisa Muyundo and establish the boundaries thereto. The third and final order is for an order that the OCS Matisi Police Station be authorized to provide security to the County Surveyor while carrying out the subdivision exercise.
9. The brief background of this case is that when this case came for directions before the Deputy Registrar of this Court on 17/05/2024, the parties compromised the suit with a consent order marking the matter as settled. The advocates for the parties and the Deputy Registrar signed the consent marking the case as concluded. The Deputy Registrar of this court is also a sitting magistrate having a cause list like all

other judicial officers beside dealing with ELC matters coming up for directions and other administrative duties. However, she has no jurisdiction to issue substantive orders in ELC matters that are listed before her. When the learned Magistrate entered the consent orders on 17/05/2024 which gave rise to a decree issued on 22/07/2024, she exceeded her jurisdiction as a Deputy Registrar. The said consent order is therefore null and void for all intents and purposes and incapable of execution by this court. It follows therefore that the consent judgment by the Deputy Registrar and any subsequent orders for enforcement arising from the said decree is incapable of enforcement by this court. Consequently, the Notice of Motion dated 21st June 2025 is hereby struck out with no orders as to costs.

10. Orders accordingly.

READ, DELIVERED and **SIGNED** at **BUNGOMA** this 30th day of October, 2025

HON. E.C CHERONO

ELC JUDGE

In the presence of;

1. Mr. Alubala for the Respondent.
2. Applicant/Advocate-absent.
3. M/S Nalika C/A.