



REPUBLIC OF KENYA



**KENYA LAW**  
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**Mwaighacho v Mbogo (Environment and Land Miscellaneous Application E010 of 2025)  
[2025] KEELC 7589 (KLR) (Environment and Land) (5 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 7589 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT VOI  
ENVIRONMENT AND LAND  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E010 OF 2025  
EK WABWOTO, J  
NOVEMBER 5, 2025**

**BETWEEN**

**LIVINGSTONE D. MWAIGHACHO ..... APPLICANT**

**AND**

**THOMAS MWAWASI MBOGO ..... RESPONDENT**

**RULING**

1. The Applicant took out Originating Summons dated 18<sup>th</sup> September 2025 seeking for the following orders:-
  - i. That this Honourable Court be pleased to compel the Respondent to sign all relevant documents, for Subdivision and Transfer of the Land known as Werugha/Mghambonyi/1705 (formerly and subdivision of Plot Number Werugha/Mghambonyi 461 as per the Decree issued on the 22<sup>nd</sup> March 2015 vide Wundanyi Law Court, SRMCC Case No. 23 of 2025 Livingstone D. Mwaighaco =vs= Thomas Mwawasi Mbogo in the presence of the Deputy Registrar of this Honorable Court.
  - ii. That in the event that the Respondent refuses to comply with the orders (a) above this Honorable Deputy be pleased to issue an order to the Deputy Registrar of this Court authoring her to sign all necessary documents required to subdivide and transfer the suit parcel of land known as Werugha/Mghambonyi/1705 (formerly and subdivision of Plot Number Werugha/Mghambonyi 461) to the applicant herein.
  - iii. That costs of this application be provided for.
2. The Originating Summons was premised on the grounds outlined in the summons and the supporting affidavit sworn on 18<sup>th</sup> September 2025 by the Applicant.



3. In summary the Applicant's case is that a Decree was issued on the 22<sup>nd</sup> March 2015 vide Wundanyi Law Court, SRMCC Case No. 23 of 2025 Livingstone D. Mwaighaco –vs- Thomas Mwawasi Mbogo for subdividing of the land known as LR. NO. Werugha/Mghambonyi 461 into three parts and further transfer a portion belonging to me.
4. That after the issuance of the Decree the Applicant went further and started the process of subdivision and the land was subdivided into two parcels and he was given Werugha/Mghambonyi/1705, which number was issued in the names of Thomas Davis Mwawasi Mbogo, since he is the original owner of Werugha/Mghambonyi/461.
5. It was averred that when he engaged the Respondent to come to the Land Control Board to give consent for the final transfer of the new number Werugha/Mghambonyi/1705 the Respondent refused to attend the Land Control Board and also sign the Transfer forms.
6. It was also averred that the Respondent has never challenged the Judgement of the court, neither has he ever filed any appeal or application for stay of the Judgment and decree of the court.
7. That despite numerous efforts made to the Respondent to comply with the Decree of this honorable Court and sign the Land Control Board application and the Transfer forms, the Respondent failed, and/or refused to comply.
8. It was further averred that the refusal of the Respondent to comply with the Decree is not only amounting to contempt of court orders, but it is also denying him from enjoying the fruits of the Judgement.
9. The application was not contested by the Respondent despite service and being notified of the existence of this proceeding.
10. During the hearing of the Originating Summons Livingstone Mwaighacho the Applicant herein urged the Court to grant the reliefs sought on the reasons that there has been no compliance on the part of the Respondent in respect to the Order and Decree issued by the Wundanyi Court, SPMCC Case No. 23 of 2015 in respect to the subdivision and transfer of the land known as Werugha/Mghambonyi/1705.
11. Having considered the Originating Summons and the oral submissions made by the Applicant, the main issue for determination is whether the application is merited.
12. Even though the application is not opposed, In the Supreme Court of Kenya case of Gideon Sitelu Konchellah v Julius Lekakeny Ole Sunkuli & 2 Others [2018] eKLR, the court stated that;

“As a court of Law, we have a duty in principle to look at what the application is about and what it seeks. It is not automatic that for any unopposed application, the court will as a matter of course grant the sought orders. It behooves the court to be satisfied that prima facie, with no objection, the application is meritorious and the prayers may be granted”.
13. In the instant matter it is evident that there is a valid decree issued by the lower court requiring the Respondent to sign and transfer all land known as Werugha/Mgambonyi/1705. The Applicant is desirous to have the same process finalized. However, the Applicant has not stated the reasons as to why he has not moved the Court that issued the said decree to enforce the said orders.
14. Section 25 and 26 of the *Environment and Land Court Act* and Section 9 of the Magistrates Court Act gives the jurisdiction to the Magistrate's court to deal with disputes relating to land matters falling within their pecuniary jurisdiction. There is no specific provision barring the Magistrates Court from



hearing and determining the issues raised by the Applicant so long as they fall within the pecuniary and territorial jurisdiction of the Magistrate Court that issued the decree.

15. In the circumstances, the Applicant ought to have moved the Court that issued the said decree.
16. Consequently, this Court is unable to grant the reliefs sought by the Applicant and as such the said application dated 18<sup>th</sup> September 2025 is hereby dismissed.
17. In respect to costs, there being no opposition to the application, it is only prudent that each party bears own costs.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT VOI THIS 5<sup>TH</sup> NOVEMBER 2025.**

**E. K. WABWOTO**

**JUDGE**

**In the presence of: -**

**Livingstone Mwaighacho the Applicant appearing in person.**

**No appearance for the Respondent.**

**Court Assistant: Mary Ngoira.**

