



REPUBLIC OF KENYA



Rotich v Kirui (Sued as the legal representative of the Estate of Jane Jepkemboi Kirui-Deceased) (Land Case (Originating Summons) E006 of 2024) [2025] KEELC 7713 (KLR) (5 November 2025) (Ruling)

Neutral citation: [2025] KEELC 7713 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET
LAND CASE (ORIGINATING SUMMONS) E006 OF 2024
GMA ONGONDO, J
NOVEMBER 5, 2025**

BETWEEN

JULIUS KIPCHIRCHIR ROTICH APPLICANT

AND

KIMBERLY JEPKOECH KIRUI (SUED AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF JANE JEPKEMBOI KIRUI-DECEASED) RESPONDENT

RULING

1. This ruling is in respect of an application by way of a Notice of Motion dated 8th August 2025 by the applicant through Cheruiyot, Melly and Company Advocates for orders;
 - a. That, this Honourable Court be pleased to review its ruling or orders issued on 7th November, 2024 and its place there be an order directing maintenance of status quo both on the ground and registers of land parcel numbers Nandi/itigo/833 and Nandi/itigo/834 (The 1st and 2nd subdivisions of the suit land respectively) formerly known as Nandi/itigo/383 (The suit land) pending the hearing and determination of the main suit.
 - b. That, this Honourable Court be pleased to review its ruling or order issued on 7th April 2025 and its place there be an order directing the County Surveyor Nandi County to undertake the survey in the 1st and 2nd subdivisions of the suit land to ascertain the acreage and occupation thereof and to compile and file a report in Court.
 - c. That, this Honourable Court may be pleased to grant the application leave and allow him to amend the pleadings including but not limited to the Originating Summons dated 1st August, 2024 and filed in Court in the 2nd August 2024.



- d. That, consequent to grant of prayer (5) above this Honourable Court be pleased to grant the Applicant leave to file and serve any additional and/or further documents in compliance with Order 11 Rule 3 of the Civil Procedure Rules, 2010.
 - e. Cost of this application be provided for.
 - f. Any such orders and/or reliefs do issue as the Court may deem fit and/or appropriate in the circumstances.
2. The basis of the application is the Applicant's affidavit of thirty paragraphs sworn on even date and the accompanying documents including copies of rulings delivered on 7th November 2024 and 7th April 2025 respectively and the twenty-three grounds, inter alia;
- a. That, this Honourable Court delivered a Ruling on the 7th day of November, 2024 ordering the parties herein to maintain status quo prevailing on the register and ground of Nandi/itigo/183 pending the hearing and determination of the main suit and also that save for registration by way of transfer the property be transmitted only to estate beneficiaries excluding third parties
 - b. That, this Honourable Court vide its Ruling above also directed that the Applicant remains in possession and occupation of his 10 acres out of the suit land pending hearing and determination of the main suit.
 - c. That, it is on the account of the Ruling of 7th November 2024 that orders were extracted by the Environment and Land Court Registry for a registration of the Lands Registry respecting an erroneous suit land with the result that the orders sought by the Applicant to secure the status quo prevailing then on the register and ground of the suit land never came to be.
 - d. That, there is an error apparent on the face of the record by virtue of the Ruling of 7th November 2024 which if not reviewed will irreparably cause injury to the Applicant
 - e. That, there is need to have status quo ordered in the Ruling of 7th November 2024, applying to the 1st and 2nd sub divisions of the suit land until the full finalization of the main suit.
 - f. That, the introduction of parcel number Nandi/itigo/183 in the ruling of 7th November, 2024 suffices from the mistake by the Court as a mistake or error apparent on the face of the record which falls as a sufficient reason to have both rulings reviewed.
 - g. That, the Applicant would need to amend his pleadings, with the Court's permission, to clarify the issues in dispute or correct errors. The amendment would cause no injustice or irreparable loss to anyone and will not be an abuse the Court process.
3. The Respondent was duly served with the application as disclosed in the affidavit of service sworn on 15th August 2025 by Mr. Victor Kiprono learned Counsel for the Applicant but opted not to respond to the same as held in the case of *Ogada-v-Moliin* (2009) eKLR.
4. On 23rd September 2025, the Court directed that the application be heard by written submissions.
5. So, the Applicant's counsel filed submissions dated 3rd October 2025 making reference to the application inclusive of the orders sought therein, the affidavit of service stated in paragraph 3 above, the Court's rulings delivered on 7th November 2024 and 7th April 2025 respectively and identified issues for determination including whether the Applicant has satisfied the requirements for review. In discussing the issues in favour of the Applicant, counsel cited Order 45 Rule 1 of the Civil Procedure Rules 2010, section 80 of the *Civil Procedure Act* Chapter 21 Laws of Kenya, Multi Choice (K)



- Ltd Wananchi Group (K) Ltd & 2 others (2020) eKLR and Elijah Kipngeno Arap Bii-vs-Kenya Commercial Bank Ltd (2013) eKLR and others, to buttress the submissions.
6. I have duly considered the application, the affidavit of service and the Applicants' submissions in entirety. So, is the application meritorious?
 7. Notably, the Applicant sued the Defendant/Respondent for adverse possession over the suit land as set out on the face of the Originating Summons dated 1st August 2024.
 8. The suit land featured at paragraphs 1 and 7 of the Court's ruling which was delivered on 7th November 2024 in respect of the application dated 1st August 2024. However, paragraphs 16 and 23 of the ruling introduced LR NO. Nandi/itigo/183 in place of the suit land.
 9. The Court's orders captured in the Court's ruling delivered on 7th April 2025, relate to the suit land. However, in light of the fundamental changes to the suit land in terms of its 1st and 2nd subdivisions of the suit land as revealed in copies of certificates of official searches marked 'JKR-3a b' annexed to the affidavit in support of the application, leave to amend the Applicant/Plaintiff's pleading and the rulings delivered on 7th November 2024 and 7th April 2025, would be necessary in the interest of justice.
 10. Clearly, there is clerical mistake or an error apparent on the rulings of 7th November 2024 and 7th April 2025 touching on the suit land calling for review of the rulings. The suit land has since mutated to the 1st and 2nd subdivisions of the same. So, sections 80 and 100 of the *Civil Procedure Act* Chapter 21 Laws of Kenya and Order 45 (supra) and the case of National of Kenya Ltd-vs-Ndungu Njau (1996) KLR 469 (CAK) as well as Bii & Multichoice cases (supra), would be quite instructive in this application.
 11. It therefore, follows that the present suit is not hopeless as it plainly and obviously discloses reasonable cause of action rendering the amendment sought in the application necessary; see D.T Dobie & Company (Kenya) Ltd-vs-Muchina {1980} KECA 3 (KLR).
 12. In the premises, the notice of application dated 8th August 2025 is not challenged and merited. The same is hereby allowed in terms of orders 4, 5, 6 and 7 sought therein as stated in paragraphs 1 (a) (b) (c) and (d) hereinabove with costs in the cause.
 13. Thus, I direct that the Applicant's amended pleadings be filed and served within the next 14 from this date for pre-trial directions regarding the suit on 9th December 2025.
 14. It is so ordered

DATED AND DELIVERED AT KAPSABET THIS 5TH DAY OF NOVEMBER 2025.

HON G M A ONGONDO

JUDGE

In the presence of;

Mr. Biwott learned Counsel for the Applicant

Walter, Court Assistant

