



**Ouro v Anyieni (Environment and Land Case E039 of 2024)  
[2025] KEELC 8437 (KLR) (3 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 8437 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KITALE  
ENVIRONMENT AND LAND CASE E039 OF 2024**

**CK NZILI, J**

**NOVEMBER 3, 2025**

**BETWEEN**

**GRACE KWAMBOKA OURO ..... PLAINTIFF**

**AND**

**REBECCA ANYIENI ..... DEFENDANT**

**RULING**

1. On 16/6/2025, this court delivered a ruling following an application dated 8/10/2024, brought by the plaintiff seeking temporary orders of injunction barring and restraining the defendant, her servants, employees, or agents from trespassing onto, subdividing, transferring, damaging, cultivating, planting crops or laying claim on the parcel of land known as Trans Nzoia/Gidea/484.
2. The record shows that when the application came for an interpartes hearing on 6/11/2024, Miss Mukanda advocate, appeared on behalf of the firm of Nakitare & Co. Advocates for the defendant. The court gave the defendant time to respond to the application, which it placed for hearing on 11/12/2024.
3. Come 6/12/2024, the court was told that the defendant had yet to comply by filing a replying affidavit. Miss Mukanda, for the defendant, told the court that they required more time to put in a response after obtaining a grant of letters of administration ad litem on behalf of the late husband of the defendant.
4. The court gave the defendant until 9/12/2024 to confirm the position. Come 9/12/2024, Mr Nakitare advocate appeared for the defendant. He told the court that the defendant had been on the land for 35 years before her husband passed on. Learned counsel told the court that they had applied for a limited grant ad litem filed in Kitale Misc. Appl. No. E143 of 2024 at the lower court. The court listed the application for hearing on 6/2/2025. The order of the status quo was extended till then.
5. Come 6/2/2025, Mr Nakitare advocate appeared for the defendant. He indicated to the court that he believed that a replying affidavit had been filed in the court file. Learned counsel did not refer to the



- date it had been filed. The court proceeded to give a ruling date for 14/5/2025, after extending the interim orders of status quo in existence.
6. At the ruling on 16/6/2025, the defendant was represented by Miss. Mukanda Advocate. The court record shows that the defendant was served with court processes on 15/10/2024, and a return of service was sworn on 17/10/2024 by Rioba Shem Nyandeka, filed before this court.
  7. Following this, the firm of K.W. Nakitare & Co. Advocates entered an appearance on behalf of the defendant on 29/10/2024. The said law firm also filed a defence and counterclaim dated 25/2/2025 with a verifying affidavit sworn by the defendant. The counterclaim was also accompanied by a witness statement signed by the defendant on 25/2/2025 and a list of documents.
  8. The record shows that the firm of Zamura & Co. Advocates filed a notice of change dated 14/8/2025 on behalf of the defendant, replacing the former law firm. After almost a week, the defendant, by an application dated 27/8/2025, sought the setting aside, variation, and stay of the ruling and orders issued on 16/6/2025.
  9. The reasons are contained on the face of the application and in a supporting affidavit of Rebecca Motabori Anyieni, sworn on 27/8/2025. It is deposed that as a family, she has been on the suit land since 1985, after it was purchased by her late husband Zephaniah Mogunde Anyieni, on whose estate she now has letters of administration ad litem.
  10. The defendant deposes that on 7/8/2025, she was shocked when police officers from Kwanza Police Station presented her with an eviction order and directed her to vacate the land, and upon inquiry, she established that through an application and papers, a suit which had not been served upon her had been filed against her and orders issued by the court on 16/6/2025 without her knowledge.
  11. Further, the defendant deposes that she has now established that there is an advocate on record purporting to represent her, yet she has never instructed any such advocate or acted on her behalf, or met, communicated, or signed any papers prepared by him, or signed any retainers or authority to be represented by him in this suit.
  12. The defendant deposes that the said law firm has been placed on record through actions of a third party unknown to her, or without her consent or knowledge. The defendant deposes that the court in the ruling observed that she had no authority to represent the deceased estate, yet she has one, and that the ruling was delivered without her participation.
  13. Again, the defendant deposes that the affidavit of service of the application is false and misleading; otherwise, she was never served at her residence or elsewhere, making the affidavit of service not authentic.
  14. The defendant deposes that the orders herein were made without her knowledge or involvement; otherwise, she was never given any opportunity to give her side of the story, more so, when the orders effectively seek to evict her from the land she has lived on for over 40 years.
  15. The defendant deposes that there was no due process or fair hearing, and the orders were issued irregularly, unjustly, and should be set aside, since she has a genuine and meritorious defence. Again, the defendant deposes that the plaintiff's suit is based on a title deed alleged issued recently, yet she has been on the land for 40 years, in highly questionable circumstances, calling for ventilation at the hearing.
  16. The defendant deposes that unless the orders are set aside, varied, or reviewed, she stands to suffer irreparable loss or harm, including displacement, loss of shelter, and violation of her right to own the land and a fair hearing.



17. The application is opposed through a replying affidavit sworn by Grace Kwamboka Ouro on 26/9/2025. It is deposed that the defendant was duly served with the application together with the plaint as per directions and an affidavit of service attached as annexure GKO-(2), leading to entry of appearance as per annexure marked GKO-(3), where after a statement of defence and counterclaim was duly filed and served with a verifying affidavit and witness statement signed by the defendant, facts which she has not disputed.
18. The plaintiff deposes that there is no evidence by way of a copy of the sale agreement showing that the defendant's late husband bought the land, nor is there any annexed limited grant ad litem letter to show that she has the capacity to represent the late husband's estate.
19. The plaintiff deposes that the alleged eviction order served upon the defendant by the police has not been attached; otherwise, the interim orders issued were regular after the defendant was given a chance to participate in the application through the advocates therein on record; otherwise, the rights of the defendant were not violated as alleged or at all, going by the court record.
20. Further, the plaintiff deposes that, unlike the defendant, she has a valid ownership document attached as annexure GKO-(4). The plaintiff deposes that the application is premised on wild and false allegations as well as mere speculation with no valid material to justify the grant of the orders sought.
21. In the supplementary affidavit sworn on 31/10/2025, the defendant deposes that the suit property originally was plot 103 Gidea Settlement Scheme No. 5612, allocated to Joseph Kimaiyo Kigen by the Settlement Fund Trustees and her late husband fully purchased it, settled the balance directly with the Settlement Fund Trustees, took possession and remained there, now known as Trans Nzoia/Gidea/484, and that her family has always been on possession uninterruptedly.
22. The defendant denies receiving any formal notice, summons, or communication from the plaintiff or any authority indicating that the land was being transferred, registered, or claimed by another party before this suit.
23. The defendant deposes that on 7/8/2025, she was alerted by a neighbour of unknown persons on the land, who were accompanied by police officers, a surveyor, and an excavator operator, as well as the plaintiff seeking to dig trenches on the land, whom she engaged before they left, after they told her to vacate the land.
24. The defendant deposes that she was not served with any order or court documents; otherwise, it was her first time to become aware of the suit. The defendant denies that the signatures appearing on the documents belong to her; otherwise, her ID card attached as RMA-(1) has the actual signature.
25. The defendant deposes that the court should take notice of the anomalies in the signature and the absence of a retainer or authority to act and investigate how the former law firm came on record and purportedly acted for her.
26. The defendant deposes that on 23/7/1985, a Land Control Board consent was issued to transfer the land to her late husband, thereby validating the transaction as per annexure marked RMA-(2).
27. The defendant deposes that there exists a letter from her late husband from Magina & Co. Advocates to sign a sale agreement on the acquisition of the land as per annexure marked RMA-(3), who also wrote to the Managing Director, Kenya Co-operative Creameries (KCC) to effect deductions relating to the suit property in place of the original allottee after which he assumed responsibility and became a beneficial owner, attached as RMA-(4) and also an assistant chief's letter attached as RMA-(5), confirming the purchase and occupation of the land for many years.



28. The defendant deposes that her late husband was also issued with receipts between 1985 and 1999 for land allocation, conveyance, and related charges by the Settlement Fund Trustees, attached as RMA-(6).
29. The defendant deposes that her late husband passed on on 21/9/2014, as per attached copies of ID Card, a death certificate, and letters of administration marked RMA-(7), (8), and (9).
30. The defendant deposes that although the letters of grant were initially issued jointly with her co-wife, she has since passed any, and after her husband passed on in 2014, she has continued to reside on and maintain the suit property as the sole surviving spouse and beneficiary as per the annexed photos showing the developments marked RMO-(10).
31. The defendant deposes that although the land is not occupied by herself or the immediate family, it has actively been utilized for farming since 1985, with a mud house in place serving as the residence of the caretaker family, and acts as her long-term investment, which is an integral part of her livelihood, hence the material attached provides the historical and factual context of her use, possession, interest, stewardship of the land and its acquisition which is lawful, secure, and uninterrupted since 1985.
32. Order 40 Rule 7 of the Civil Procedure Rules grants this court powers to discharge, vary, or set aside interim orders of an injunction on an application made thereto by any party dissatisfied with the order.
33. The defendant has invoked the jurisdiction of this court, saying that she was never served with the summons to enter appearance or the application leading to the issuance of temporary orders of injunction, and that the law firm that allegedly came on record for her was not authorised by her, the signatures to the pleadings are suspect, and that she had not retained or authorised the law firm to represent her. Further, the defendant says she was condemned unheard, and her right to property and a fair hearing were violated.
34. The right to be heard before an adverse decision is taken against a person is fundamental and permeates our entire justice system. See *Onyango Oloo -vs- Attorney General* [1987] KLR 711, and Articles 47, 48, and 49 of *the Constitution*. Equally, the right to be represented by counsel of one's own choice is governed by Article 50 (2)(g) of *the Constitution*.
35. The court record shows that before the impugned ruling was rendered, the court was satisfied that the defendant had been duly served with the court processes and given adequate opportunity to oppose both the application and the suit. The court record shows that the defendant opted to and did engage a law firm on record and which proceeded to file and serve a defence and counterclaim, accompanied by a verifying affidavit and a witness statement duly signed by the defendant.
36. The defendant has opted to file only a notice of change of advocate. The defendant is disowning having retained and authorised the law firm of K.W. Nakitare & Co. Advocates to come on record, which law firm did prepare and present the documents alluded above, as duly signed by the defendant. One of the prayers the applicant is seeking is for the court to investigate the said law firm.
37. There is nothing to show that the defendant has formally made a complaint under the *Advocates Act*, that the law firm misrepresented itself before this court, and forged her signature as per the statement of defence, verifying affidavit to the counterclaim, and the witness statement. The defendant has not asked this court to expunge from the court record those pleadings as forgeries.
38. There is no evidence that the defendant has caused the office of the Directorate of Criminal Investigations, upon a complaint to the Advocates Disciplinary Tribunal, to investigate how the said law firm was able to obtain the vital information, prepare pleadings, cause her signature to be appended



on them, file and pay for the pleadings, serve them upon the plaintiff, appear and make representation on behalf of the defendant and go to an extent of acting in her best interests.

39. It is the defendant who is alleging that there was no service of summons and that the papers before the court filed on her behalf are forgeries or misrepresentations. Unfortunately, the defendant is talking from both sides of her mouth. She wants the court to find that the pleadings or documents were prepared by a law firm which she did not retain or authorise, and which, perhaps, she suspects was retained on her behalf by an unknown third party.
40. A party cannot approbate and reprobate at the same time. When the application came up for the first time, the court directed that the former law firm be served with the allegations. There is no evidence that the directions were complied with. Instead, the defendant is silent on whether the statement of defence and counterclaim, the verifying affidavit, the witness statement, and the list of documents are forgeries or should remain on the court file. Strangely, the supplementary affidavit has almost alluded, word-for-word, to the contents of the statement of defence and the counterclaim, and the witness statement together with the listed documents in the pleadings prepared by the former law firm.
41. A party coming to court must make a full and frank disclosure. Even though the defendant wants the court to find a discrepancy only in the signature used, to make a finding that she was not aware of the suit or did not participate in the suit, for lack of knowledge of its existence until 27/8/2025, there is evidence to the contrary that, as of 25/2/2025, the former law firm had obtained and was in custody of crucial documents and information over the suit and the matter adequate to enable the said former law firm to adequately respond to the plaint substantively and bring the information before the court in furtherance of the rights of the defendant to fair hearing and the right to the property.
42. To allege that a lawyer is acting without instructions or has forged court documents is a serious offence both under penal law and under the *Advocates Act*. Using such an excuse to allege denial of the right to be heard by a court of law is equally a serious indictment of the administration of justice. Such an allegation cannot be made and taken casually. The court, in the circumstances, finds no basis to investigate the former law firm for any alleged misconduct that has not been substantiated.
43. The applicant alleges non-service with court processes and claims that she did not instruct the law firm to represent her. Unfortunately, the applicant does not and did not insist on both the process server and the former law firm attending court for cross-examination. In *Union Insurance Co. of (K) Ltd - vs- Ramzan Abdul Dhanji Civil Appl. Nairobi 179 of 1989*, the court said that, whereas the right to be heard is a basic natural justice concept that ought not to be taken away lightly, the court, looking at the record before it, was not impressed by the point that the applicant was denied his right to defend itself.
44. In this application, I am of the considered view that, looking at all the circumstances, the defendant was notified of the suit and instructed counsel, either directly or indirectly, through the alleged unknown and undisclosed third party.
45. I find it unbelievable that the former law firm could access vital information from the blues, prepare, file, and serve the pleadings, and appear before the court not once or thrice on a frolic of their own, without adequate instructions. The defendant has, as a result of those pleadings, adopted them without question and proceeded with the matter unperturbed.
46. The law is not that a party must be heard on every opportunity it is given and is not utilised. The defendant was granted an opportunity to respond to the application. The record shows that not once or thrice did the former law firm ask for more time to file the response, but failed to do so. The only point that the defendant, given the record of the court, has to explain why she did not utilise the opportunity.



47. In *Gitau -vs- Waititu Civil Appeal (Application 8 of 2017) [2025] KECA 80 PKLR* [ (24<sup>th</sup> January 2025) (Ruling), the court said that an advocate represents the interest of the client. Where an advocate lacks instructions or efforts to obtain instructions are hampered by the client's disinterest or indolence in pursuing the case, there is no reason to keep on record.
48. The *Law Society of Kenya Act* No. 21 of 2014, under Sections 4, 7, and the code, is clear on the role of lawyers before courts. I have no reason to doubt or find that the former law firm had no ostensible instructions to act for the defendant. Lawyers should not be blamed for all manner of indiscretion, especially where parties also have responsibilities to show interest in and follow up on their cases. See *Habo Agencies Limited -vs- Wilfred Odhiambo Musingo [2015] eKLR*.
49. In *Bains Construction Co. Ltd. -vs- John Mizare Ogowo [2003] KEHC 752 (KLR)*, the court held that a lawyer, as an agent, is vested with authority to perform duties as directed by the principal and that a principal must also bear the consequences. The court is aware of a noticeable trend among litigants when confronted with adverse orders arising out of their indolence, to quickly hire new advocates to help them plead the mistake of the former lawyers, for the purpose of getting another relief from the court as a ploy to deflect blame from where it should land.
50. Coming to whether, other than denying there was service of summons, the applicant has discharged the burden why I should review, set aside, or stay the injunctive orders, the defendant alleges that her late husband had paid consideration for the suit land between 1985-1999, on behalf of the initial allottee to the Settlement Fund Trustees as per the attached documents. The law is that until a discharge of charge is perfected, an allottee has no better title to pass to a potential purchaser.
51. In *Torino Enterprises Ltd -vs- Attorney General, Petition No. 5 (E006) of 2022 [2023] KESC 79 [KLR]*, the court held that a letter of offer is a mere invitation to treat, and until it is perfected though meeting the terms and conditions of the offer letter, there are no legal rights that may pass to the purchaser.
52. Perfection of a charge with the Settlement Fund Trustees is what the initial allottee and the defendant's late husband have to prove before this court as a basis that the plaintiff who has a valid title does not deserve protection under Sections 24, 25, 26, 27, and 28 of the *Land Registration Act* as read together with Order 40 of the Civil Procedure Rules and Article 40 of *the Constitution*.
53. In *Botwa Farm Co. Ltd -vs- Settlement Fund Trustees & Another [2019] eKLR*, the court cited *John Kamunya & Another -vs- John Nginyi Muchiri & Others [2015] eKLR*, where a land transaction between a purchaser and a seller took place before the seller had completed paying a mortgage that he had taken with the Settlement Fund Trustees. The court had found that no contractual relationship could legally be created before the seller had discharged his indebtedness to the Settlement Fund Trustees to acquire a title deed.
54. By parity of reasoning, the applicant can only be granted the orders sought if she indeed proves that the initial allottee and her late husband had perfected the charge, obtained a discharge of the charge, and lodged the papers, earlier than the issuance of title to Trans Nzoia/Gideia/484, to the plaintiff on 16/5/2024.
55. There is no evidence that the defendant has complained to the allocating authority that the plaintiff has irregularly or illegally obtained a title to the land, when there was already an earlier allocation that had been perfected and was only awaiting a title deed in her favour. Since the death of the late Zephania Mogunde Anyieni on 29/3/2014 and the issuance of confirmation of grant on 14/5/2019, there is no evidence that the applicant had made a follow-up with the allocating authority to perfect the charge or discharge of charge, if at all any existed in favour of the deceased husband, up to the filing of this suit.



56. Equally, the grant does not list the title number or its acreage herein as forming part of the estate of the deceased husband. Obviously, even if what is indicated therein as the plot, before it was perfected, it could not be said to be free property of the deceased at the time he passed on by dint of Section 3 of the *Law of Succession Act*.
57. In *Ochola Kamili Holdings Ltd -vs- Guardian Bank Ltd* [2018] eKLR, the court said an interim injunction order can be discharged if it is shown that the applicant's conduct with respect to the suit does not meet the approval of the court which granted the orders, the orders will prejudice the applicant and there was non-disclosure of material facts, or is oppressive or is an abuse of the court process or the orders are out to defeat the ends of justice.
58. In *Filista Chemaiyo Sosten -vs- Samson Mutai* [2012] eKLR, the court cited *Ragui -vs- Barclays Bank of Kenya* [2002] 1KRL 647, that if an interlocutory order of injunction is obtained by misrepresentation or concealment of material facts, the same is a candidate for discharge.
59. In *Atlas Copso Customers Finance AB -vs- Polarize Enterprises* [2016] eKLR, the court set out the factors to guide on whether or not to exercise the discretion under Order 40 Rule 8 of the Civil Procedure Rules.
60. In this application, the applicant has failed to prove that:
- a. Material facts were concealed from the court.
  - b. Radical change of circumstances has occurred, rendering the order ineffective.
  - c. Post issuance of the injunction behaviour of the plaintiff shows misuse of the order.
  - (d) Sustenance of the order would cause injustice to her.
61. Annexures RM-(1) - (10) in the supplementary affidavit are not anything new that was not in the court file and which the court in paragraphs 6-8 of the ruling dated 16/6/2025, had considered before finding that there was a need to issue temporary orders of injunction. The issues raised herein are res judicata.
62. The upshot is that I find the application an afterthought, mischievously made and lacking merit. It is dismissed with costs.
63. Orders accordingly.

**RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 3<sup>RD</sup> DAY OF DECEMBER 2025.**

**HON. C.K. NZILI**

**JUDGE, ELC KITALE.**

In the presence of:

Court Assistant Dennis

Parties present

Ndege for the plaintiff present

Miss Karanja for defendant present

