



**Khamala (Suing as legal representative of the Estate of Khwale Okomoli - Deceased) & another v Khwale & 11 others (Environment and Land Case E009 of 2023) [2026] KEELC 1152 (KLR) (25 February 2026) (Ruling)**

Neutral citation: [2026] KEELC 1152 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA  
ENVIRONMENT AND LAND CASE E009 OF 2023  
A NYUKURI, J  
FEBRUARY 25, 2026**

**BETWEEN**

**EMILY AUMA KHAMALA (SUING AS LEGAL REPRESENTATIVE OF THE ESTATE OF KHWALE OKOMOLI - DECEASED) ..... 1<sup>ST</sup> PLAINTIFF**

**GLADYS AMBIA GADI (SUING AS THE LEGAL REPRESENTATIVE OF GADI ANDAYI KHWALE) ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**DANIEL AMBONGO KHWALE & 11 OTHERS & 11 OTHERS & 11 OTHERS ..... DEFENDANT**

**RULING**

**Introduction**

1. On 4<sup>th</sup> February 2026, the parties in this matter sought for adoption of consent dated 26<sup>th</sup> November 2025, which prayer was allowed. The consent is in favour of the plaintiffs. In the said consent, parties settled all the substantive matters between them, but asked the court to make a determination on who should pay costs of the suit.
2. Therefore, the court directed the plaintiffs to file and serve written submissions on the question of costs in 7 days and upon service, the defendants to file and serve his submissions in 7 days in response thereto. On record are submissions filed by the plaintiffs dated 10<sup>th</sup> February 2026. No submissions were filed by the defendants.

**Plaintiffs' submissions**

3. Counsel for the plaintiff relied on the provisions of section 27 of the *Civil Procedure Act* and argued that costs are awarded at the court's discretion and that the same follow the event. Counsel submitted



that although this case involved family members, in which case the court may be inclined to deny the plaintiffs costs, costs can still be awarded in matters involving family members.

4. They relied on the case of Roche v John Odhiambo Cyprian Laura Roche & Another C.A No. 177 of 2019 and argued that there were justifications for an award of costs to the plaintiffs in this case because of the defendant's conduct before and during litigation and that they were also guilty of intransigence as it took them too long to accept their mistake.
5. Counsel argued that this was a case of male siblings intending to disinherit their female siblings, a matter which is common and should be discouraged by an award of costs, because not awarding costs although intended for fostering peace in the family, may result in undesirable outcomes. That the plaintiffs had spent money, time and effort in this matter and ought to be awarded costs.

### **Analysis and determination**

6. The court has carefully considered this matter and submissions filed. The only issue for determination is whether costs should be awarded to the plaintiffs.
7. Section 27 of the *Civil Procedure Act* provides that costs are awarded at the court's discretion and that they should follow the event. In the instant case, the plaintiffs sued the defendants vide a plaint dated 13<sup>th</sup> April 2023 seeking declaratory orders that the process that led to creation of new numbers from parcel No. E Wanga/ Isongo/766 was unlawful and cancellation of the said titles together with a permanent injunction to restrain the defendants from interfering with the suit property.
8. The matter was referred to mediation on 15<sup>th</sup> August 2023 but parties did not agree. The plaintiffs informed court in May 2024 that they had been able to serve all the defendants with summons to enter appearance. On 3<sup>rd</sup> December 2024, parties were negotiating and ought time to record a consent which they did vide consent dated 26<sup>th</sup> November 2025.
9. It is therefore clear that this matter was settled before it was confirmed for hearing. Parties herein are siblings. This is not a matter for settling scores on the basis of gender. For those reasons, I order that each party shall bear its own costs.
10. It is so ordered.

**DATED, SIGNED AND DELIVERED AT KAKAMEGA IN OPEN COURT/VIRTUALLY THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM THIS 25<sup>TH</sup> DAY OF FEBRUARY, 2026**

**A. NYUKURI**

**JUDGE**

In the presence of;

Mr. Mutoka for the plaintiffs

1<sup>st</sup> Defendant in person

No appearance for the 2<sup>nd</sup> to 12<sup>th</sup> defendants

Court Assistant: Delphine

