

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT SIAYA**  
**HC CIVIL CASE (OS) NO. E009 OF 2021**

**CHARLES OCHIENG NDIGA.....**  
**PLAINTIFF/APPLICANT**

**VERSUS**

**NEREAH MICHAEL SAID.....1<sup>ST</sup> RESPONDENT**

**NATIONAL GOVERNMENT**

**VALUER SIAYA COUNTY.....2<sup>ND</sup> RESPONDENT**

**LAND REGISTRAR, UGENYA.....3<sup>RD</sup> RESPONDENT**

**DISTRICT SURVEYOR.....4<sup>TH</sup> RESPONDENT**

**RULING**

1. The Plaintiff/Applicant filed an application dated 15<sup>th</sup> October 2025 seeking the following reliefs:

- i) That the Honourable Court be pleased to certify this application as urgent and that the same be fixed for hearing with immediate effect.

- ii) That the Honourable Court be pleased to issue orders directing the 2<sup>nd</sup> Respondent to visit and conduct a valuation exercise on the suit lands namely Uholo/Ugunja/1623 and 1726 and that the said officer do file his report in this Honourable court within thirty (30) days of issue of such orders.
- iii) That this Honourable Court be pleased to consider the Valuation report in order 2 above and proceed to order that the 3<sup>rd</sup> and 4<sup>th</sup> Respondents do visit the suit land namely LR Uholo/Ugunja/1623 and 1624 and to subdivide the same in equal shares between the Applicant and the 1<sup>st</sup> Respondent and that the 3<sup>rd</sup> Respondent to issue separate title deed to the Applicant and the 1<sup>st</sup> Respondents respectively to that effect.
- iv) That this Honourable Court be pleased to order the 3<sup>rd</sup> Respondent to discharge the charge currently registered on the registration of one of the suit lands namely LR Uholo/Ugunja/1623 to enable him effect Order 3 above.
- v) That the 1<sup>st</sup> Respondent be ordered to surrender to the 3<sup>rd</sup> Respondent all the original title deeds in respect to the suit lands namely; Uholo/Ugunja/1623 and 1726 to enable the said officer to effect order 3 above and that in default of doing so within 30 days' notice from the 3<sup>rd</sup> Respondent, the 3<sup>rd</sup> Respondent

be empowered to disregard the surrender of such title deeds on the end of a 30 days' notice to the 1<sup>st</sup> Respondent to surrender such title deeds and he shall proceed to effect the orders in prayer 3 anyway.

vi) That the cost of the exercise in Order No. 2 above be borne jointly by the Applicant and the 1<sup>st</sup> Respondent failing which the Applicant will pay the same and follow up on the said half of costs against the 1<sup>st</sup> Respondent as a debt.

vii) That the cost of the application be provided for.

2. The application is supported by the grounds set out thereunder and by the supporting affidavit of the Plaintiff/Applicant sworn on even date. The Applicant's gravamen is inter alia; that this court in its judgment dated 4<sup>th</sup> April 2022 made certain orders inter alia; that the property known as Uholo/Ugunja/1623 and Uholo/Ugunja 1726 together with all developments thereon and registered in the names of N.M.S, the Respondent herein are matrimonial properties; that both the petitioner and the Respondent contributed in equal proportions the acquisition of property in title LR Uholo/Ugunja/1623 and Uholo/Ugunja/1726 during the subsistence of their marriage; that the aforementioned properties titles Uholo/Ugunja/1623 and LR Uholo/Ugunja/1726 shall be valued by a joint valuer to be agreed upon by the parties failing which a valuer shall be appointed by the Honourable Court and the same shall be shared in the manner declared; that there is liberty to apply

in terms of the aforesaid orders or any settlement terms of this judgment; that each party shall bear their own costs of proceedings.

The Applicant's further gravamen is that the parties moved for review of the order through Misc. Application No. E032 of 2022 in which the court maintained the earlier orders save that it appointed Siaya National Government Valuer to complete the valuation report and both parties were to pay the fees of such valuation equally. Further, that since the aforesaid orders were issued, the 1<sup>st</sup> Respondent has refused to cooperate with the Applicant to pay the valuation fee and hence the exercise has never kicked off. That due to poor communication and bad blood between the 1<sup>st</sup> Respondent and the Applicant, the 1<sup>st</sup> Respondent has refused to secure a discharge of charge from the bank where she had charged the title LR No. Uholo/Ugunja/1623 and has further refused to surrender the title deed for the other property Uholo/Ugunja/1726 to the 3<sup>rd</sup> Respondent for destruction and to enable the registration of the Applicant as the owner of the parcel as ordered by the court. That the Applicant is in dire need of disposing some of his share in the two properties for monetary value to enable him construct a dwelling house and to cater for urgent medical expenses. That the Applicant continues to suffer despite the reliefs granted to him by this court at the expense of wrangles between him and the 1<sup>st</sup> Respondent. That unless the orders are granted, it will take forever to execute the orders to the prejudice of the Applicant.

3. The application was opposed by the 1<sup>st</sup> Respondent who filed a replying affidavit dated 28<sup>th</sup> November 2025 wherein she averred inter alia; that the Applicant has, without seeking leave of the Court, proceeded to add strangers to this suit and as such, the names of the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents should be struck out; that since the prayers in the application are sought against strangers, this Honourable Court has no jurisdiction or power to grant the same; that the Court is currently functus officio and as such, it cannot issue any of the reliefs sought in the Application; that the Applicant has moved the Court in another matter identified in his supporting Affidavit in which valuation of the two properties were ordered. Indeed, he was to pay the costs of the same on condition that refund would be done for my share after the conclusion of the exercise. Consequently, the Court cannot make a similar order in this matter; that the Applicant and I have a child together and it is my desire that the subject properties be transferred to the said child; that the Applicant has another child who I believe could benefit from the property rather than the Applicant proceeding with the purported subdivision and intended sale of half of the property; that the sizes of the two properties do not offer any economic benefit if subdivided as such the same should be bestowed upon me after valuation; that the orders sought are issues which parties can, after valuation,

agree on who can retain the property or otherwise and hence the same are not properly placed before Court; that the Applicant has not come to Court in good faith noting that the current Advocates on record had already communicated to me that the properties had been sold and the Applicant paid part of the purchase price. Consequently, the application is an attempt by the Applicant's stooges and/or hirelings to cleanse the wrongs already done; that I therefore pray that the Application be dismissed with costs, as it is incompetent, irregular, seeks orders already granted by the Court, has without leave joined strangers and hence an abuse of the court process; that I have annexed herewith documents in support of the foregoing averments and marked the same as "**NMS**".

The Plaintiff/Applicant upon being served with response filed a further affidavit dated 10<sup>th</sup> December 2023 wherein he averred inter alia; that leave of court is not required to enjoin the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents as this is a minor application; that the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents are experts shouldered with the task of implementing the orders of this Honourable Court as were ordered in the judgments dated 4<sup>th</sup> April 2022 and 15<sup>th</sup> February 2021 respectively; that ever since this Honourable Court on 4<sup>th</sup> April 2022 did issue the orders that the aforesaid properties title No. Uholo/Ugunja/1623 and 1726 shall be valued by a joint valuer to be agreed by the parties failing to which a valuer shall be appointed by this Honourable Court and the same (lands) be

shared in manner declared and that there is liberty to apply in terms of the above order or on any settlement terms of this judgment; that the above orders were ordered that the parties do involve a joint valuer agreed upon by both parties. That the agreement on who to be appointed as the valuer has been impossible to be arrived at on grounds that the parties herein namely; that he and the 1<sup>st</sup> Respondent divorced and each one lead independent lives and that the 1<sup>st</sup> Respondent cannot dictate on how to deal with his shares of the suit property; that he has an ancestral home where he can place his children and therefore they are not squatters and further that he has another land in Kwale known as Kwale/Shimoni/131 measuring 4 acres and that his children do not depend on the suit lands as they have been lying idle from the time the case commenced in 2021; that the 1<sup>st</sup> Respondent should not use the children as a scape goat to deny him his shares of the suit land; that the suit properties are within Ugunja township and therefore they are of a commercial nature and not agricultural; that he is the one who had purchased the land and registered them in the name of the 1<sup>st</sup> Respondent but which had been ordered by the court to be shared equally.

4. The application was canvassed by way of written submissions. The Plaintiff/Applicant and 1<sup>st</sup> Respondent complied, while the rest of the Respondents did not ostensibly because they had not been enjoined into the proceedings. It was submitted that this court granted orders vide its judgement dated 4/4/22022 and also vide Siaya High

Court Misc Civil Case. No. E032/2022 to the effect that the two assets Uholo/Ugunja/1623 and 1726 be valued by a joint valuer and sold, and the proceeds shared equally between the Applicant and 1<sup>st</sup> Respondent. That there is a stalemate in that the 1<sup>st</sup> Respondent has deliberately refused to cooperate and thus the properties have not been valued and presented for sale so that the Applicant gets his share of the proceeds. That there is need for the court to direct that the order be implemented and the 1<sup>st</sup> Respondent be ordered to pay her share of the valuer's fees. That the 1<sup>st</sup> Respondent had charged parcel number Uholo/Ugunja/1623 to KCB and upon completion of the loan repayment has refused to discharge the title so that the order of the court could be implemented. That the court do summon the County Surveyor to oversee the sub-division of the properties. It was also submitted that an order for the discharge of charge over land parcel Uholo/Ugunja/1623 be made due to the 1<sup>st</sup> Respondent's recalcitrance. It was finally submitted that the response by the 1<sup>st</sup> Respondent to the application clearly shows that she is out to frustrate the process throughout as she is adamant to bring this matter to conclusion and hence the need to compel her to perform her part.

5. The Defendant submissions are dated 17<sup>th</sup> February 2026. It was submitted that the application has been filed improperly on the record since the Plaintiff's previous advocate M/s Masika Otieno & Associates Advocates had already filed a Notice of Appointment as acting for the Plaintiff and thus the purported notice of the present advocates M/s Odhiambo



Odera and Associates Advocate is erroneous as the same is styled “Notice of appointment to act alongside advocates.” It was contended that there is no known document filed in that manner and that the same should be struck out. Reliance was placed in the case of **Republic v County Secretary Nairobi City County & another; Tom Ojienda & Associates (Exparte Applicant [2023] KEHC 24953 (KLR))** where the Court expunged documents that had been filed by a firm not properly on record as follow:

*“20. It is this court’s finding and I so hold that since Mugoye & Company Advocates is on record for the Respondents, the court cannot allow two advocates to represent one client on the strength of a ‘Notice to Co-appear’.*

21. ...

22. In the case of **Kenya Commercial Bank Ltd v John Benjamin Wanyama [2007] eKLR** the Court observed as follows:

*“There is no provision in the Rules for two firms of Advocates to be on record contemporaneously or concurrently...:*

23.

24. Only one Advocate or law firm can be on record for a particular litigant at all material times. The Court further went ahead and stated that:

*“40. There is no provision under the Rules of Court for the filing of a second Notice of Appointment of Advocates for a party once a*

*Notice of Appointment of Advocate has already been led by another advocate.”*

Learned counsel therefore urged the court to expunge the said document that was improperly filed.

6. It was also submitted that the Applicant has improperly joined parties to the suit without leave of the court. Learned counsel pointed out that the parties who have been litigating are the Plaintiff and the Defendant and that judgment was entered. That the present application has attempted to bring in other parties who were not originally on record without leave of the court and hence the application is incompetent and ought to be dismissed. Reliance was placed in the case of **Njogu & 2 others v Githinji & 2 others; Ngiricha & 4 others (Intended Interested Party) (Environment & Land Case 151 of 2013) [2025] KEELC 936 (KLR)** to the extent that:

*“It is instructive to note that before a party is joined in a matter, the court ought to satisfy itself that the proceedings are alive. That means that the suit must still be pending before the Court. Therefore, the Applicant must move the Court during the pendency of the proceedings in that matter.”*

7. It was also submitted by the 1<sup>st</sup> Respondent’s counsel that this court lacks jurisdiction to grant orders similar to those that had been issued in Siaya ELC Misc. E032/2022 as the same will amount to sitting on appeal on the said orders which are still in force.

8. As regards the prayer for discharge of the security from the banks it was submitted that the Plaintiff/Applicant failed to join the bank into these proceedings and hence the court cannot order the discharge of the security without the involvement of the bank as the lender.
9. It was finally submitted that the Plaintiff's desire to subdivide the properties cannot be granted in view of the fact that the 1<sup>st</sup> Respondent intends to have those properties for use by herself and her children and therefore the interest of justice is in favour of preserving the properties in the name of the 1<sup>st</sup> Respondent to utilize for herself and the children.
10. I have considered the application and rival submissions. It is not in dispute that the Applicant and the 1<sup>st</sup> Respondent had litigated in this matter which was concluded vide the judgment of Aburili J, dated 4<sup>th</sup> April 2022. It is also not in dispute that the said two parties litigated vide Siaya HCMisc. Application No. E032 of 2022 wherein the 1<sup>st</sup> Respondent had sought to review the judgment of Aburili J dated 4/4/2022 and that the said application was dismissed by Ogembo J on 31/1/2024. It is also not in dispute that vide the judgment of Aburili J, the two properties Uholo/Ugunja/1623 and Uholo/Ugunja/1726 were to be shared equally and that the same were to be valued by a Government Valuer and the sale proceeds shared equally and that the valuation report was to be filed in court within a period of 30 days. I find the issue for determination is whether the application has merit.

11. Before coming to the gist of the application, learned counsel for the 1<sup>st</sup> Respondent has raised an objection to the effect that the “Notice of Appointment to act alongside advocates” filed by the counsel for the Applicant is improper and should be expunged from the record on the grounds that the same is a strange document in view of the fact that the Plaintiff’s counsel had already filed Notice of Appointment of advocates. The previous advocates Masiga & Associates Advocates had already filed a Notice of Appointment to act for the Plaintiff/Applicant herein. Ordinarily, the advocates who have filed Notice of Appointment are deemed to be the ones acting for the party in question and that should the party seek to appoint another counsel then the new counsel is required to file a document known as Notice of Change of Advocates. However, if a party is desirous of having more than one advocate then the new advocates are only required to join the advocates already on record and proceed with the matter without the need to file a further Notice of Appointment. In the present scenario, the present advocates for the Plaintiff have filed a document styled “Notice of Appointment to act alongside advocates.” This appears to be improper as the same is not provided for as there is no such document known in law. In the case of **Republic v County Secretary Nairobi City County & another; Tom Ojienda & Associates (Exparte Applicant [2023] KEHC 24953 (KLR)** the Court expunged documents that had been filed by a firm not properly on record as follow:

*“20. It is this court’s finding and I so hold that since Mugoye & Company Advocates is on record for the Respondents, the court cannot allow two advocates to represent one client on the strength of a ‘Notice to Co-appear’.*

*21. ...*

*22. In the case of **Kenya Commercial Bank Ltd v John Benjamin Wanyama [2007] eKLR** the Court observed as follows:*

*“There is no provision in the Rules for two firms of Advocates to be on record contemporaneously or concurrently...:*

*23. ....*

*24. Only one Advocate or law firm can be on record for a particular litigant at all material times. The Court further went ahead and stated that:*

*“40. There is no provision under the Rules of Court for the filing of a second Notice of Appointment of Advocates for a party once a Notice of Appointment of Advocate has already been led by another advocate.”*

It is therefore clear that the counsel now purporting to act for the Plaintiff/Applicant has improperly filed the offending document. The said advocates had only two options namely, to file a Notice of Change of Advocates or inform the court that they are acting alongside the firm of Masiga & Associates. They were not supposed to file a Notice of Appointment to act alongside advocate. They simply were to appear and inform the court that they have instructions from

the firm of Masiga & Associates to represent the Plaintiff/Applicant. They did not do so and also failed to come in on record as the alternate advocates for the Applicant by filing the requisite Notice of Change of Advocate. Since the present advocates for the Applicant have not approached the court appropriately, then the document that they filed must be expunged from the record.

12. It is noted that the Plaintiff/Applicant had initiated this suit previously by way of an originating summons, and that he litigated with the 1<sup>st</sup> Respondent both in this case and in Misc. Application No. E032 of 2022. In both cases, the court issued out directions and orders for compliance in pursuance to the judgment dated 4/4/2022. However, in the present application, the Applicant has roped in three other parties and that during the proceedings herein, the Applicant did not indicate to the court whether the said new parties were served with the application or whether leave was sought from the court to enjoin them into the proceedings. In the earlier directions given by this court both in this file and in the Miscellaneous one, the Plaintiff and the 1<sup>st</sup> Respondent were directed to get the services of a valuer from the Siaya County Government who would value the two assets namely Uholo/Ugunja/1623 and 1726 and thereafter the properties would be sold and the proceeds shared equally between the parties. Apparently, the parties who had been divorced have had irreconcilable differences and that they have not been able to agree on anything. This can be seen by the 1<sup>st</sup> Respondent in her affidavit in response wherein she has

maintained that the two assets should not be sold as she wants them to be kept by herself for her two children. The Applicant on the other hand wants the order of the court implemented to the letter.

13. As regards the 1<sup>st</sup> Respondent's claim that the assets should not be sold as she wants them for her children, it must be noted that this is a departure from the pleadings in that she had the opportunity to raise the said issues during the trial. She did not and therefore it is rather late in the day for her to agitate the issue. It is instructive that the said 1<sup>st</sup> Respondent has not filed an appeal against the judgment of Aburili J dated 4/4/2022 and the ruling by Ogembo J dated 31/1/2024. That being the position, the 1<sup>st</sup> Respondent is barred from raising fresh claims to the two properties and that she should cooperate with the orders of the court regarding the sharing of the said properties.

14. It is noted that the Applicant has introduced three new parties into the proceedings without seeking the leave of the court. Even though the Applicant wishes this court to agree with his suggestion that the said new parties are experts who need not be enjoined, the Plaintiff who is aware of the requisite procedures was supposed to seek leave of the court to enjoin these parties if indeed their joinder would assist the court to finally thrash out all the issues in controversy with finality. Again, and as noted above, the Plaintiff all through the proceedings did not confirm whether or not those new parties were even served with the application in the first place. I find that it is improper for the

Plaintiff to proceed to seek orders against parties who have not been properly enjoined in the proceedings. Indeed, the introduction of the new parties has been made rather late in the day (post judgment). In the case of **Njogu & 2 others v Githinji & 2 others; Ngiricha & 4 others (Intended Interested Party) (Environment & Land Case 151 of 2013) [2025] KEELC 936 (KLR)** the Court held that:

*“It is instructive to note that before a party is joined in a matter, the court ought to satisfy itself that the proceedings are alive. That means that the suit must still be pending before the Court. Therefore, the Applicant must move the Court during the pendency of the proceedings in that matter.”*

The non-compliance for joinder of parties can be seen by the action of the Plaintiff who seeks orders against the rest of the Respondents and further seeking for an order to compel Kenya Commercial Bank to discharge a charge over one of the properties that had been charged in favour of the bank by the 1<sup>st</sup> Respondent. I find it was appropriate for the Plaintiff to have sought leave to enjoin the said Respondents. By seeking orders against them in their absence, amounts to condemning them without being given an opportunity to be heard contrary to provisions of Article 48 of the Constitution.

15. After analyzing the Applicant’s case as well as that of the 1<sup>st</sup> Respondent it becomes clear that the orders issued by this court on 4/4/2022, 15/2/2023 and 31/1/2024 were self-



explanatory and that the parties were only to approach the court and inform the court as to whether or not there has been non-compliance of the said orders. It is common knowledge that parties to a suit have a remedy in the event of non-compliance of court orders and that they are at liberty to institute contempt proceedings against parties or persons who have disobeyed court orders. The record does not show any evidence that the parties have taken that route for redress. Hence, the present application is improperly before the court.

16. In the result, it is my finding that the Applicant's application dated 15/10/2025 lacks merit. The same is dismissed with costs to the 1<sup>st</sup> Respondent.

**Dated and delivered at Siaya this 13<sup>th</sup> day of March 2026.**

**D. KEMEI  
JUDGE**

**In the presence of:**

**Otieno.....for Plaintiff/Applicant.**

**Abidha.....for 1<sup>st</sup> Respondent.**

**N/A .....for 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents.**

**Maurine.....Court Assistant.**

SIAYA HCCC (OS) NO. E009 OF 2021 - RULING

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