

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT OF KENYA AT
GARISSA

ELCMISC. APPL. NO. 3 OF 2020

MOHAMED MUNIR CHAUDHRI

(Sued as administrator of the estate

of Salim Omar Basabra, deceased) 1st

DEFENDANT/APPLICANT

SAIDA ALI AMBAR 2nd

DEFENDANT/APPLICANT

VERSUS

ABDALLA MOHAMED OMAR

PLAINTIFF/RESPONDENT

RULING

[DIRECTIONS]

[NOTICE OF MOTION DATED 2ND NOVEMBER 2023]

1. This miscellaneous application was commenced vide the notice of motion dated 10th December 2020, that sought for orders inter alia that the respondent to vacate from the suit property; that court bailiff be authorised to remove the respondent from the said property; OCPD Garissa to provide security, and compensation for illegal occupation. That from the copy of the ruling on the record and order issued on 19th October 2021, the application was heard

and allowed on the 1st October 2021. A notice of appeal dated 10th February 2023 was lodged on the 14th February 2023, but there is no information provided on the outcome of the appeal, if any.

2. The applicants then filed the notice of motion dated 2nd November 2023 seeking for orders inter alia that:
 - a. The court do re-issue and pronounce its orders given on 1st October 2021 to the Estate of Abdalla Omar.**
 - b. The court to order Salim Mohamed Omar, brother to Abdalla Mohamed Omar, deceased, his agents/representatives/emissary/relatives/kith and kin/servants/vassal/assigns or employees to vacate from plot No. GSA/24 (Garissa Township Block 1/17), the suit property.**
 - c. The court to issue eviction order authorizing the court bailiff, to remove Salim Mohamed Omar, his his agents/representatives/emissary/relatives/kith and kin/servants/vassal/assigns or employees to vacate from plot No. GSA/24 (Garissa Township Block 1/17).**
 - d. The OCPD Garissa to provide security and assistance to ensure compliance with the eviction order.**

e. The court to order compensation for the illegal occupation of the suit property.

3. The application is premised on the twelve (12) grounds on its face, and supported by the affidavit of Mohamed Munir Chaudhri, the 1st applicant/defendant sworn on the 2nd November 2023 deposing to among others that the Abdalla Mohamed Omar, the respondent had filed a suit against them being Nairobi HCCC No. 1420 of 1990, that was heard and dismissed with costs through the judgement delivered on 4th May 2009; that the decree was issued on 18th November 2009 and served on the respondent; that the respondent was served with a notice to vacate from the suit property dated 15th August 2019; that the respondent is now deceased and the applicants have tried to execute the orders of 1st October 2021 without success as it is Salim Mohamed Omar, his brother, and others who are on the land, and hence this application.
4. The record confirms that M/s Ongegu & Associates Advocates filed a notice of appointment of advocate dated 29th January 2025, coming on record for "*Salim Mohamed Omar (Estate of Abdalla Mohamed Omar - deceased) the plaintiff/respondent herein*". The record further shows the following:
 - a. That during the mention of 28th October 2024, Mohamed, the respondent was present in person. He requested for more time and was granted 30 days to

file and serve a reply. The application was fixed for hearing on 2^{7th} February 2025.

- b. That on the hearing date of 27th February 2025, Mr. Bosire for the respondent indicated he had just been instructed and requested for more time. The application was fixed for mention on 28th May 2025.
- c. On the 28th May 2025, Mr. Bosire reported that he had not filed replies to the application dated 2nd November 2023. The court directed that responses be filed and fixed the application for mention on 28th July 2025 for directions.
- d. On the 28th July 2025, Mr. Bosire for the respondent reported that he had received information that the applicant had passed on, and the court placed the matter for mention on 28th October 2025.
- e. On the 25th November 2025, Mr. Bruno advocate for the applicants sought for the application to be canvassed through written submissions. On his part, Mr. Bosire advocate for the respondent requested for 21 days to file a reply. The court then directed as follows:

“Notice of motion dated 2nd November 2023 to be canvassed by way of written submissions. The respondent to file response in 21 days. Applicant to file and serve supplementary material within 28 days. Hearing on 28th January 2026.”

- f. There appear not to have been any court sitting on 28th January 2026 as the next proceedings were on the 10th February 2026, when the court directed the application to be heard today, the 23rd March 2026.
5. That when the application was called for hearing today, Mr. Bosire for the respondent indicated that he had joined the session from Pandya hospital at Mombasa. He added that he had received information that the applicant had passed on and had notified their counsel so that he could confirm but had not done so. Mr. Bosire sought for one month to file a reply. Mr. Bruno, counsel for the applicants opposed the respondent's counsel application pointing out that the same report of the passing on of the applicant had been raised before Justice Gicheru, and counsel had been directed to file a reply. Mr. Bruno submitted that the application should be taken as unopposed and granted as prayed. Mr. Bosire replied that to the respondent, the applicant was not alive, and the application is an academic exercise. The court directed that it requires time to peruse the record before giving its directions on the 25th March 2026.
6. I have considered the submissions by the learned counsel for both sides, the record as summarized above and come to the following determinations:
 - a. That the respondent was duly served with the application dated 2nd November 2023 and attended court in person on 28th October 2024, when he sought for time to file a reply. That he subsequently

instructed M/s Ongegu & Associates Advocates, who filed a notice of appointment of advocate dated 29th January 2025 coming on record for him. On 27th February 2025, Mr. Bosire, counsel for the respondent, sought for more time to file a reply, which was granted. He subsequently made similar requests on 28th May 2025, 28th July 2025 and 25th November 2025 but no replies had been filed by 23rd March 2026 when the application came up for hearing before me.

- b. It is true that Mr. Bosire, counsel for the respondent reported to the court on 28th July 2025 that he had received information that the applicant had passed away. He repeated the same claim today the 23rd March 2026. I notice that Mr. Bruno, counsel for the applicants did not respond to the said claim then and even today. More importantly, I notice that the claim that the applicant had passed on was not specific on which of the two applicants had reportedly passed on and no documentary evidence has been presented to back up the claim of death. The claim of death of applicant, having been made from the bar, without evidence being presented, amounts to nothing but unsubstantiated claim, that does not call for a response.
- c. As the respondent is represented by counsel, the court will take it that he is alive to the provisions of

Order 51 Rule 14 of the Civil Procedure Rules that provides as follows:

- “(1). Any respondent who wishes to oppose any application may file any one or a combination of the following documents-*
- (a) a notice of preliminary objection; and/or*
 - (b) replying affidavit; and/or*
 - (c) statement of grounds of opposition.*
- (2). The said documents in subrule (1) and a list of authorities, if any shall be filed and served on the applicant not less than three clear days before the hearing date.*
- (3). Any applicant upon whom a replying affidavit or statement of grounds of opposition has been served under subrule (1) may, with the leave of the court, file a supplementary affidavit.*
- (4). If the respondent fails to comply with subrule (1) and (2), the application may be heard ex parte.”*

That as it is evident from the record that no document in reply as contemplated in *Order 51 Rule 14(1)* of Civil Procedure Rules has to date been filed by the respondent in response to the applicants notice of motion dated 2nd November 2023, despite the respondent having been granted several opportunities to do so, the application is taken as unopposed. Even if it were true that one of the two applicants had passed on, which had not been

admitted or proved, the remaining applicant would still be at liberty to prosecute the application.

d. The respondent's counsel application for more time to file and serve a reply made today was opposed by the applicants' counsel. I have noted no reasons were presented by counsel for the respondent to explain why no reply has been filed for over one year, despite the court having granted all the previous applications for more time. I therefore find no reasonable or compelling cause to extend the time for filing a reply has been presented and the application is rejected.

7. The court will therefore proceed with the application as unopposed and noting that it was more or less similar to the earlier one dated 10th December 2020, that was granted vide the ruling of 1st October 2021, and the only notable difference being the name of Salim Mohamed Omar, brother to the respondent, the court finds the application substantially meritorious and is granted in the following terms:

a. That further to the orders of 1st October 2021, an order is hereby issued directing Salim Mohamed Omar, brother to Abdalla Mohamed Omar, deceased, his agents/representatives/emissary/relatives/kith and kin/servants/vassal/assigns or employees to vacate from plot No. GSA/24 (Garissa

Township Block 1/17), the suit property, within the next ninety (90) days from today, and in default eviction order be issued.

b. The OCPD Garissa Police Division to provide security during the eviction exercise, upon any necessary fees being paid.

c. The respondent to pay the applicants costs.

It is so ordered

DATED, SIGNED AND VIRTUALLY DELIVERED ON THIS 25TH DAY OF MARCH 2026.

S.

M. Kibunja, J.

EL

C GARISSA.

IN THE PRESENCE OF:

APPLICANTS: MR. BRUNO

RESPONDENT: MR. BOSWE

MOHAMED-COURT ASSISTANT.

S.

M. Kibunja, J.

EL

C GARISSA.