

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT BUSIA**  
**ELC NO 1 OF 2024**

**MOHAMOUD JUMA ALELI** (suing as the Legal Representative of  
the Estate of the late **WILLIAM JUMA LUYOKO** .....

**PLAINTIFF**

**= VERSUS =**

**ANGELINE ATIENO ONYANGO** ..... **1<sup>ST</sup>**

**DEFENDANT**

**OPONDO ANINDO EVERISTO** ..... **2<sup>ND</sup>**

**DEFENDANT**

**THE LAND REGISTRAR, BUSIA** ..... **3<sup>RD</sup>**

**DEFENDANT**

**THE ATTORNEY GENERAL** ..... **4<sup>TH</sup>**

**DEFENDANT**

**R U L I N G**

1. If there was any evidence needed to prove that at times,  
what happens in succession proceedings with regard to land

invariably affects land disputes, this is one such case. The pungent smell emanating from **BUSIA CHIEF MAGISTRATES COURT SUCCESSION CAUSES NO E379** of **2023** and **NO E201** of **2023** has now pervaded into these proceedings and from the look of things, that smell is unlikely to disappear soon. A sad scenario indeed.

2. On 25<sup>th</sup> July 2024, I allowed an application by **MOHAMOUD JUMA ALELI** (the Plaintiff) dated 4<sup>th</sup> September 2023, in which he had sought against **ANGELINE ATIENO ONYANGO, OPONDO EVERISTO, THE LAND REGISTRAR BUSIA** and the **ATTORNEY GENERAL** (the 1<sup>st</sup> to 4<sup>th</sup> Defendants respectively) the main order that pending the hearing and determination of this suit, an order of injunction be issued restraining the Defendants, their agents, servants, employees or others from trespassing, tilling, cultivating, developing or using the land parcels **NO BUKHAYO/BUGENGI/13917, 13918, 9336 and 9335**.
3. Upon service of that order upon the Defendants, the 2<sup>nd</sup> Defendant approached this Court vide his Notice of Motion

dated 29<sup>th</sup> August 2024 seeking an order of temporary injunction to restrain the Plaintiff from interfering with his quiet enjoyment of the land parcel **NO BUKHAYO/BUGENGI/13918** pending the hearing and determination of the suit herein. But what is important for purposes of this ruling is that the 2<sup>nd</sup> Defendant asked me to discharge the injunctive orders issued on 25<sup>th</sup> July 2024 because, although the Plaintiff had approached this Court on the basis that he was the Legal Administrator of the Estate of **WILLIAM JUMA LUKOYO**, that Estate already had legal Administrators namely **KRISPINUS MASIGA JUMA** and **TOPISTA ADIKINYI JUMA**.

4. Faced with the doubt as to who between the Plaintiff, **KRISPINUS MASIGA JUMA** and **TOPISTA ADIKINYI JUMA** was the valid legal administrator to the estate of **WILLIAM JUMA LUKOYO**, this Court took the only natural decision to discharge the injunctive orders issued on 25<sup>th</sup> July 2024 and advised the parties to go back to the Succession Court and have the record set straight.

5. What the Plaintiff did, this time joined by **WILBRODA AUMA PAMBA, HASSAN JUMA** and **LOICE SHISIA MUKAMBA**, was to go back to the succession Court in Chief Magistrate Succession Cause **NO E379** of **2023** seeking for the revocation and annulment of the Grant issued to **KRISPINUS MASIGA JUMA** and **TOPISTA ADIKINYI JUMA**. That application was allowed vide a ruling delivered by **HON R. ODENYO** on a date which has not been specified in that ruling.
6. Armed with that ruling, the Plaintiff has now returned to this Court vide his Notice of Motion dated 2<sup>nd</sup> July 2025 and premised on the provisions of **Order 12 Rule 7** of the **Civil Procedure Rules**. He seeks against the Defendants the following substantive orders:
- 1) **Spent.**
  - 2) **Spent.**
  - 3) **Spent.**
  - 4) **That the Honourable Court be pleased to reinstate the orders issued on 25<sup>th</sup> July 2024**

**pending the hearing and determination of the main suit.**

**5) That costs of this application be provided for.**

The Motion is anchored on the grounds set out therein and supported by the Plaintiff's affidavit of even dated. The thrust of the Motion is that this Court by its ruling delivered on 25<sup>th</sup> July 2024 issued an order of injunction restraining the Defendants from interfering in any manner with the land parcels **NO BUKHAYO/BUGENGI/13913, 13918, 9336** and **9335** pending the hearing and determination of the suit herein. That order of injunction was however set aside vide my ruling dated 8<sup>th</sup> April 2025 in which I advised the parties to go back to the succession Court to confirm which between the Grant issued to the Plaintiff in **BUSIA CHIEF MAGISTRATES COURT SUCCESSION CAUSE NO E201 of 2023** and the Grant issued to **KRISPINUS MASIGA JUMA** and **TOPISTA ADIKINYI JUMA**, both in respect of the Estate of **WILLIAM JUMA LUKOYO**, is the valid one. It is the

Plaintiff's case that he has since the delivery of my ruling gone back to the succession cause which as now revoked the Grant issued to **KRISPINUS MASIGA JUMA** and **TOPISTA ADIKINYI JUMA**. Based on that revocation, it is fair and just for this Court to reinstate the orders issued on 25<sup>th</sup> July 2024 to preserve the suit property pending the hearing of this suit.

7. The following documents are annexed to the Motion:
- 1) Copy of Limited Grant of Letters of Administration and Ad Litem issued to the Plaintiff on 13<sup>th</sup> October 2023 in **BUSIA CHIEF MAGISTRATES COURT SUCCESSION CAUSE NO E201** of 2023 in respect to the Estate of **WILLIAM JUMA LUYOKO**.
  - 2) Copy of the un-dated Ruling by **HON R. ODENYO** in **BUSIA CHIEF MAGISTRATES' SUCCESSION CUASE NO E379** of 2023 revoking the Grant issued to **KRISPINUS MASIGA JUMA** and **TOPISTA ADIKINYI JUMA** on 15<sup>th</sup> August 2023.

8. The Motion is opposed and the 1<sup>st</sup> Defendant has filed a replying affidavit dated 14<sup>th</sup> October 2025 in which she has averred, inter alia, that the Plaintiff, purporting to be the son of **WILLIAM JUMA LUYOKO** used a forged death certificate in obtaining the Grant to the said Estate and that infact, the son of **WILLIAM JUMA LUYOKO** is **KRISPINUS MASIGA JUMA** who obtained the death certificate which pre-dates the one used by the Plaintiff. That infact **KRISPINUS MASIGA JUMA** has now filed an application in **BUSIA CHIEF MAGISTRATES COURT SUCCESSION CAUSE NO E379** of **2023** for the appointment of Administrators and the same was coming up on 4<sup>th</sup> November 2025. Therefore, the issue of the forged death certificate needs to be addressed first. The other issues raised in the said replying affidavit are not really relevant to this Motion as they touch on events that occurred on 3<sup>rd</sup> June 2010 when the 1<sup>st</sup> Defendant appeared before the **NAMBALE LAND CONTROL BOARD** to subdivide the suit land and that she has been in occupation of the same since 2010. Those are issues which will only fall for

consideration when this suit is finally heard. And at this rate, that is a long way to come judging by this Motion and the other Motions pending in the succession Court.

9. The 2<sup>nd</sup> Defendant in his replying affidavit dated 12<sup>th</sup> September 2025 has also taken the same trajectory in opposing the Plaintiff's Motion. He too has deposed, inter alia, that the Plaintiff used a forged certificate of death while applying for the Grant to the Estate of **WILLIAM JUMA LUYOKO** and other Applicants have now applied for Grant in respect to that Estate. The 2<sup>nd</sup> Defendant has also averred at length on the ownership of the land in dispute which issues, as I have already stated above, will be determined at the trial of this suit and are not relevant for purposes of this Motion.
10. The Plaintiff filed a further affidavit, un-dated, in which he too addresses the issues with regard to the forged death certificate of the deceased which he says was only an error which was rectified. Further, that the application coming up on 8<sup>th</sup> September 2025 in the succession cause **NO E379** of

**2023** is frivolous. He also makes lengthy reference to the ownership of the land in dispute which, as I have already said, is not relevant for purposes of this Motion.

11. The Motion has been canvassed by way of written submissions. The same have been filed by **MS NYANDORO** instructed by the firm of **NYANDORO & COMPANY ADVOCATES** for the Plaintiff, **MS NABULINDO** instructed by the firm of **D. K. NABULINDO & COMPANY ADVOCATES** for the 1<sup>st</sup> Defendant and by **MS MYRA** instructed by the firm of **MAINA KINGARA & COMPANY ADVOCATES** for the 2<sup>nd</sup> Defendant.
12. I have considered the Motion, the rival affidavits and the submissions by counsel.
13. In my view, the main issue is whether this Court should reinstate the orders of injunction which had been issued on 25<sup>th</sup> July 2024 but were set aside on 8<sup>th</sup> April 2025. Notwithstanding the lengthy affidavits by the parties and the submissions by counsel, the swift and short answer to the Motion is that it is for dismissal on the following grounds:

14. Firstly, the orders issued on 25<sup>th</sup> July 2024 were injunctive orders pending trial. **Order 40 Rule 6** of the **Civil Procedure Rules** provides that:

**“Where a suit in respect of which an interlocutory injunction has been granted is not determined within a period of twelve months from the date of the grant, the injunction shall lapse unless for any sufficient reason the Court orders otherwise.”**

As this Court crafts this ruling, it is obvious that the injunctive orders issued on 25<sup>th</sup> July 2024 lapsed some three weeks after the Motion was filed which was on 2<sup>nd</sup> July 2025. This case has not even commenced trial and it is un-likely to be determined within the twelve (12) months statutory period set out in **Order 40 Rule 6** of the **Civil Procedure Rules**. Indeed, any possibility of extending the said order of interlocutory injunction is now water under the bridge. The injunctive order having lapsed, there is nothing which this

Court can reinstate. The term lapse is defined in the **BLACK'S LAW DICTIONARY TENTH EDITION** as:

**“The termination of a right or privilege because of a failure to exercise it within some time limit or because a contingency has occurred or not occurred.”**

The interlocutory order of injunction having lapsed by operation of the law and the same having not been extended by this Court, there is no order which can be reinstated. Any order for extension could only have been made, and on application, before it lapsed.

15. Secondly, even as this Court grapples with this Motion, it has been averred by the Defendants, and confirmed by the Plaintiff, that there is infact an application dated 8<sup>th</sup> September 2025 and filed in **BUSIA CHIEF MAGISTRATE'S COURT SUCCESSION CAUSE NO E379** of **2023** in which **KRSIPINUS MASIGA JUMA** seeks the appointment of **TOPISTA ADIKINYI JUMA, KRIPINUS MASIGA JUMA, GRACE NABWIRE JUMA** and **HASSAN JUMA** as

Administrators to the Estate of **WILLIAM JUMA LUKOYO**. The Plaintiff has by his further affidavit described that application which was coming up on 4<sup>th</sup> November 2025, as frivolous, an abuse of the Court process and a waste of judicial time. That may very well be so. However, the fact of the matter is that for as long as the muddle arising out of the two Grants remains unresolved, nobody is sure, let alone this Court, as to who of the parties herein has the locus standi to sue or be sued in these proceeding. Let me adopt the analogy of a plane waiting on the runway to take off. For as long as the debris left behind by flights **BUSIA CHIEF MAGISTRATES COURT SUCCESSION CAUSES NOS E201** and **E379** of **2023** remains on the runway, the plaint herein and with it, the various Motions on which it is anchored are going nowhere. My advise to the parties is to urgently prioritize the determination of all the issues pending in the succession causes so that there is clarity as to who is the legitimate legal Administrator to the Estate of the late **WILLIAM JUMA LUKOYO**. Unfortunately, this Court has no

role to play in that exercise and can only fold its hands and wait.

16. The up-shot of all the above is that having considered the Plaintiff's Notice of Motion dated 2<sup>nd</sup> July 2025, I issue the following disposal orders:

- 1) The Motion is dismissed.**
- 2) Costs to the Defendants.**

**BOAZ N. OLAO**

**JUDGE**

**9<sup>TH</sup> APRIL 2026**

**Ruling dated, signed and delivered by way of electronic mail on this 9<sup>th</sup> day of April 2026 with notice to the parties.**

**BOAZ N. OLAO**

**JUDGE**

**9<sup>TH</sup> APRIL 2026**

Explanatory notes:

This ruling was due for delivery on 26<sup>th</sup> January 2026. However, following my transfer to Iten Court from Busia Court, I had to prioritize my part heard cases as well as delivering pending judgments and ruling since the transfer was effective 15<sup>th</sup> January 2026. That has caused the delay in delivering this ruling, among others. The same is regretted.

**BOAZ N. OLAO**

**JUDGE**

**9<sup>TH</sup> APRIL 2026**