

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT BUSIA**  
**ELC NO 22 OF 2020**

<b>RAPHAEL ONYANGO</b> .....	<b>1<sup>ST</sup></b>
<b>PLAINTIFF</b>	
<b>CORNEL BWIRE</b> .....	<b>2<sup>ND</sup></b>
<b>PLAINTIFF</b>	
<b>SELINA WAMBOI</b> .....	<b>3<sup>RD</sup></b>
<b>PLAINTIFF</b>	
<b>ALPHONSE MAIYAH</b> .....	<b>4<sup>TH</sup></b>
<b>PLAINTIFF</b>	
<b>MELKIO BANDA</b> .....	<b>5<sup>TH</sup></b>
<b>PLAINTIFF</b>	
<b>SAMWEL MAINA</b> .....	<b>6<sup>TH</sup></b>
<b>PLAINTIFF</b>	
<b>SYLVESTER OTIENO</b> .....	<b>7<sup>TH</sup></b>
<b>PLAINTIFF</b>	
<b>MICHAEL OSINYA</b> .....	<b>8<sup>TH</sup></b>
<b>PLAINTIFF</b>	
<b>SARAH OTWANI</b> .....	<b>9<sup>TH</sup></b>
<b>PLAINTIFF</b>	
<b>PAUL OKEYA</b> .....	<b>10<sup>TH</sup></b>
<b>PLAINTIFF</b>	
<b>DAN OCHIENG</b> .....	<b>11<sup>TH</sup></b>
<b>PLAINTIFF</b>	
<b>FATUMA BILEI</b> .....	<b>12<sup>TH</sup></b>
<b>PLAINTIFF</b>	
<b>BENARD SPENCER</b> .....	<b>13<sup>TH</sup></b>
<b>PLAINTIFF</b>	
<b>MONICA MUTANU</b> .....	<b>14<sup>TH</sup></b>
<b>PLAINTIFF</b>	
<b>ELISHA NGUGI</b> .....	<b>15<sup>TH</sup></b>
<b>PLAINTIFF</b>	

<b>EMMANUEL OLUOCH</b> .....	<b>16<sup>TH</sup></b>
<b>PLAINTIFF</b>	
<b>WILLIAM ODHIAMBO</b> .....	<b>17<sup>TH</sup></b>
<b>PLAINTIFF</b>	
<b>DANIEL GICHERU</b> .....	<b>18<sup>TH</sup></b>
<b>PLAINTIFF</b>	
<b>OSCAR MUNYIRI</b> .....	<b>19<sup>TH</sup></b>
<b>PLAINTIFF</b>	
<b>GEORGE OKELLO</b> .....	<b>20<sup>TH</sup></b>
<b>PLAINTIFF</b>	
<b>CHARLES MWANGI</b> .....	<b>21<sup>ST</sup></b>
<b>PLAINTIFF</b>	

**= VERSUS =**

<b>AGATHA NABWIRE OKELLO</b> .....	<b>1<sup>ST</sup></b>
<b>DEFENDANT</b>	
<b>DENIS OGALLO OBANDA</b> .....	<b>2<sup>ND</sup></b>
<b>DEFENDANT</b>	
<b>ROBERT ADUNGO</b> .....	<b>3<sup>RD</sup></b>
<b>DEFENDANT</b>	
<b>CHRISTOPHER OMODING</b> .....	<b>4<sup>TH</sup></b>
<b>DEFENDANT</b>	
<b>FLORENCE AYIEYE</b> .....	<b>5<sup>TH</sup></b>
<b>DEFENDANT</b>	
<b>FLORENCE AMATI</b> .....	<b>6<sup>TH</sup></b>
<b>DEFENDANT</b>	
<b>JACKSON MUBWEKA</b> .....	<b>7<sup>TH</sup></b>
<b>DEFENDANT</b>	
<b>COUNTY GOVERNMENT OF KENYA</b> .....	<b>8<sup>TH</sup></b>
<b>DEFENDANT</b>	
<b>ESHIKHONI AUCTIONEERS</b> .....	<b>9<sup>TH</sup></b>
<b>DEFENDANT</b>	
<b>THE HON. ATTORNEY GENERAL</b> .....	<b>10<sup>TH</sup></b>
<b>DEFENDANT</b>	

## **R U L I N G**

1. Part of these proceedings were conducted virtually and this case illustrates the challenges and pitfalls inherent in conducting trials through the virtual platforms. While there are advantages such as flexibility for both the counsel and parties, there are also concerns about connectivity, procedural fairness including coaching of witnesses, accessibility by some litigants e.t.c. **MR ODHIAMBO OUMA** counsel for the Plaintiffs is unlikely to forget in a hurry the events that took place in this Court on 12<sup>th</sup> October 2023 when the Defendants started prosecuting their case.
2. The chronology of the events giving rise to this ruling is that the Plaintiffs closed their case on 12<sup>th</sup> October 2023. The Defendants then called their first witness **DENNIS OGALO OBANDA** who is the 2<sup>nd</sup> Defendant in this case. He was sworn and led in his testimony by his counsel **MR MAXWELL OKEYO** who also appears for the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants. Both **MR WAMBURA** counsel for the 8<sup>th</sup> Defendant and **MR WANYAMA** counsel for the 9<sup>th</sup> Defendant

did not cross-examine him. He was however cross-examined at length by **MR ODHIAMBO OUMA** before we adjourned at 1pm because my Court Assistant **MS TRACY AJWANG** had fallen ill.

3. The matter then came up for hearing on 8<sup>th</sup> May 2024 but both **MR WAMBURA** and **MR WANYAMA** sought adjournments as they were not ready to proceed.
4. When the hearing resumed on 18<sup>th</sup> December 2024, **MR ODHIAMBO OUMA** joined the proceedings virtually and that was when all hell broke loose. **MR ODHIAMBO OUMA** informed the Court that the **MR DENNIS OGALO OBANDA** who actually took the witness stand and testified on 12<sup>th</sup> October 2023 was infact one **MICHAEL OSIGWAR** who masqueraded as **DENNIS OGALO OBANDA**. Counsel asked this Court to admonish him and expunge the evidence from the record saying he had never witnessed something like that before. I must confess I had also never witnessed anything like that before in my 44 years career on the Bench. I did not know whether to laugh, cry or just hold my

head in shame at what was not turning out to be like an episode in the Kiswahili Court room comedy **VIHOJA MAHAKAMANI**. I can only imagine the parties and their witnesses grinning from ear to ear as they left my Court amused that they had left a whole Judge and his 4 learned friends with egg on their faces!

5. After hearing counsel orally on the issue, I directed that **MR ODHIAMBO OUMA** who had sought the expunging of the evidence of **DENNIS OGALO OBANDA** from the record, files a formal application.
6. The Plaintiffs have therefore filed a Notice of Motion dated 10<sup>th</sup> March 2025 in which they seek the following orders:
  - 1) **That the entire evidence and testimony of defence witness number 1 who appeared and testified for and on behalf the 1<sup>st</sup> to 7<sup>th</sup> Defendants on 12<sup>th</sup> October 2023 be entirely quashed from the records of the proceedings before this Court having been procured**

**through an illegal and criminal process by impersonation.**

**2) That the 2<sup>nd</sup> Defendant DENNIS OGALO OBANDA and his father MICHAEL OSIGWAR be caused to personally appear before this Honourable Court.**

**3) That the costs of this application be provided for.**

7. The Motion is based on the grounds set out therein and is supported by the affidavit of **RAPHAEL ONYANGO** the 1<sup>st</sup> Plaintiff.

8. The gravamen of the Motion is that **DENNIS OGALO OBANDA** the 2<sup>nd</sup> Defendant had filed a detailed written statement intending to testify as a witness for the 1<sup>st</sup> to 7<sup>th</sup> Defendants. That when the matter came up for hearing of the defence case on 12<sup>th</sup> October 2023 and when it was expected that the said **DENNIS OGALO OBANDA** would personally appear and testify, he conspired and connived with one **MICHAEL OSIGWAR** his father who appeared and

testified before this Court as though he were the said **DENNIS OGALO OBANDA** a fact that was well known to the said **DENNIS OGALO OBANDA**. The said **MICHAEL OSIGWAR** did not record or file any statement and was not listed as a witness in this case whereas the said **DENNIS OGALO OBANDA** who filed a written statement did not testify before this Court as a witness. The evidence of the said **DENNIS OGALO OBANDA** was not taken by this Court and the evidence impersonating him as such is therefore irregular improper and contemptuous of this Honourable Court and is also a serious crime of impersonation. The evidence should be expunged from the records of this Court and the perpetrators of this heinous act be admonished and punished to up-hold the dignity and sanctity of this Honourable Court.

9. In opposition to the Motion, the 2<sup>nd</sup> Defendant **DENNIS OGALO OBANDA** filed both grounds of opposition dated 7<sup>th</sup> July 2025 and a replying affidavit dated 14<sup>th</sup> July 2025.

10. In his grounds of opposition, the said **DENNIS OGALO OBANDA** has stated that the Motion is scandalous, frivolous, devoid of merit and an abuse of the process of this Court. That he came to learn of this suit in June 2020 when he was informed that the Plaintiffs had sued him for general as well as special damages arising from the acts leading to the Plaintiffs' alleged eviction from the suit parcels. Prior to that, the Defendants had obtained eviction orders in Busia **CMC ELC NO 56 of 2018** directing that the occupants of the suit parcels vacate it. The said orders were implemented.
11. That the 2<sup>nd</sup> Defendant recorded a statement in this suit which he adopted on 12<sup>th</sup> October 2023 when he attended Court and **was cross-examined by the Plaintiffs' counsel. That the said MICHAEL OSIGWAR** was not a party to this suit and has never recorded any statement and neither is he the father of **DENNIS OGALO**. That the father of **DENNIS OGALO OBANDA** is one **CLEMENT OBANDA** (deceased) and he has never appeared in this Court to testify.

12. The 2<sup>nd</sup> Defendant also filed a replying affidavit dated 14<sup>th</sup> July 2025 in which he confirmed that having been sued in this case, in June 2020, he instructed the firm of **OKEYO OCHIEL & COMPANY ADVOCATES** to act for him. Previously, he had applied for eviction orders in Busia **CMC ELC** case **NO 56** of **2018** and obtained eviction orders against the persons occupying the suit land.
13. That in this case, he recorded a statement which he adopted as his evidence during the trial on 12<sup>th</sup> October 2023 when he properly identified himself to the Court and the Plaintiffs' counsel before testifying. He was then cross-examined.
14. He denied having made arrangements with any person to impersonate him. That his father is one **CLEMENT OBANDA** who died a long time ago and not **MICHAEL OSIGWAR** as alleged by the Plaintiffs. The said **CLEMENT OBANDA** never appeared before the Court to testify and there is no substantive evidence of impersonation since he personally testified on behalf of the 1<sup>st</sup> to 7<sup>th</sup> Defendants. The application is devoid of any merit, is scandalous, frivolous

and an abuse of the process of this Court. It should be dismissed.

15. The Plaintiff filed a further affidavit dated 7<sup>th</sup> October 2025 in which he reiterates that he knows the 2<sup>nd</sup> Defendant personally and it was not him who testified on 12<sup>th</sup> October 2023. That the person who testified was actually **MICHAEL OSIGWAR** and if this Court can play the recorded footage of the proceedings of that day, they will confirm that the person who appeared in Court and testified was not **DENNIS OGALO OBANDA** but **MICHAEL OSIGWAR**. The evidence of **DENNIS OGALO OBANDA** should be expunged from the record.
16. I need to add that annexed to the replying affidavit was a copy of the Identity Card of **DENNIS OGALO OBANDA**.
17. The Court directed that the application be canvassed by way of written submission. However, only **MR OKEYO** instructed by the firm of **OKEYO OCHIEL & COMPANY ADVOCATES** filed submissions on behalf of the 1<sup>st</sup> to 7<sup>th</sup> Defendants. The other Defendants did not file any responses to the

application and **MR ODHIAMBO OUMA** did not file any submissions.

18. I have considered the application, the rival affidavits by the Plaintiff and the 2<sup>nd</sup> Defendant and the submissions filed.
19. This Court has been asked to expunge the testimony of **DENNIS OGALO OBANDA** from the record on the basis that the person who took the witness stand and testified on 12<sup>th</sup> October 2023 was infact not him but it was his father **MICHAEL OSIGWAR**. The said **DENNIS OGALO OBANDA** who is the 2<sup>nd</sup> Defendant has averred in his affidavit that he was the one who testified and that his father is infact one **CLEMENT OBANDA** who died long time ago. What I find strange is that the 2<sup>nd</sup> Defendant **DENNIS OGALO OBANDA** who introduced himself as such and testified on 12<sup>th</sup> October 2023 did so in the presence of the Plaintiff and his counsel **MR ODHIAMBO OUMA**. He was then cross-examined by **MR ODHIAMBO OUMA** and re-examined by **MR MAXWELL OKEYO** at length. Indeed the proceedings went on upto 1pm and had to be adjourned because my Court Assistant **TRACY**

**AJWANG** was feeling un-well. It is not clear why the Plaintiff did not bring up the issue of impersonation when the said **DENNIS OGALO OBANDA** was testifying on 12<sup>th</sup> October 2023 rather than wait until 18<sup>th</sup> December 2024, almost one year later, to raise that issue. Nothing stopped him from alerting the Court on 12<sup>th</sup> October 2023 the moment the said **DENNIS OGALO OBANDA** took to the witness stand, was sworn, identified himself and proceeded to testify. It must be remembered that the Court does not know the parties and their witnesses unless of course they have testified before or are in the category of expert witnesses who frequent the Courts to testify. The Court will only be able to intervene when counsel of a party raises the issue of the identity of a witness the moment he or she takes the witness box and starts testifying. That happens quite often when counsel start to cross-examine witnesses and would usually ask for their identification documents. That it took the Plaintiff this long to raise the issue can only mean that he is not sure himself about who testified.

20. The fact that the Plaintiff is not certain about the identity of the person who testified on 12<sup>th</sup> October 2023 and introduced himself as **DENNIS OGALO OBANDA**, the 2<sup>nd</sup> Defendant, is compounded by the fact that he has averred in paragraph 5 of his supporting affidavit that the person who testified as **DENNIS OGALO OBANDA** was infact his father **MICHAEL OSIGWAR** a former councillor of the defunct county council of Busia and well known to him. But **DENNIS OGALO OBANDA** has himself averred in paragraph 13 of his replying affidavit, that his father **CLEMENT OBANDA** is deceased having died a long time ago and not **MICHAEL OSIGWAR** as alleged.

21. It is also instructive to note that in his submissions, counsel for the 2<sup>nd</sup> Defendant **DENNIS OGALO OBANDA** has stated thus:

**“Your Lordship, the 2<sup>nd</sup> Defendant herein DENNIS OGALO OBANDA instructed our firm in June 2020 when he learnt that he had been sued for general and special damages. That we entered**

**appearance to defend the same claim, his statement recorded which statement was to be relied on in the (sic) defending of the suit.**

**On 12<sup>th</sup> October 2023, he testified in open Court in the presence of the Plaintiffs and their advocate as stated in his replying affidavit dated 14<sup>th</sup> July 2025. In the affidavit he states that he attended Court on the aforementioned date and adopted his statement as evidence in chief having properly identified himself both to the Court and to the Plaintiffs' advocate.**

**That the said advocate proceeded and cross-examined him on the contents of the written statement and the general information regarding the suit. At no given point was the issue of impersonation brought up by either the Plaintiffs or their advocate.”**

Counsel ends his submissions by stating that:

**“Your Lordship, the 2<sup>nd</sup> Defendant/respondent’s evidence was adduced before Court in a fair manner and in the presence of the advocates from both parties and in the presence of the Plaintiffs. Expunging such evidence from the Court records will be prejudicial to the Defendant’s case and that will amount to denying the 2<sup>nd</sup> Defendant/respondent the right to a fair trial.”**

It must be remembered that between **MR ODHIAMBO OUMA** and **MAXWELL OKEYO**, it is only the latter who can confirm with certainty that the 2<sup>nd</sup> Defendant **DENNIS OGALO OBANDA** is the witness who recorded the statement dated 18<sup>th</sup> January 2022 and adopted it as his evidence during the hearing on 12<sup>th</sup> October 2023. Clearly, **MR ODHIAMBO OUMA** had not met the 2<sup>nd</sup> Defendant prior to 12<sup>th</sup> October 2023 when he testified in Court. Therefore, when **MR MAXWELL OKEYO** called him to testify without any objection from any of the parties or counsel with none

requiring to produce his identification documents, and bearing in mind the inconsistencies in the Plaintiffs' assertion about who actually testified on that day, it would be rather far-fetched to accuse **DENNIS OGALO OBANDA** of impersonation which, as a criminal offence, must be proved beyond any reasonable doubt. And this Court would be descending into the arena of conflict and wading into the jurisdiction of another organ of state by purporting to summon **MICHAEL OSIGWAR** and punishing him for impersonation when he is neither a party in this case nor is there cogent evidence that he testified in place of **DENNIS OGALO OBANDA** on 12<sup>th</sup> October 2023.

22. The proceedings of 12<sup>th</sup> October 2023 were also not virtual and therefore they were not recorded. It is not possible to get any footage of the same as suggested by the plaintiffs.
23. In the circumstances and having considered the Notice of Motion dated 10<sup>th</sup> March 2025, this Court issues the following dispositive orders:

**1) The Motion is dismissed.**

**2) Costs to the 2<sup>nd</sup> Defendant.**

**BOAZ N. OLAO**

**JUDGE**

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

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

**Mention on 13<sup>th</sup> May 2026 before WAITHAKA J to take a date for hearing and final determination before the Judge.**

**BOAZ N. OLAO**

**JUDGE**

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

**Explanatory notes:**

This ruling was due for delivery on 10<sup>th</sup> December 2025. However, following my transfer to Iten Court which was effective 15<sup>th</sup> December 2025, I had to prioritize delivery of my rulings and judgments hence the delay. The same is regretted.

**BOAZ N. OLAO**

**JUDGE**

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

ORIGINAL