

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT SIAYA
ELC (OS) NO. E008 OF 2025

VINCENT ERICK ODUOR OKELLO.....
PLAINTIFF

VERSUS

ALLAN ODUOR OSORO.....1ST
DEFENDANT

CHRISPINE OTIENO OKELLO.....2ND
DEFENDANT

EMMANUEL ODUOR OKULO.....3RD
DEFENDANT

MERCY ADHIAMBO ORINDA.....4TH
DEFENDANT

RULING

1 The subject of this ruling is the Notice of Motion application dated 10/10/2025 seeking the following orders;
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- 1) That the 5th and 6th respondents do visit the site of the suit land LR North Ugenya/Sega/364 now divided into 4826,4827,4828,6036 and 6037 and to survey the part being occupied and utilised by the applicant to ascertain the area thereon in measurement and also its location.

- 2) That the 5th and 6th respondents do file their report in court within 30 days after the survey exercise in order 1 above.
- 3) That the applicant be granted leave to amend his pleadings herein upon the 5th and 6th respondents filing of the survey report in order No.2 above.
- 4) The OCS Segga police station to provide security and maintain order during the survey exercise in order 1 above
- 5) That the applicant to pay the survey fee in order 1 above as calculated by the 5th and 6th Respondents
- 6) That costs of the application be provided for.

2 The application is premised on the grounds on its face and the supporting affidavit of Vincent Erick Oduor Okello sworn on 10/10/2025. The gist of the depositions is that there was a miscommunication between the applicant and her advocate on record. That while he had instructed his advocate to sue for adverse possession for a portion of the parcel LR North Ugenya/Segga/364 which she was in occupation for over 46 years the claim has been pleaded as if it were for the entire parcel and not a portion. That the survey was necessary since the mother parcel had been subdivided several times and the need to identify the portion she was in occupation.

3 The applicant depones that she was not an owner of the land and therefore could not deploy a private surveyor as the matter was already before court and the respondents

were cruel. That the survey will guide the court to administer justice and to ensure the applicant takes only whichever is rightfully his and under his occupation. That unless the application is allowed it would be impossible to dispense with the matter in a just and fair manner.

- 4 The application is opposed by the 1st defendant vide a replying affidavit sworn on 13/10/2025. The 1st defendant points that the Plaintiff has, in the title to his application, purported to join the Land Registrar and the Land Surveyor as parties to these proceedings, as evidenced by the heading. That the Land Registrar and Land Surveyor are not parties to the Originating Summons that initiated this suit. There exists no valid order of this Honourable Court joining them as parties to these proceedings.
- 5 Further, that there is no substantive prayer seeking the joinder of the Land Registrar and the Land Surveyor as parties to this suit. The application attempts to compel these public officers to perform specific duties without first making them parties, which is procedurally improper and renders the application fatally defective. The attempt to compel non-parties to undertake actions and be bound by court orders is a fundamental procedural flaw that offends the principles of natural justice and the provisions of the Civil Procedure Rules.
- 6 It is averred that the Plaintiff's Originating Summons and the present application are anchored on a title that no longer exists in its original form. The Plaintiff has failed to

disclose this critical fact to the Court and has not specified with any clarity on which of the new, resultant parcels he alleges to be occupying. That the lack of clarity and specificity is prejudicial to the defendants' rights as a registered proprietor of one of the resultant parcels and makes the Plaintiff's entire claim, and the present application, untenable and unenforceable. The Court cannot issue orders over a non-existent entity.

- 7 It is averred that the prayer for amendment was premature and speculative. It seeks to use the Court's process to conduct a "fishing expedition" to gather evidence to support a poorly pleaded case. The Plaintiff is essentially asking for permission to amend his pleadings based on a report that does not exist, from a process that is procedurally flawed, concerning a parcel of land that is no longer in existence. Granting such a prayer would be sanctioning an abuse of the court process.
- 8 On the prayer for security it is contended that while the court has powers to order security, the prayer is unnecessary, exaggerated, and is being used to sensationalize the application. There is no evidence placed before this Honourable Court demonstrating a likelihood of a breach of peace that would warrant the drastic measure of involving armed police. The Plaintiff has not provided any supporting evidence, such as a letter from the area police chief or official records of prior incidents.

- 9 The 2nd respondent opposed the application through the replying affidavit sworn on 3/11/2025. It is deponed that the pleadings are anchored on a non-existent title rendering the application vague and incapable of enforcement. The applicant purports to join the land registrar and land surveyor. That the leave to amend is sought against a non-existent report and is termed speculative, the prayer for police protection is unsupported by evidence of threats to breach of peace. The court is urged to dismiss the application for being frivolous.
- 10 The 3rd defendant opposed the application vide a replying affidavit sworn on 3/11/2025 and echoes the depositions by the 2nd respondent.
- 11 The application was disposed by way of written submissions. The applicants' submissions are dated 24/10/2025 and the respondents 3/11/2025 filed on behalf of the 2, 3 and 4th defendants.

ANALYSIS AND DETERMINATION.

- 12 I have read the affidavit sworn in support of the application and those sworn in reply. I have also given due consideration to the submissions of the learned counsels appearing. The main issue for determination is whether the prayers sought should be granted. Who bears the costs of this application?

13 The application has been brought under the provisions of section 1A,1B and 3A of the Civil Procedure Act and Order 1 Rule 10(1) (2) 7(4) of the Civil Procedure Rules.

14 Order 1 Rule 10 (1) provides for the substitution and addition of parties as follows; -

“(1) Where a suit has been instituted in the names of the wrong persons as plaintiff, or where it is doubtful whether it has been instituted in the name of the right plaintiff, the court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute to do so, order any person to be substituted or added as plaintiff upon such terms as the court thinks fit.

(2)The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of the party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, to be added.”

15 Arising from the foregoing provisions the court can only invoke the above provisions where a party has been

wrongly enjoined in the suit and requires his name to be struck out or where the court is of the opinion that it would be necessary to enjoin a party to the suit for the effective determination of the matters in dispute.

- 16 In the present proceedings the proposed amendment to include the land registrar Ugenya and District Surveyor Ugenya to enable them carry out the site visit and undertake survey to ascertain the portion occupied by the applicant and its location. Will their joinder help in the effective determination of the dispute? My answer is in the negative for the reason that the claim is one of adverse possession pitting the registered owner of the land and the alleged adverse possessor. There is no claim against the land registrar and the surveyor. In my view these two parties need not be parties to the suit as they are not necessary parties. Moreover, they do not need to be parties to enforce the order of the court. All that is required is service of the court orders for their implementation were the orders to be granted.
- 17 It is the finding of this court that the land registrar Ugenya and District Surveyor Ugenya are not necessary parties to this dispute to warrant their joinder. Their presence in this suit is not necessary for the just determination of the suit between the plaintiffs and the defendant.
- 18 The court has been invited to order the land registrar Ugenya and District Surveyor Ugenya visit the suit property formerly LR North Ugenya/Sega/364 to ascertain

the portion of the area in occupation of the applicant following the numerous subdivisions that the land has undergone. The respondents have not disputed the fact that the said parcel has been subdivided into a number of portions. In fact, they confirm it in their replying affidavits.

- 19 What the respondents contend is that the plaintiffs claim is anchored on a non-existent parcel following the subdivisions. I will respectfully disagree with this argument for the reason that the history of the land does not die with subdivisions. It remains and will always be available in the land registry.
- 20 But of importance in my view should be the objectives of the visit and if this will cause any prejudice to the respondents. The reason for the visit is to ascertain where the plaintiff's occupation is situated among the subdivisions to enable the plaintiff clearly identify the area allegedly adversely possessed by him. I do not see any prejudice to be suffered. In fact, to me this demonstrates good faith on the part of the applicant. Allowing the survey does not mean a confirmation of adverse possession. The claim will still be taken through the rigours of whether it meets the requisite threshold.
- 21 Section 13 (5) of this court's Act empowers me to make any order and grant any relief as the court deems fit and just. The court must remain cognizant of the Court's eternal mandate of responding appropriately to individual claims, as dictated by compelling considerations of justice.

- 22 As regards the application to amend the pleadings upon the report arising out of the survey, I have noted the respondent's opposition that the same is premature and speculative. The applicants have explained the purpose of the survey is to identify the area occupied by the applicant amidst the subdivisions. This in my view is not speculative as I have not seen allegations to the effect that the area occupied does not fall within the mother title.
- 23 It is the duty of a court of law to guide and lead parties and even counsel towards expeditious disposal of cases by avoiding multiplicity of applications. Indeed this court associates with the dictum of Justice C.K Yano in **John Kilonzo Ndivo v Everton Coal Enterprises Limited & 3 Others [2020] eKLR** where he stated thus;-

'...The overriding objective provided for under Sections 1A and 1B and the inherent power of the court under Section 3A are meant for the attainment of justice to the parties who come to court. The court is therefore under a statutory obligation while interpreting the provisions of the Act or exercising the powers conferred upon it thereunder to give effect to the overriding objective and in order to attain this objective, the court must strive towards ensuring the efficient disposal of proceedings at a cost affordable by the respective parties.'

- 24 Moreover amendments may be allowed at any stage of the dispute. I see no bar to grant leave to the anticipated amendments provided that there will be a right of reply to the respondents.
- 25 As to security I note that land disputes tend to be very emotive and this court does not require evidence of likely breach of peace to order that security be provided during the enforcement of the orders.
- 26 The upshot of the foregoing is that the Notice of Motion application dated 10/10/2025 partly succeeds in the following terms; -
- 1) That the Land Registrar Ugenya and District Surveyor Ugenya do visit the site of the suit land formerly LR North Ugenya/Sega/364 now divided into 4826,4827,4828,6036 and 6037 and to survey the part being occupied and utilised by the applicant to ascertain the area thereon in measurement and also its location.
 - 2) That Land Registrar Ugenya and District Surveyor Ugenya do file their report in court within 45 days after the survey exercise in order No.1) above.
 - 3) That the applicant be granted leave to amend his pleadings herein upon filing of the survey report in order No.2) above.
 - 4) That the respondents be at liberty to amend their pleadings upon service pursuant to order No. 3) above and respond further.

- 5) The OCS Segga police station to provide security and maintain order during the survey exercise in order 1) above
- 6) That the applicant to pay the survey fee in order No.1) above.
- 7) That costs of the application are granted to the respondents who responded to the application.

Orders accordingly

HON. JUSTICE A. E. DENA
JUDGE
22/4/2026

**Ruling delivered virtually through Microsoft Teams
Video Conferencing Platform in the Presence of:**

Mr. Ochido Holding Brief for Odera for Plaintiff Applicant

Mr. Aburili for the 2nd, 3rd & 4th Defendant

Mr. Siwolo Holding Brief for Odongo for 1st Respondent

Court assistant: Dorothy Awuor