

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT
BUNGOMA
ELC CASE NO. 35 OF 2012
(CONSOLIDATED WITH BUNGOMA HCCC NO. 89 OF
2012)

GERISHOM WANYONYI KOLOLI1ST

PLAINTIFF

AGGREY WAMBULWA KOLOLI 2ND

PLAINTIFF

HENRY MASIBO KOLOLI 3RD

PLAINTIFF

JULIANA KOLOLI4TH

PLAINTIFF

VERSUS

JOSEPH SAPIRI1ST

DEFENDANT

JAMES NGOSIA NANDOLI 2ND

DEFENDANT

**DOMINIC WAFULA NANDOLI (Suing as Personal
Representative of the Late WYCLIFFE MASIKA
NANDOLI..... 3RD DEFENDANT**

LENAH MURUNGA CHENJENI 4TH

DEFENDANT

**DANIEL NAMACHANJA NANDOLI5TH
DEFENDANT**

**DAVID WAFULA NANDOLI 6TH
DEFENDANT**

**DOMINIC WAFULA NANDOLI7TH
DEFENDANT**

**ELIZABETH OKEMA JAIRO8TH
DEFENDANT**

RULING

The applicants, who are Defendants in the suit alongside the 8th Defendant brought the application dated 13/10/2025 seeking the leave of this court to appeal to the Court of Appeal against the decision of the court given on 9/10/2025. They also sought stay of execution of the orders given on the same date pending hearing and determination of the intended appeal.

The application was made on the ground that the applicants were dissatisfied with the ruling of this court and had lodged a notice of appeal but that they did not have the automatic right of appeal.

Dominic Wafula Nandoli swore the affidavit in support of the application. He averred that the 8th Defendant's application was allowed on 9/10/2025 and that the rest of the Defendants were dissatisfied with the ruling of the court in that the advocate who drew the application in the name of Mr. Nabibia Advocate was actually Mr. Were advocate who filed it through the Court Tracking System (CTS). He contended that Mr. Were acted in the

matter despite the court having found that he was professionally conflicted to act for the 8th Defendant.

He averred that their appeal was purely on a point of law as to whether Mr. Were could use Mr. Nabibia's name to bring a fresh application on behalf of the 8th Defendant after the court found that he was unethically seeking to act for the 8th Defendant. Further, Mr. Nandoli deponed that the 8th Defendant's stubborn quest to get her portion of land surveyed before the other Defendants was not *bona fide* and would bring serious complications and conflict on the ground. He added that there were certain adjustments that must be made on the ground with the cooperation of the 8th Defendant and the other Defendants based on a family agreement dated 29/4/2005, a copy of which he exhibited.

Elizabeth Okema Jairu, the 8th Defendant swore a replying affidavit in opposition to the application. She deponed that the application was an abuse of the court process and that the applicants were being malicious and petty. Further, that the Defendants found it hard to believe that she, a mere widow got justice after her rights were trampled on by the Defendants for a long time. She added that she was entitled to the fruits of the judgment issued on 16/7/2020 and that delaying the matter further would deny her justice. She explained that after the court's ruling she was represented by Nabibia and Co. Advocates who drafted the documents which were filed in court. She maintained that there was nothing barring Nabibia & Co.

Advocates who had taken over conduct of the case from consulting her former advocate. She urged that the application was an afterthought and that the issues raised were not in issue when the court delivered its ruling.

The court directed parties to file submissions on 4/2/2026. On 2/3/2026, the court gave a ruling date when the parties failed to file their written submissions.

The court has looked at the ruling delivered on 9/10/2025. The court noted that in the judgment delivered on 16/7/2020, it was held that the Defendant had acquired title over Bokoli/Bokoli/286 through adverse possession. The court granted the 8th Defendant leave for the firm of Nabibia & Co. Advocates to come on record for her. The court clarified that its order did not absolve the 8th Defendant of her professional or financial obligations owed to Kraido & Co. Advocates.

The court indicated in the ruling that it was alarmed by the tone of the respondents replying affidavit, which characterised the 8th Defendant as sly and motivated by a desire to outsmart or run ahead of the other family members. The court noted that pursuance of one's legal rights could not be equated to disobedience or insubordination to family arrangements. After setting out the portions of the suit land measuring 69 acres which the parties occupied, the court pointed out that there was no plausible explanation as to why the other Defendants resorted to subdividing the land into 5 portions instead of the 8 portions set out in the judgment. The court went on to observe that a decision

of the court was not to be implemented selectively, altered or interpreted to suit individual convenience or family arrangements. Despite the sentiments expressed by the Judge in the ruling dated 9/10/2025, no plausible reason has been given by the applicants as to why the decree issued in this case on 16/7/2020 has not been executed. This court does not see the relevance or application of the agreement dated 29/4/2005 to the execution of a judgment of this court delivered on 16/7/2020. Litigation must come to an end. The Defendants ought to move with alacrity to implement the judgment of the court delivered almost six years ago.

The court does not find any merit in the application dated 13/10/2025 and declines to grant the orders sought in that application. Each party will meet its costs for the application since they are related, as members of one family.

Delivered virtually from Nairobi this 23rd day of April 2026.

K. BOR
JUDGE

In the Presence of:

Mr. Z. Oindi holding brief for Mr. M. Kraido for the Plaintiffs

No appearance for the other parties