



Wandera (Suing as the legal administratrix of the Estate of Damina Wandera Ouma) v Muckoya & another (Environmental and Land Originating Summons E035 of 2024) [2026] KEELC 2594 (KLR) (30 April 2026) (Ruling)

Neutral citation: [2026] KEELC 2594 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUSIA
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E035 OF 2024
L WAITHAKA, J
APRIL 30, 2026

BETWEEN

CAROLINE NANGIRA WANDERA (SUING AS THE LEGAL ADMINISTRATRIX OF THE ESTATE OF DAMINA WANDERA OUMA) APPLICANT

AND

KEVINA TABU MUCKOYA 1ST RESPONDENT
MATHIAS MUGENI OUMA 2ND RESPONDENT

RULING

1. The applicant instituted this suit for determination of, among other questions, the question as to whether she has acquired title to the parcel of land known as Bukhayo/Mundika/4690 (Suit Property) by adverse possession.
2. In the affidavit sworn in support of the suit, the applicant has inter alia deponed that the suit property was bought by her father, Daminian Wandera Ouma (deceased); that her family and she have been in possession and occupation of the suit property since 1991 when it was bought; that the suit property is registered in the name of her father but that fact is not reflected in the register; that despite being aware of their use and occupation of the suit property, the respondents have never taken any adverse step against them and that her friends, relatives and neighbours know that the land belongs to her to the exclusion everybody else.
3. Contending that the suit discloses no reasonable cause of action against them and is intended to embarrass who will preside over it, the respondents/applicants filed the notice of motion dated 21st February 2025 seeking to strike out, with costs, the entire suit.



4. According to the respondents, no claim for adverse possession can be brought against them because they are not the owners of the suit property. The respondents/applicants also contend that the applicant/respondent cannot bring a claim for adverse possession against title registered in their name. Further, that the title annexed to the supporting affidavit is different as it is for parcel 2171 and not 4690.
5. Terming the suit an abuse of the process of the court, the respondents/applicants urge the court to, in the interest of expeditious disposal of suits, strike the suit out with costs to them.
6. The applicant filed a response to the application vide the replying affidavit sworn on 26th September 2025 in which she contends that the application is intended to defeat her father's estates' claim to the suit property and sanitize unlawful dealings with the suit property, hence it ought to be dismissed for being an abuse of the process of the court.
7. When the application came up for hearing, the applicant relied on her replying affidavit sworn on 26th September 2025. Counsel for the respondents/applicants pointed out that the applicant in her pleadings has stated that her father purchased the suit property and was issued with a title deed which she has attached as CNW3 and submitted that being a claimant who is in possession of a title deed for a property which is the subject of the suit in the claim for adverse possession, the applicant has, in her humble view, moved the court wrongly as a claim for adverse possession cannot be brought against persons who do not own the land whose ownership is in question.
8. Counsel for the respondents/applicants further stated that if the applicant wants to bring issues of succession and fraud, then this is not the right forum. Contending that the applicant filed the wrong suit, counsel for the respondent urged the court to dismiss it with costs.
9. I have read and considered the application by the respondents which is expressed to be brought under sections 1A 1B 3A of the *Civil Procedure Act*; Order 2 rule (1) (b) and (c) and order 51 of the Civil Procedure Rules. I have also read and considered the response thereto and the submissions by counsel for the respondents in respect thereof.
10. From the grounds taken up in support of the application and the submissions by counsel for the respondents/applicants, the respondents/applicants contend that the suit discloses no reasonable cause of action against them on the ground that they are not the registered owners of the parcel of land in question namely 4690. They also contend that the applicant cannot maintain a claim for adverse possession against the suit property for the reason that, according to her pleaded case, the suit property belongs to her father's Estate which she represents.
11. According to counsel for the respondents, this court is not the right forum to hear and determine the issues arising from the suit, which she identifies as succession of the Estate of the applicant/respondent's deceased father or fraudulent dealings with the suit property.
12. Whereas the applicant/respondent in her pleadings, particularly the Originating Summons and the affidavit sworn in support thereof, has made reference to the parcel of land known as 4690 (which appears to be the subject matter of the suit) that property despite having been indicated as an annexure in the supporting affidavit sworn by the applicant/respondent is not part of the documents annexed to the supporting affidavit.
13. In their response vide the replying affidavit sworn by the 2nd respondent on 21st February 2025, the respondents have annexed to the affidavit a certificate of search in respect of the suit property, Bukhayo/Mundika/4690 indicating that the suit property was registered in the name of one Adrian Were Ojiambo having been registered as the owner of the suit property on 1st October 2024 (presumably



- during the pendency of this suit). The certificate of search indicates that the suit property was charged by the said Adrian Were Ojiambo in favour of the LSK Sacco Society Ltd to secure a loan of Kshs.1,100,000/- advanced to him by the said Sacco.
14. The respondents/applicants, in the application sworn in response to the suit, have further deponed that they have never occupied any of the properties mentioned in the suit, namely Bukhayo/Mundika/4690 and Bukhayo/Kisoko/2171.
 15. In her response to the respondents'/applicants' application for striking out the suit, the respondent has termed the application as an abuse of the court process intended to defeat the Estate's claim and to sanitize unlawful dealings with the land. The applicant respondent urges the court to dismiss the application with costs.
 16. The affidavit evidence adduced by the parties in this suit, suggests that the suit property, Bukhayo/Mundika/4690 might have been transferred to a third party, namely Adrian Were Ojiambo, during the pendency of this suit. Other than indicating that the suit property is currently registered in the name of a third party, there is no explanation or evidence given of the circumstances that led to that registration.
 17. Considering that the affidavit sworn in support of the suit intimates that there existed a certificate of title issued in favour of the applicant/respondent's father's Estate, which certificate did not feature in the land register and further considering that no evidence has been given, at least at this stage of the case, concerning the circumstances upon which the suit property was transferred to Adrian Were and taking into account that misjoinder of a party or parties per se is not a good ground for striking out a suit, I decline to strike out the suit at this early stage and direct that Adrian Were Ojiambo and the Law Society of Kenya Sacco Ltd, who I consider to be a necessary parties to this suit, be added to the suit as the 3rd respondent and interested party respectively.
 18. The applicant/respondent is directed to within seven (7) days from the date of this ruling, to extract and serve the order issued herein together with a copy of the ruling on Adrian Were Ojiambo and the Law Society of Kenya Sacco Society Ltd. Upon service, Adrian Were Ojiambo and the Law Society of Kenya Sacco Ltd, shall within seven days of service, file their responses to the applicant/respondent's suit.
 19. The upshot of the foregoing is that I dismiss the respondents/applicants' notice of motion dated 2st February 2025. The costs of the application shall be in cause.

RUING DATED, SIGNED AND DELIVERED VIRTUALLY AT BUSIA THIS 30TH DAY OF APRIL, 2026.

L. N. WAITHAKA

JUDGE

In the presence of;

Caroline Nangira Wandera Applicant

Mr Otieno for the Respondent

Court Assistant: Tracy

