

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA
ELCC No. 109 OF 2021

ABEL KURURA TINEGA (Suing as legal representative of the Estate of NAHASON TINEGA KURURA) PLAINTIFF

VERSUS

SHADRACK ORINA MOGENI 1ST DEFENDANT
HEZRON NYANGAU MOGENI 2ND DEFENDANT
EVANS GESORA MOGENI 3RD DEFENDANT

RULING

1. Judgment was delivered in this matter on 25th July 2024 by Mugo Kamau, J. as follows:

In the premises, I do not find any grounds of denying the Estate of Nahason Tinega Kurura of a fairly and lawfully acquired Title to land and the Plaintiff succeeds in this Suit and I hereby enter judgement in his favour in the following terms: -

a. A Declaration do hereby issue that the estate of Nahason Tinega Kurura is the rightful

owner of the parcel of land known as Title No Title No Settlement Fund Trustee/Ekerubo/26.

b. The Land Registrar, Nyamira is hereby ordered to ensure the property known as Title No Title No Settlement Fund Trustee/Ekerubo/26 remains in the name of Nahason Tinega Kurura pending the process of Succession and distribution to its rightful Dependants.

c. A Declaration do issue that the Defendants are not entitled to enter, remain or use the suit property known as Title No Settlement Fund Trustee/Ekerubo/26.

d. A permanent injunction do issue to restrain the Defendants whether by themselves, their servants and/or agents or otherwise howsoever from entering, remaining or using, alienating the suit property and from interfering with the Plaintiff and other Dependants of the Estate of the Deceased quiet possession and enjoyment of the suit property namely Title No Settlement Fund Trustee/Ekerubo/26.

e. An order be and is hereby issued that the Defendants do vacate the suit property Title

No Settlement Fund Trustee/Ekerubo/ 26 forthwith and in default thereof an order of eviction do issue against the Defendants, their servants and/or agents.

f. The prayer for General Damages for trespass is disallowed for want of proof.

g. The Counterclaim dated 9/11/2007 and amended on 27/10/2015 be and is hereby dismissed in its entirety with costs to the Plaintiff.

h. On the issue of costs, the same follow the event and I accordingly order that the Defendants do pay the costs of this suit to the Plaintiff in addition to those of the Counterclaim.

2. Subsequently, the Plaintiff filed Notice of Motion dated 19th November 2025, which is the subject of this ruling. The application seeks the following orders:

1. THAT this application be certified urgent and service be dispensed with in the first instance the urgency being that the one-year consent stay of execution has lapsed and the Defendants remain in unlawful occupation of the suit property in open defiance of the Court's decree, thereby causing continuing

prejudice, loss, and risk of waste to the Decree-Holder, and rendering the judgment incapable of enforcement unless urgent orders for eviction are granted.

- 2. That A Warrant of Eviction/ Possession do issue directing Moco Auctioneers to evict the Defendants/Judgment-Debtors from Title No. SETTLEMENT FUND/TRUSTEE/EKERUBO/26, in execution of the Decree issued on 23 August 2024.*
- 3. The OCS Manga Police Station be ordered to provide security to the auctioneer during the eviction exercise.*
- 4. Moco Auctioneers be granted leave to break open, remove obstructions, and use reasonable force where necessary to effect the eviction.*
- 5. The costs of the execution be borne by the Defendants/Judgment-Debtors.*
- 6. Such other orders as this Honourable Court shall deem just.*

3. The application is based on the grounds listed on its face and is supported by an affidavit sworn by Abel Kurura Tinega, the Plaintiff. The Defendants responded to it through a replying

affidavit sworn by Hezron Nyangau Mogeni, the Second Defendant.

4. In the course of preparing the ruling, the Deputy Registrar brought to the Court's attention a letter dated 18th March 2026, written to the Court by the firm of Macharia, Gaitho & Murigu Advocates LLP and communicating that on 13th March 2026, the Court of Appeal delivered a ruling in **Kisumu Civil Appeal (Application) No. E253 of 2024** in which it granted stay of execution of the judgment and decree herein pending hearing and determination of the appeal. A copy of the ruling was enclosed in the letter.
5. I note that the ruling referred to is reported by the National Council for Law Reporting (Kenya Law) as **Mogeni & 2 others v Tinega (Sung as the Legal Representative of the Estate of Nahashon tinega Kurura) (Civil Appeal (Application) E253 of 2024) [2026] KECA 631 (KLR) (13 March 2026) (Ruling)**. The Court of Appeal ordered as follows:

There shall be a stay of execution of the judgment and decree of the Environment and Land Court at Nyamira delivered on 25th July, 2024 in Nyamira ELC No. 109 of 2021 pending the hearing and determination of Kisumu Civil Appeal No. E253 of 2024.

6. In view of the foregoing, Notice of Motion dated 19th November 2025 is overtaken by events and is hereby marked spent. Costs shall abide the outcome of the appeal.

Dated, signed, and delivered at Nyamira, this 6th day of May 2026.

D. O. OHUNGO
JUDGE

Delivered in the presence of:

Ms Caleb for the Plaintiff

Mr Macharia for the Defendants

Court Assistant: B Kerubo