



**Wafula (Suing as the Attorney of Dismus Wanjala Wochuna) v Murunga & 6 others
(Environment and Land Case 118 of 2015) [2025] KEELC 5410 (KLR) (17 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5410 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA
ENVIRONMENT AND LAND CASE 118 OF 2015**

EC CHERONO, J

JULY 17, 2025

BETWEEN

**BENJAMIN BARASA WAFULA (SUING AS THE ATTORNEY OF DISMUS
WANJALA WOCHUNA) OBJECTOR**

AND

**GLADYS NEKOYE MURUNGA 1ST DEFENDANT
ELGON RELIGIOUS SOCIETY OF FRIENDS CHURCH 2ND DEFENDANT
JOSECK SIMIYU PRICHANI 3RD DEFENDANT
STEPHEN BARASA WASWA 4TH DEFENDANT
GEOFFREY WAFULA WASILWA 5TH DEFENDANT
PAUL SEME 6TH DEFENDANT
CATHERINE BARASA 7TH DEFENDANT**

RULING

1. Before me for determination is the Chamber Summons application dated 28/02/2025 brought under Order 37: Rules 1 (f), 3, 8 and 11 and Order 13: Rules 1 & 2 of the [Civil Procedure Act](#) Cap 21 through; The [Law of Succession Act](#) Cap 160: Section 54 and Paragraph 14 of the Fifth Schedule and Article 22: Clauses 1 & 2 (a – c); Article 50: Clauses 4, 6, 8, 9; 51: Clauses 1 & 2 (a – c) and 258: Clauses 1 & 2 (a – c) of [the Constitution](#) of Kenya seeking the following orders;
 - a. That, it pleases this Hon. Court to hear this Application on the 4th day of March, 2025 on priorities; due to the utmost urgency hereof.
 - b. That, pending tracing the main file from Kisumu and Bungoma ELC Registries; it pleases this Hon. Court to hear the Chamber Summons dated 17th September, 2024 through the Holding



File; which was diligently opened, pursuant to the Order of the Court given and issued on 24th October, 2024.

- c. That, it pleases this Hon. Court to issue Vesting Orders, requesting the Kisumu Environment and Land Court Trial Judge; to return the main file to Bungoma Environment and Land Court, which was transferred without the consent of the Plaintiff/s/Applicant's Attorney, contrary to the Judicial Civil Geographical Jurisdictional Rules.
 - d. It pleases this Hon. Court to equally award Costs of this Chamber Summons to the Plaintiff/Applicant herein.
2. The application is based on the grounds on the face of the said application supported by the affidavit of the Applicant sworn on an even date. The Applicant his supporting affidavit deposed as follows;
- a. That, I know of my own knowledge, it's for the interests of justice to hear these Claims from this Hon. Court on priorities, then stay the 1st up to 7th Defendants; from grabbing, selling, alienating, subletting and transferring the late Yohana Ochuna Maelo's Estate, through the late Zephaniah Lusweti Murunga.
 - b. That, I know of my own knowledge, the Plaintiff/Applicant and his Attorney, were not consulted, when their main file was transferred to Kisumu Environment and Land Court, contrary to the Judicial Civil Geographical Jurisdictional Rules.
 - c. That, I know of my own knowledge, it's very expensive for the Plaintiff / Applicant and his Attorney, to attend Court at Sessions at Kisumu; because they don't possess enough funds.
 - d. That, I know of my own knowledge, it's for the interests of justice to hear the Plaintiff's Claims from this Hon. Court, because, the Subject matters being LR. No. Kimilili/Kamukuywa 337 and 339; are situated in the North-West of Bungoma County, Kimilili Sub-County, Makhonge Location, Chesamisi Village.
 - e. That, I know of my own knowledge, it's for the interests of justice to hear the Plaintiff's Claims from this Hon. Court, because, all parties to this Case, are natives and residents in the North-West of Bungoma County, Kimilili Sub-County, Makhonge Location, Chesamisi Village.
 - f. That, I know of my own knowledge, it's for the interests of justice to hear the Plaintiff's Claims from this Hon. Court, because, the witnesses who can witness about the relations of the Plaintiff, his Attorney and the late Yohana Ochuna Maelo; are natives and residents in the North-West of Bungoma County, Kimilili Sub-County, Makhonge Location, Chesamisi Village.
 - g. That, I know of my own knowledge, it's for the interests of justice to hear the Plaintiff's Claims from this Hon. Court, because, I've unsuccessfully attempted to map the Kisumu Environment and Land Case No. 4 of 2019.
 - h. That, I know of my own knowledge, it's for the interests of justice to hear the Plaintiff's Claims from this Hon. Court, because, I've unsuccessfully requested for Registration of the Kisumu Environment and Land Case No. 4 of 2019.
 - i. That, I know of my own knowledge, it's for the interests of justice to hear the Plaintiff's Claims from this Hon. Court, because, the current Trial Judge of Bungoma Environment and Land Court; while knowing That, the main file of this case was transferred to Kisumu Environment and Land Court, issued practicing directions on the current Holding File already being used.



- j. That, I know of my own knowledge, all the deposed herein, are true to the best of my knowledge, information, belief and understanding.
3. The 1st Respondent filed a Replying affidavit in opposition thereto sworn on 02/04/2025 in which she deposed That the Applicant who has a power of Attorney cannot, under the Advocates Act draw legal documents, issue summons to other parties, appear in court and represent the objector in the manner That he purports to. That this Honorable Court issued a ruling on 28th July, 2016 and cautioned the Applicant herein against what he now purports to do. That based on the foregoing, the Applicant lacks capacity to institute the foregoing and represent the objector and the application must fail. She asked the court to dismiss the application.
4. The Applicant filed a supplementary affidavit sworn on 16/05/2025 where he deposed That the Respondents herein are depriving him of the use of 6 acres of LR. No. Kimilili/Kamukuywa/339. That the Hon. Trial Judge Hon. Lady Justice Ali Avita Aroni (as she then was) omitted to consider the Plaintiff/Applicant herein together with his Co-Siblings while Sharing the Estate of the late Yohana Ochuna Maelo as confirmed in the grant issued on the 12/07/2012. That the Hon. Trial Judge Hon. Lady Justice Ali Avita Aroni, omitted to consider how the Plaintiff/Applicant herein, together with his Co-Siblings consented the Power of Attorney No. 651 of 2016 before the Bungoma District Land Registrar on the 24/02/2016. That the trial Judge Hon. Lady Ali Avita. Aroni, omitted to consider how the 1st Defendant/Respondent herein forged the Green Card of LR. No. Kimilili/Kamukuywa/337 cheating That, her biological father Zephaniah Murunga Lusweti, who died on 01/05/1995 died before 05/05/1985. That the Respondents have not demonstrated how the late Zephaniah Murunga Lusweti died on 05/05/1986 according to Survey and Land Registry Records. That the Respondents have produced/submitted on a forged Land Sale Agreement dated 03/05/ 1984.
5. When the applications came for directions, the parties agreed to have the same canvassed by way of written submissions.
6. The Applicant filed unduly lengthy submissions dated 21/04/2025. The said submissions are marked by incoherence, lacked logical structure and failed to address the pertinent issues raised in the application making it difficult for this court to discern the Applicant's intended arguments. The 1st Respondent on the other hand filed her submissions dated 02/05/2025.

Analysis and determination.

7. I have considered the application under review and matters canvassed in the said application which are relevant to the present ruling.
8. The background of this case is That the original Court file was transferred to the Environment and Land Court, Kisumu by Justice B. Olao for further hearing and determination vide a letter dated 20/01/2020. This was after the Applicant herein filed a suit against the then trial Judge Hon Mr. Justice B. Olao who thereafter recused himself from dealing with the suit. After the Judge transferred this suit and the original file forwarded to the ELC Kisumu, a holding file was created on 09/10/2024 and the Applicant herein requested to have the original court file returned to this court for further action. On 04/03/2025, the Applicant informed the court That he went to Kisumu in search of the original file but he could not trace it. It is then That he (the Applicant) filed the present application using the 'holding file'.
9. In light of the foregoing, and given the Applicant's knowledge of the circumstances surrounding the transfer of the original file to the Environment and Land Court at Kisumu, he cannot purport to have been unaware of the same. Concerning the prayer to have the application dated 17/09/2024 filed in



this ‘holding file’ heard, I find That this court is not in a position to grant the orders sought in the present application, which has been created in the present holding file without first ascertaining the status and retrieving the original court file from the ELC Court in Kisumu. As far as I aware, the original Court file was transferred to the Environment and Land Court in Kisumu for hearing and determination and no official communication has been received That the same is either lost and/or missing. The transfer of a suit from one court to another is governed by clear statutory and procedural provisions, particularly Section 18(1)(b)(i) of the Civil Procedure Act, which provides That any transfer of proceedings must be by an order of the court upon formal application and with notice to all parties. This court cannot therefore, in total disregard of established procedural rules and principles of natural justice, make substantive orders in a vacuum or on the basis of unverified allegations. The Applicant, if genuinely desirous of having the matter transferred back to this court, must follow the appropriate legal procedures for effecting such a transfer.

10. Additionally, this court has not been presented with any formal communication or documentation from the Kisumu Environment and Land Court to support the applicant’s claim That the original court file would not be traced. In the absence of any confirmation from the Deputy Registrar, ELC Kisumu That the original court file in respect of this suit cannot be traced, this court must proceed on the presumption That the matter is either pending or actively proceeding before That court. It would therefore be improper and procedurally untenable for this court to entertain or determine an application in a ‘holding file’ which may be running parallel to proceedings before a court of competent and concurrent jurisdiction. Such a course of action would offend the doctrine of sub judice under Section 6 of the Civil Procedure Act as well as the principles laid down in Kenya National Commission on Human Rights v Attorney General; Independent Electoral and Boundaries Commission (Interested Party) [2020] eKLR, which cautions against the risk of forum shopping and duplication of judicial effort.
11. Consequentially, the application dated 17th September 2024 is devoid of merit and the same is hereby dismissed. However, I make no order as to costs.

DATED, SIGNED AND DELIVERED AT BUNGOMA THIS 17TH DAY OF JULY, 2025.

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HON.E.C CHERONO
ELC JUDGE

In the presence of;

1. Applicant-present.
2. M/S Masengeli for the 1st Respondent.
3. Bett C/A.

