



**Omungu v Okongo & 5 others (Environment & Land Case
20 of 2021) [2024] KEELC 1373 (KLR) (11 March 2024) (Ruling)**

Neutral citation: [2024] KEELC 1373 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY
ENVIRONMENT & LAND CASE 20 OF 2021
GMA ONGONDO, J
MARCH 11, 2024**

BETWEEN

JOHN ODAGO OMUNGU PLAINTIFF

AND

AMOS JAOKO OKONGO & 5 OTHERS DEFENDANT

RULING

1. I have carefully considered an application by Mr. B Mulisa learned Counsel for the plaintiff to be allowed to avail land adjudication records relating to Land parcel Nos 1078, 1079, 1080 and 1081 herein. That therefore, PW2, Kipkuto Toromo be recalled for that purpose as the records are in his possession in order to meet the ends of justice.
2. The defendants through learned counsel Mr. J. Kisera have opposed the application. The reasons thereof include; that the records sought to be produced by the plaintiff are captured in the defendants' list of documents and will be produced in this suit by the defendants. That this matter has to come to a close.
3. Notably, the records sought to be produced by the plaintiff are discerned in the Minister's decision in Land Appeal No. 504 of 1985 as captured in P Exhibit 5. PW3 did refer to and produce the said exhibit in evidence.
4. The plaintiff's counsel is yet to close his case. He informed the court that the availability of the records sought in the application would not be prejudicial to the defendants herein.
5. Sections 1A,1B,3 and 3A of the *Civil Procedure Act*, (Cap 21 Laws of Kenya) as read with sections 3 and 19 of the *Environment and Land Act*, 2015 (2011) on this court's mandate, are all borne in mind. So, should the records sought in the application be availed in this case?



6. This court is guided by Article 48 of the *Constitution* of Kenya, 2010 on access to justice. Further, the right to fair trial shall not be limited under Articles 25 (c) 50(1) of the same *Constitution*. The parties herein are entitled to the said rights.
7. Indeed, an opportunity to be heard is a fundamental principle of justice, see Halsbury's Laws of England 10th Edition volume 61 at paragraph 639.
8. Moreover, I subscribe to the court of Appeal decision in the case of *James Kanyitta Nderitu and another -versus Marios Phitotas Ghikas* (2016) eKLR that the right to be heard is fundamental and permeates our entire justice system.
9. Wherefore, the prayer/application is merited and is hereby allowed accordingly.
10. The plaintiff's counsel to recall PW2 to produce records relating to the said parcels of land stated in paragraph 1 hereinabove and the same to be filed and served within the next 14 days from this date.
11. The defendants' counsel to file and serve further documents in response to the said records within 14 days from the date of service of the records.
12. Further hearing of this case on priority on 28th May 2024.
13. It is so ordered.

DELIVERED, DATED AND SIGNED AT HOMABAY THIS 11TH DAY OF MARCH 2024

G.M.A ONG'ONDO

JUDGE

Present.

Mr. J. Kisera learned counsel for defendants

Mr. B Mulisa learned counsel for plaintiff

Defendants -Present

Court Assistant, T. Luanga

