



**Motende (Suing as the Administrator of the Estate of Motende Ontweka (Deceased)) & 4 others v Mang'ong'o & 6 others (Environment & Land Case E011 of 2021) [2024] KEELC 6106 (KLR) (25 September 2024) (Ruling)**

Neutral citation: [2024] KEELC 6106 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISII  
ENVIRONMENT & LAND CASE E011 OF 2021**

**M SILA, J  
SEPTEMBER 25, 2024**

**BETWEEN**

**CHARLES NYABENGI MOTENDE (SUING AS THE ADMINISTRATOR OF THE ESTATE OF MOTENDE ONTWEKA (DECEASED)) ..... 1<sup>ST</sup> PLAINTIFF  
JOSEPH ONDIBA MANGONDI (SUING AS THE ADMINISTRATOR OF THE ESTATE OF MOTENDE ONTWEKA (DECEASED)) ..... 2<sup>ND</sup> PLAINTIFF  
GEDION ONDARA OBURE (SUING AS THE ADMINISTRATOR OF THE ESTATE OF AUGUSTINO OBURE ONTWEKA (DECEASED)) ... 3<sup>RD</sup> PLAINTIFF  
SAMWEL OGIRI MOSIRIMANI (SUING AS THE ADMINISTRATOR OF THE ESTATE OF SAMWEL OGIRI MOSIRIMANI (DECEASED)) ..... 4<sup>TH</sup> PLAINTIFF  
HEZEKIEL OMBASO OCHEGO (SUING AS THE ADMINISTRATOR OF THE ESTATE OF OCHEGO ONWEKA (DECEASED)) ..... 5<sup>TH</sup> PLAINTIFF**

**AND**

**ONKEO MANG'ONG'O ..... 1<sup>ST</sup> DEFENDANT  
MONANDI MANG'ONG'O ..... 2<sup>ND</sup> DEFENDANT  
SAMWEL ONYANGO OMBUI ..... 3<sup>RD</sup> DEFENDANT  
LUKAS MIRUKA OMBUI ..... 4<sup>TH</sup> DEFENDANT  
MOKORO OICHOE ..... 5<sup>TH</sup> DEFENDANT  
JAMES SIAMBE ..... 6<sup>TH</sup> DEFENDANT  
ISAAC NYAKANGI AKA ISAAC LUKAS ..... 7<sup>TH</sup> DEFENDANT**



## RULING

1. For determination is an application dated 30 November 2022 filed by the defendants. The application seeks the striking out of the plaintiffs' suit. I can categorise the 16 grounds raised in support of the application into two main grounds. Firstly, that the plaintiffs lack *locus standi* as the properties in dispute being Majoge/Magenche/1280, 1281, 1282, 1283 and 1284 are registered in the names of deceased persons, and secondly, that this is a boundary dispute and the court lacks *locus standi*.
2. In my opinion this application is overtaken by events in so far as it relates to the *locus standi* of the plaintiffs. When the suit was filed, it was filed by the plaintiffs as registered owners of the suit properties. While the case was still pending their titles were revoked as there was insinuation that they were procured after presentation of forged grants of letters of administration. The titles therefore reverted back to the names of the original proprietors who are deceased. After this happened, the plaintiffs proceeded to apply for grants of letters ad litem which they obtained. They then applied to amend the plaint to reflect that they are suing in their new capacity of administrators ad litem and not registered proprietors of the disputed properties. The application to amend was opposed and I gave my ruling on 18 October 2023 allowing it. By the time I allowed the application to amend this application had already been filed and was pending. It will be seen that the application contests the capacity of the plaintiffs to mount suit but that has already been cured by the plaintiffs procuring grants of administration ad litem and amending the plaint. The issue of capacity of the plaintiffs is now water under the bridge.
3. The second main ground is that this is a boundary dispute and that the court lacks capacity to hear it. The applicants heavily rely on the holding of Onyango J, in a previous suit between them, that is the suit Kisii ELC No 17 of 2018. The plaintiffs had sued the applicants in that suit over the same properties herein. They contended that the applicants, who own the neighbouring parcels of land, had encroached into their land. They wished to have orders of eviction and permanent injunction against them. The applicants (as defendants) raised a preliminary objection that this was a boundary dispute and that the Land Registrar was seized of the matter and his office was yet to conclude a boundary hearing. The court was of the view that in the first instance, it was the mandate of the Land Registrar to determine a boundary dispute and it would be important to allow that department to first do its work before the matter is escalated to court.
4. In the amended plaint, the plaintiffs have pleaded that they sought the intervention of the Land Registrar and Surveyor, Kisii County, who visited the disputed parcels of land and ascertained that the applicants have encroached into their land. They have in fact annexed as part of the documents a report dated 18 November 2020 signed by the County Surveyor. It would appear therefore that the matter has passed through the hands of the Land Registrar and County Surveyor. In my appreciation, what is before this court is therefore no longer a dispute asking this court to determine boundaries, but a dispute relating to trespass. Indeed in their plaint among the prayers asked for are orders of eviction and a permanent injunction against the applicants. This court in my opinion has the jurisdiction to determine the dispute presented. I am aware that within this application the applicants raise issue that the Land Registrar and Surveyor could not have properly dealt with the boundary issue as some proprietors of neighbouring parcels are deceased. That in my view is a matter that can only be dealt with substantively in a full hearing of the suit.
5. From the foregoing it will be seen that I am not persuaded to the merits of this application and it is hereby dismissed with costs. The matter to proceed for hearing on merits.



6. Orders accordingly.

**DATED AND DELIVERED THIS 25 DAY OF SEPTEMBER 2024**

**JUSTICE MUNYAO SILA**

**JUDGE, ENVIRONMENT AND LAND COURT**

**AT KISII**

Delivered in the presence of :

Mr. Obure for the defendants/applicants

Mr. Ochwangi for the plaintiffs/respondents

Court Assistant – David Ochieng'

