



**Nyabera (Suing as the Personal Representative of the Estate of Edward Nyabera Kumba) v Mohabe (Sued as the Personal Representative of the Estate of Nicholas Mohabe Wambura) & another (Environment & Land Case E011 of 2024) [2024] KEELC 13687 (KLR) (29 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 13687 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MIGORI  
ENVIRONMENT & LAND CASE E011 OF 2024**

**GMA ONGONDO, J  
OCTOBER 29, 2024**

**BETWEEN**

**JAMES KUMBA NYABERA (SUING AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF EDWARD NYABERA KUMBA) ..... PLAINTIFF**

**AND**

**JOHN GETANGITA MOHABE (SUED AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF NICHOLAS MOHABE WAMBURA) ..... 1<sup>ST</sup> DEFENDANT**

**THOMAS OMAHE PHILIP ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. This ruling pertains to an oral application generated by Mr David Otieno instructed by Jura learned counsel for the defendants that due to the nature of the defendants’ notice of motion dated 23<sup>rd</sup> October 2024 (The second application), the same be heard and determined before the plaintiff’s notice of motion dated 9<sup>th</sup> August 2024 (The first application) herein.
2. Counsel has asserted the that the first application is set for ruling today, 29<sup>th</sup> October 2024. That the defendants filed the second application fixed for directions today and there is replying Affidavit thereto duly filed and served. That the two applications are interrelated. That therefore, this application be allowed hence, the defendants be accorded an opportunity to be heard in the first application.
3. Mr Sam Onyango learned counsel for the plaintiff has opposed the application on the grounds that the second application has come too late in the day and urged this court to deliver ruling in regard to the first application. That the defendants would have an option of setting aside the ruling or prefer an appeal against it.



4. In a rejoinder, learned counsel Mr Otieno has asserted that injunctive orders inclusive of exhumation of body in issue are sought in the first application. That since the first application is related to the second application, the defendants may be prejudiced if the defendant's oral application is not granted.
5. In the foregoing, is there merit in the defendants' oral application?
6. It is borne in mind that the first application is for temporary injunctive relief against the defendants in respect of the suit land reference number Bukira/Bwisaboka/26. In the second application, the defendants are seeking to be heard in the first application.
7. The right to be heard is fundamental and permeates the entire justice system; see James Kanyiita Nderitu and another-vs-Marios Philotas Ghikas and another (2016) eKLR and Philip Chemwolo and another-vs-Augustine Kubende (1986) eKLR .
8. In the premises, this application has merit. So, ruling on the first application is held in abeyance pending the outcome of the second application to be heard by written submissions on priority basis.
9. I therefore, order and direct that the defendants' counsel and the plaintiff's counsel to file and serve submissions within the next seven (7) and seven (7) days from the date of service of the defendant's submissions respectively.
10. Interim injunctive orders herein extended accordingly.
11. Ruling on the second application is hereby set for 18<sup>th</sup> November 2024.
12. It is so ordered.

**DATED AND DELIVERED AT MIGORI THIS 29<sup>TH</sup> DAY OF OCTOBER 2024.**

**G M A ONGONDO**

**JUDGE**

In Presence of;-

Mr Sam Onyango learned counsel for the plaintiff

Mr David Otieno learned counsel for the defendants

Tom Maurice, court assistant

