



**Ogolla v Kisumu & 2 others (Environment and Land Miscellaneous Application
E019 of 2023) [2024] KEELC 7070 (KLR) (24 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 7070 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E019 OF 2023
E ASATI, J
OCTOBER 24, 2024**

BETWEEN

DANIEL OTIENO OGOLLA APPLICANT

AND

LAND ADJUDICATION KISUMU 1ST RESPONDENT

REGIONAL SURVEYOR KISUMU 2ND RESPONDENT

LAND REGISTRAR KISUMU COUNTY 3RD RESPONDENT

RULING

1. This ruling is in respect of the Notice of Motion application dated 6th November 2023 filed by Daniel Otieno Ogola against the Respondents. The application seeks for orders that: -
 - a. The court be pleased to issue an order directing the 1st defendant to cancel the plot No.s Kisumu Kanyakwar B/390, 395 and 391 as per decision made by the Land Committee on appeal Case No. 9/79/1980 dated 23rd January 1981.
 - b. The honourable court be pleased to issue an order compelling the 2nd and 3rd defendants registered Kisumu Kanyakwar Plot No. 385, 384, 469 and also amend map as it was demarcated in the year 1932 as per the decision of the Land Committee dated 23rd January 1981 and petition date on 1st June 1931.
 - c. Cost of the application.
2. The application was supported by the contents of the Supporting Affidavit of the applicant sworn on the 6th November 2023 and the annexures thereto.
3. The application was opposed vide the grounds contained in the Replying Affidavit sworn on 8/5/2024 by Nicholas Obiero, the Land Registrar Kisumu.



4. The applicant's case is that there was arbitration award made on 23/1/1981 which awarded his late father the suit lands and that the said award has never been challenged. That he filed the suit on behalf of his father.
5. The Respondents' case on the other hand is that the applicant has not demonstrated that he has capacity to sue on behalf of his father. That the suit lands are currently registered in the names of various persons who have not been made parties in the suit.
6. I have considered the application. I am in agreement that no merit has been demonstrated in it. The applicant who claims to have brought the suit on behalf of his late father has not demonstrated capacity to sue in terms of sections 2, 79 and 82 of the Law of Succession Act.
7. Secondly, it is the evidence of the Land Registrar, the legally recognized custodian of the records in respect of the suit lands, that the suit lands are currently registered in the names of various persons who are not parties to the suit. The application urges the court to cancel the titles and amend the maps all these without involving the registered owners. If the court were to grant the orders sought it will be violating the constitutional and other lawfully protected rights of the registered owners.
8. The application is therefore untenable and unmerited. It is hereby dismissed. No order as to costs.

Orders accordingly.

RULING DATED AND SIGNED AT KISUMU, READ VIRTUALLY THIS 24TH DAY OF OCTOBER 2024 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.

E. ASATI,

JUDGE.

In the presence of:

Maureen- Court Assistant

The applicant present in person.

Kobimbo for the Respondents

