



**Wanyonyi & 5 others v Chief Land Registrar & 60 others (Environment & Land Case 3 of 2023) [2024] KEELC 7056 (KLR) (24 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 7056 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA  
ENVIRONMENT & LAND CASE 3 OF 2023  
DO OHUNGO, J  
OCTOBER 24, 2024**

**BETWEEN**

**ASHON SIKOLIA WANYONYI ..... 1<sup>ST</sup> PLAINTIFF  
PATRICK KISAKA ..... 2<sup>ND</sup> PLAINTIFF  
EDDY WANDELA TELA ..... 3<sup>RD</sup> PLAINTIFF  
KISAKA MWONGOLO ..... 4<sup>TH</sup> PLAINTIFF  
DAVID KIBERENGE ..... 5<sup>TH</sup> PLAINTIFF  
PATRICK BARASA MUKWEYI ..... 6<sup>TH</sup> PLAINTIFF**

**AND**

**CHIEF LAND REGISTRAR & 60 OTHERS ..... DEFENDANT**

**RULING**

1. By Amended Notice of Motion dated 26<sup>th</sup> February 2024, the 57<sup>th</sup> Defendant (Benjamin Barasa Wafula) seeks the following orders:
  - 1(A). That it pleases this Hon. Court to give and issue ex parte priority orders for hearing then determine this Application within 14 days of 4<sup>th</sup> March 2024; concurrent with the Preliminary Objection dated 19<sup>th</sup> January, 2021; due to the utmost urgency hereof.
  - 2(A). That, it pleases this Hon. Court to issue ex parte orders staying the 1<sup>st</sup> up to 6<sup>th</sup> Plaintiffs/Applicants and 1<sup>st</sup> up to 7<sup>th</sup> Defendants/Respondents herein, their relations, officers, workers, agents and clients as well as any other institution or affiliates claiming through them; from intermeddling and building the Webuye Modern Market Industrial Park and Affordable Houses, on the late Cheloti Kisaka's uncompensated Intestate LR. No. Ndivisi/Muchi/1253 up to 1400; pending determination of this Substantive Case.



- 3(A). That, it pleases this Hon. Court to issue ex parte orders for arresting the 1<sup>st</sup> up to 7<sup>th</sup> Defendants/Respondents herein, their relations, officers, workers, agents and clients as well as any other institution or affiliates claiming through them; due to contempt of the Order of the Court given on the 30<sup>th</sup> day of June, 2014 and the Rulings delivered on the 5<sup>th</sup> day of November, 2019; 15<sup>th</sup> day of October, 2020.
- 4(A). That, it pleases this Hon. Court to issue ex parte orders allowing families, relatives, guardians or nominees of the deceased proprietors like Cheloti Kisaka, Ali Loponi Mukweyi Titako Kituyi Wanyama, William Mwangolo Tela, Bopoyi Wesenda, Ali Mung'oma Malale, Zebedayo Biketi Mutinyu Wanambisi and Juma Namatsi Wambuchi, Thomas Wefwafwa Kati, Redrick Mabele Kati and Eman Bakari Wekesa Mwasame; to substitute the 3<sup>rd</sup> up to 6<sup>th</sup> Plaintiffs/Respondents herein.
- 4(B). That, it pleases this Hon. Court to issue ex parte orders allowing the blind Selinah Namalwa Masoni to substitute the deceased 2<sup>nd</sup> Plaintiff /Respondent herein; pursuant to the Limited Grant Ad-Litem Intestate issued on the 28<sup>th</sup> day of September 2023.
- 5(A). That, it pleases this Hon. Court to issue orders for Costs payable to the 57<sup>th</sup> up to 61<sup>st</sup> Defendants/Applicants herein.
2. The application is based on the following grounds as listed on the face thereof:
- A. That, the urgency considered, shall stop the 1<sup>st</sup> up to 6<sup>th</sup> Plaintiffs/Respondents herein, their relations, agents and clients; from intermeddling with the late Cheloti Kisaka's uncompensated Intestate LR. No. Ndivisi/Muchi 1335 up to 1400; pending determination of this Case.
- B. That the urgency considered, shall stop the 1<sup>st</sup> up to 7<sup>th</sup> Defendants/Respondents herein, their relations, agents and clients; from intermeddling and building the Webuye Modern Market and Fairly Chargeable Houses, on the late Cheloti Kisaka's uncompensated Intestate LR. No. Ndivisi/Muchi 1253 up to 1400; pending determination of this Substantive Case.
- C. That the late Cheloti Kisaka owned LR. No. Ndivisi/Muchi 1251 adversely pursuant to the Colony Protectorate of Kenya, in the Native Tribunal Courts through Cases: -
- i. In the Native Appeal Tribunal Kimilili Civil Case No. 1238 of 1947
  - ii. The Provincial Commissioner's Civil Appeal No. 10 of 1948
  - iii. The Kimilili Divisional Native Tribunal Civil Case No. 59 of 1949
  - iv. The Appeal Tribunal Kakamega 211 of 1949
  - v. The District Officer's Civil Appeal Kakamega 90 of 1950
  - vi. The Provincial Commissioner's Civil Case No. 41 of 1950.
- D. That, the late Cheloti Kisaka, made several claims to the 1<sup>st</sup> up to 6<sup>th</sup> Defendants/Respondents herein, who took a couple of years to solve the land disputes.
- E. That, the 1<sup>st</sup> up to 6<sup>th</sup> Defendants/Respondents herein, under compensated the now deceased Cheloti Kisaka, through Kenya Gazette No. 1710 of 12<sup>th</sup> June, 1970.
- F. That, the now deceased Cheloti Kisaka refused the Low Compensation and logged (*sic*) complaints to the 1<sup>st</sup> up to 6<sup>th</sup> Defendants/Respondents herein.



- G. That, I the Applicant herein, after being registered the Archivist Researcher No. 31814; has discovered how the 1<sup>st</sup> up to 6<sup>th</sup> Defendants/Respondents did con my now deceased ChelotI kisaka, on the 21<sup>st</sup> day of March, 1968.
- H. That, the 1<sup>st</sup> up to 6<sup>th</sup> Defendants/Respondents herein, were compromised on 21<sup>st</sup> March, 1968 through Muchi Registration Adjudication Team; then cheated that some tycoons and prominent people, bought part-portions of my Ancestors.
- I. That, I the Applicant herein, after being registered the Archivist Researcher No. 31814; has discovered how the 1<sup>st</sup> up to 6<sup>th</sup> Defendants/Respondents herein, returned my matrimonial grandfathers land without informing him, between 1968 and 1989.
- J. That, one of my matrimonial uncles claimed only 8 acres, out of the minimal 110 acres claimed by my matrimonial grandfather as cited through ground “C” hereof.
- K. That, its for the interests of justice, to stay the 1<sup>st</sup> up to 7<sup>th</sup> Defendants/Respondents and 1<sup>st</sup> up to 6<sup>th</sup> Plaintiffs herein, from doing any dealings on the disputed LR. No. Ndivisi/Muchi 1122 up to 1400; pending surveying investigations as resolved by the 1<sup>st</sup> up to 7<sup>th</sup> Defendants/ Respondents through National Liaison Meetings on: -
- i. 21<sup>st</sup> March, 1968
  - ii. 22<sup>nd</sup> November, 1973
  - iii. 27<sup>th</sup> February, 1975
  - iv. 16<sup>th</sup> May, 1975
  - v. 23<sup>rd</sup> September, 1975
  - vi. 3<sup>rd</sup> January, 1976
  - vii. 12<sup>th</sup> August, 1976.
3. The application is further supported by an affidavit sworn by the applicant.
  4. At the hearing, the Applicant relied entirely on the application and the supporting affidavit and urged the court to grant the orders sought.
  5. The 8<sup>th</sup> to 56<sup>th</sup> Defendants told the court that they would not participate in the hearing of the application. They left it to the court.
  6. Counsel for the Plaintiffs submitted that the Applicant is not a plaintiff in the matter and that all deceased parties were substituted. He further stated that the Busia court stopped the applicant from filing any interlocutory application and urged the court to schedule the main suit for hearing.
  7. I have considered the application, the affidavit and the submissions. This is a very old matter that has had a chequered history. It was initially filed in the High Court at Bungoma on 7<sup>th</sup> November 2012. It was later transferred to the Environment and Land Court at Bungoma, then to the Environment and Land Court at Busia, then back to the Environment and Land Court at Bungoma and finally to this court through an order made on 7<sup>th</sup> June 2023 by Justice O. A. Angote, PJ ELC.
  8. Considering the age of the matter and its history, this court has endeavoured to have the main suit heard and determined. In that regard, the court gave directions on 14<sup>th</sup> February 2024 as regards filing



of paginated trial bundles. The matter was then scheduled for mention on 20<sup>th</sup> May 2024 with a view to fixing a hearing date. The present application was filed on 13<sup>th</sup> March 2024.

9. The record further shows that the Second to Sixth Plaintiffs' cases were marked abated on 14<sup>th</sup> February 2024. The said cases have not since been revived. There can be no substitution in an abated suit without revival. Equally, no orders can be made against the Second to Sixth Plaintiffs since they ceased being parties to this case with effect from 14<sup>th</sup> February 2024.
10. The parties in this case must stop filing unnecessary interlocutory applications. They need to get to the bottom of the dispute, by having the main suit heard and determined on its merits.
11. I find no merit in Amended Notice of Motion dated 26<sup>th</sup> February 2024 and I therefore dismiss it. Costs in the cause.

**DATED, SIGNED, AND DELIVERED AT KAKAMEGA THIS 24<sup>TH</sup> DAY OF OCTOBER 2024.**

**D. O. OHUNGO**

**JUDGE**

Delivered in open court in the presence of:

Mr Sichangi for the Plaintiffs

No appearance for the 1<sup>st</sup> to 7<sup>th</sup> Defendants

Mr Mulama for the 8<sup>th</sup> to 56<sup>th</sup> Defendants

The 57<sup>th</sup> Defendant present in person

No appearance for the 58<sup>th</sup> to 61<sup>st</sup> Defendants

Court Assistant: M Nguyayi

