



**Mosongo v Ogendi & 5 others (Environment & Land Case
511 of 2016) [2025] KEELC 533 (KLR) (13 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 533 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII
ENVIRONMENT & LAND CASE 511 OF 2016
M SILA, J
FEBRUARY 13, 2025**

BETWEEN

JOHNSTONE NYANGWESO MOSONGO PLAINTIFF

AND

PHILIP ONYARI OGENDI 1ST DEFENDANT

GEORGE MOKORO OGENDI 2ND DEFENDANT

PHILIP NYAIGERO OGENDI 3RD DEFENDANT

OMAMBIA MAKENZI 4TH DEFENDANT

MONG'ARE ONGEKO 5TH DEFENDANT

EVANS SAGWE NYONG'A 6TH DEFENDANT

RULING

1. Before me is an application dated 19 May 2024 filed through the law firm of M/s Grace Bundi & Company Advocates and it is apparent that it has been filed by Mongare Ongeko, the 5th defendant in this matter.
2. The background is that through a plaint filed on 22 September 2011 the plaintiff averred that he was the owner of the plot LR No. 8805- Ikonge Trading Centre having purchased the plot in 1970 and securing a renewal of lease for 99 years from 1989. He pleaded that in 2010, the 1st – 3rd defendants purported to sell the suit land to the 4th – 6th defendants and the 3rd – 6th defendants invaded the suit land. He asked for orders for their eviction and injunction to restrain them from the plot.
3. On 6 October 2011, the firm of M/s Ochillo & Company Advocates entered appearance for the defendants. On 11 November 2011, the said firm filed a joint statement of defence for all the defendants. In addition the said firm filed witness statements for each of the six defendants. On 1



December 2011, an authority was filed whereby the 2nd – 5th defendants gave authority to the 1st defendant.

4. The matter proceeded for hearing before Onyango J, and I observe that on 25 May 2017, the 1st and 4th defendants testified and the defence case was closed. Counsel filed their submissions culminating in a judgment delivered on 23 February 2018. In the judgment the good Judge found that the suit land was jointly purchased by the plaintiff and one Ogendi Sagwe (deceased) who was the father of the 1st, 2nd and 3rd defendants. He was also father in law of the plaintiff. She found that the title was in their two names and they held the property in common. On the property, the plaintiff and the deceased had developed a shop. She held that the 1st – 3rd defendants were entitled to the share of their late father as beneficiaries but they had no right to sell as they had not taken out letters of administration. She ultimately declared the purported sale of the property to the 4th – 6th defendants as illegal and null and void; she ordered the 4th – 6th defendants to vacate the suit land within 3 months failure to which the plaintiff was at liberty to evict them; and also issued a permanent injunction to restrain the 4th – 6th defendants from the suit land or dealing with it. The defendants were to bear the costs of the suit.
5. Subsequently through an application dated 19 May 2019 and amended on 22 January 2020, the plaintiff/deed holder applied for the eviction of the 4th – 6th defendants from the suit land. The application was allowed on 10 February 2020.
6. On 5 August 2020, a consent was filed between M/s Ochillo & Company Advocates and M/s GJM Masese & Company, allowing the law firm of GJM Masese & Company to appear for the defendants.
7. On 11 September 2020, the law firm of M/s GJM Masese & Company, now on record for the defendants, filed an application dated 10 September 2020 seeking review of the judgment. The supporting affidavit to that application was sworn by Mongare Ongeko, the 5th defendant. In the application, it was urged that the court held that the beneficiaries of Ogendi Sagwe (deceased) were entitled to half share of the property and hence orders of eviction could not issue since what the applicants were occupying was the half share of the deceased. The application for review was dismissed in a ruling delivered on 28 April 2021.
8. On 24 May 2024, a purported notice of change of advocates was filed by the law firm of M/s Grace Bundi & Company for “the 4th defendant” without even indicating the law firm that is to be replaced. On 19 June 2024, the same law firm filed an application dated 19 May 2024 for “the 4th defendant.” It is that application that is subject of this ruling. That application seeks orders that the judgment delivered on 23 February 2018 be set aside and the “4th defendant” be allowed to put in his defence to the suit. The application is supported by the affidavit of Mongare Ongeko. He averred that in the year 2000 he bought the suit land from one of the beneficiaries for Kshs. 125,000/= and he developed it in the year 2002. He averred that it recently came to his attention that the property was jointly owned. He deposes that the matter seems to have proceeded ex parte without his knowledge and judgment was delivered in favour of the plaintiff in his absence. He deposes that in 2021 he and his tenants were evicted from the suit land. He claims that he is being treated unfairly and wishes to have a chance to defend himself.
9. To oppose the application, the respondent filed Grounds of Opposition. It is inter alia averred that the applicant was represented by M/s Ochillo & Company Advocates and filed a Memorandum of Appearance and Defence. It is also averred that the suit was heard on merit and that execution has already been effected.
10. I have considered the application. At the outset, I must say that I am completely surprised by the incompetency of the application. First it has very obvious and very basic errors. The applicant is not the 4th defendant in the suit but the 5th defendant. Secondly, it cannot, by any stretch of



imagination, be alleged by the 5th defendant/applicant that he was never represented in the case. Indeed, a Memorandum of Appearance and Defence was filed on his behalf and on behalf of all defendants by M/s Ochillo & Company Advocates. He himself had earlier filed a witness statement through the law firm of M/s Ochillo & Company Advocates. The applicant had through a signed authority, given authority to the 1st defendant who testified in the case. It is mendacious for the applicant to contend that the case proceeded ex parte. Thirdly, I find it ridiculous for the applicant to allege that he was not aware of the judgment yet he is the same person who swore the affidavit seeking review of the judgment. Fourthly, the law firm which filed the application, M/s Grace Bundi & Company Advocates is not even properly on record. The defendants were initially represented by M/s Ochillo & Company Advocates and later, after judgment, and through a consent, they appointed M/s G.J.M Masese Advocate. I have seen no application from the law firm of M/s Grace Bundi & Company seeking to come on record for the defendants despite the need to do so as required by Order 9 Rule 9 of the Civil Procedure Rules.

11. That aside, and as I mentioned, the notice of change of advocates does not even have the name of the advocate sought to be replaced. When in court on 23 September 2024, I inquired from Ms. Bundi who exactly was on record for the parties and her answer was that she did not know. I am completely taken aback that counsel can actually take instructions in a suit and not even know some very basic things in the matter such as who is appearing for the parties. No wonder, the 5th defendant, who is the applicant, is even being wrongly described as the 4th defendant. That also explains the fact that the purported notice of change of advocate does not have the name of the advocate being replaced. At the very least, you would expect any counsel taking over a suit, to acquaint himself/herself with the matter.
12. I believe that I have said enough to demonstrate that this application is hopelessly incompetent. It is hereby dismissed with costs.
13. Orders accordingly.

DATED AND DELIVERED THIS 13 DAY OF FEBRUARY 2025

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT KISII

Delivered in presence of :

Court Assistant : Michael Oyuko

No appearance on part of Ms. Grace Bundi for the applicant

No appearance on part of Mr. Sagwe for the plaintiff/respondent

