



**Wafula v Ohuma & another (Environment & Land Case 44 of 2018)  
[2024] KEELC 13391 (KLR) (21 November 2024) (Ruling)**

Neutral citation: [2024] KEELC 13391 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT BUSIA  
ENVIRONMENT & LAND CASE 44 OF 2018**

**BN OLAO, J  
NOVEMBER 21, 2024**

**BETWEEN**

**STEPHEN WABWIRE WAFULA ..... PLAINTIFF**

**AND**

**JESICA MIDI OHUMA ..... 1<sup>ST</sup> DEFENDANT**

**DAVID WABWIRE WAFULA ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. Stephen Wabwire Wafula (the Plaintiff/Applicant) approached this Court vide his Originating Summons dated 17<sup>th</sup> May 2018 seeking various orders against Jessica Midi Ohuma and David Wabwire Wafula (the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Respondents respectively) with regard to the land parcel No Bukhayo/mundika/1854. The remedies sought are not relevant to this application.
2. The Defendants/Respondents filed a joint replying affidavit opposing the Applicant's claim.
3. By a consent letter dated 23<sup>rd</sup> December 2020 and filed herein on the same day, the parties agreed as follows:
  1. "That the 2<sup>nd</sup> Defendant shall transfer the entire of land title No Bukhayo/mundika/12699 to the Plaintiff."
  2. "That the costs of transfer shall be borne by the Plaintiff."
  3. "That the Plaintiff shall pay costs of the suit to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants in the sum of Kshs.20,000 only."
  4. "That the case be mentioned on 27<sup>th</sup> January 2021 to confirm full and final settlement."
4. That consent was subsequently adopted as a Judgment of this Court on 10<sup>th</sup> February 2021. It would appear that the 2<sup>nd</sup> Defendant/Respondent did not keep the part of his bargain.



5. I now have for my determination a Notice of Motion dated 4<sup>th</sup> July 2024 by the Plaintiff/Applicant premised under the provisions of Sections 3 and 3A of the Civil Procedure Act and Orders 22 and 51 of the Civil Procedure Rules.
6. The Plaintiff/Applicant seeks the following orders:
  1. Spent.
  2. That this Honourable Court be and is hereby pleased to grant leave to the Plaintiff/Applicant to reopen the case herein.
  3. That the Deputy Registrar Busia Law Courts be and is hereby authorized to execute the necessary transfer instruments and effect transfer of the land title No Bukhayo/mundika/12699 measuring 0.05 Hectares to the Plaintiff/Applicant in place of the Defendants/Respondents and in line with the consent issued on 10<sup>th</sup> February 2020 and dated 15<sup>th</sup> February 2021.
  4. That the Defendants/Respondents be and are hereby barred/restrained from transferring, leasing, parting with possession of or dealing in any other manner whatsoever with the land title No Bukhayo/mundika/12699 in favour of third parties.
7. The application is premised on the grounds set out therein and is also supported by the Plaintiff/Applicant's affidavit of even date.
8. The gist of the application is that this suit was settled vide a consent order issued on 10<sup>th</sup> February 2021 as contained in the parties's own letter dated 23<sup>rd</sup> February 2020. Pursuant to that consent, the Plaintiff/Applicant paid the Kshs.20,000 to the Defendants/Respondents thus honouring his part of the bargain. And although the Defendants/Respondents have not contested the consent order nor obtained any order to the contrary, they have failed to honour the order thus necessitating this application.
9. Annexed to the application are the following documents:
  1. Copy of this Court's order dated 10<sup>th</sup> February 2021.
  2. Copy of receipt for Kshs.20,000 paid by the Plaintiff/Applicant to the firm of J. P. Makokha & Company Advocates on 23<sup>rd</sup> December 2020.
  3. Copies of letters exchanged by the parties.

When the application was placed before me on 8<sup>th</sup> July 2024, I directed that it be served upon the Defendants/Respondents together with submissions. The defendants/respondents were required to file their responses 21 days from the date of service. The matter was to be mentioned on 15<sup>th</sup> August 2024 to confirm compliance. However, on that day, MR. JUMBA counsel for the Plaintiff/Applicant informed the Court that the defendants/respondents had not filed any response to the application. He added that he had however filed and served his submissions.
10. The application is therefore not contested.
11. I have considered the application and the submission by Mr Jumba counsel for the Plaintiff/Applicant.
12. The terms of the parties consent, executed voluntarily and later adopted as an order of this Court, are not in dispute and neither are they vague. And since the Defendants/Respondents have not opposed the application, it is clear to this Court that they have no dispute with the consent. There is no reason



why they have reneged on the consent herein. The Plaintiff/Applicant is therefore entitled to the orders sought.

13. What I have agonized over is the fourth (4<sup>th</sup>) prayer of the application wherein the Plaintiff/Applicant seeks an order barring the Defendants/Respondents from transferring, leasing, parting with possession or in any other manner dealing with the land parcel No Bukhayo/mundika/12699. That prayer was not part of the consent between the parties. To include it in the orders which this Court grants the Plaintiff/Applicant will amount to varying a consent order. The power to vary such an order is now well settled. See for example *Flora Wasike -v- Destimo Wamboko* 1982-1988 1 KAR 625, *J M Kwako -v- Kenya Commercial Bank Ltd* and also *Brooke Bond Liebig -v- Mallya* 1975 E.A 266 among others. This Court is not about to accept the invitation to take that route.
14. Most importantly, the consent herein was adopted as an order of the Court on 10<sup>th</sup> February 2021 and this application was filed on 4<sup>th</sup> July 2024 some 3 years and 5 months later. This Court is not certain that the land parcel No Bukhayo/mundika/12699 is in the name of the Defendants/Respondents or any of them. It is important to note that the said land parcel No Bukhayo/mundika/12699 was not the subject of the Originating Summons dated 17<sup>th</sup> May 2018. What was in dispute was the land parcel No Bukhayo/mundika/1854 although the parties recorded their consent over a different parcel of land. I think the safest thing for this Court to do in those circumstances is to confine itself within the four corners of that consent.
15. The up-shot of all the above is that having considered the Notice of Motion dated 4<sup>th</sup> July 2024, this Court issues the following orders:
  1. The Deputy Registrar of this Court shall immediately execute all the transfer documents to facilitate the transfer of the land parcel No Bukhayo/mundika/12699 measuring 0.05 Hectares to the Plaintiff/Applicant on behalf of the Defendants/Respondents in line with the consent order herein.
  2. No order as to costs.

**BOAZ N. OLAO**

**JUDGE**

**21ST NOVEMBER 2024**

**RULING DATED, SIGNED AND DELIVERED ON THIS 21<sup>ST</sup> DAY OF NOVEMBER 2024 BY WAY OF ELECTRONIC MAIL.**

**BOAZ N. OLAO**

**JUDGE**

**21ST NOVEMBER 2024**

