



**Wekesa v Wekesa & another (Environment and Land Appeal  
12 of 2023) [2025] KEELC 556 (KLR) (13 February 2025) (Judgment)**

Neutral citation: [2025] KEELC 556 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA  
ENVIRONMENT AND LAND APPEAL 12 OF 2023  
EC CHERONO, J  
FEBRUARY 13, 2025**

**BETWEEN**

**DANIEL NYONGESA WEKESA ..... APPELLANT**

**AND**

**DOROTHY SYLVIA WEKESA ..... 1<sup>ST</sup> RESPONDENT**

**GEOFFREY WEKESA ..... 2<sup>ND</sup> RESPONDENT**

*(Being an appeal from the ruling by Hon. C.A.S. MUTAI (SPM)  
in Bungoma CMELC E067 OF 2021 delivered on 15/02/2023)*

**JUDGMENT**

1. This appeal arises from the Order/Ruling of the trial court where Daniel Nyongesa Wekesa -the Appellant herein was the Defendant while Dorothy Sylvia Wekasa and Geoffrey Wekesa -the Respondents herein were the Plaintiffs.

**Background.**

2. The former suit before the trial court was instituted by the Respondents/Plaintiffs vide a plaint dated 14/10/2021 where they averred that they presented a limited grant of letter of administration as beneficiaries and Administrators of the estate of the late Joyce Aluoch Wekesa who died on 05/02/2020. That with the instructions and permission of the deceased, the 1<sup>st</sup> Respondent had constructed a house on a portion of land which later on became the Appellant's inheritance. That the defendant urged the 1<sup>st</sup> Respondent not to demolish the house since he had had no problem utilizing the house. That to the 1<sup>st</sup> Respondents dismay, the Appellant took possession of the house, installed his 2<sup>nd</sup> wife and denied her access.



3. That the Appellant has rendered the 1<sup>st</sup> Respondent homeless and has further denied them access to their ancestral home by blocking the main entrance and placing a security guard who is constantly harassing the beneficiaries of the estate. That he has constantly breached peace at the ancestral home and destroyed/deformed the main entrances leaving the homestead exposed. The Respondents set out particulars of breach of their rights. They sought for judgment against the Appellant for;
  - a. The honourable court be pleased to issue an injunction permanently restraining the defendant herein/or his licensee, servants, agents and/or employees from further vandalizing, destroying, demolishing and interfering in any manner whatsoever with the house, building and/or structure on property known as W.Bukusu/ S.Mateka Bungoma County L.R No. 5406 the ancestral home of the plaintiff.
  - b. This honourable court be pleased to issue a permanent order against the defendant to allow the 1<sup>st</sup> plaintiff to remove, destroy and alienate the structures on the property known as W.Bukusu/ S.Mateka Bungoma County L.R No. 5406 and which particularly sits on the portion of land where the late Joyce Aluoch Wekesa instructed the defendant to construct his house.
  - c. This honourable court be pleased to issue a permanent order against the defendant compelling him to remove and/or destroy any burrier and/or structure erected on W.Bukusu/ S.Mateka Bungoma County L.R No. 5406 for purposes of denying the beneficiaries from accessing the homestead.
  - d. This honourable court be pleased to issue an order barring the defendant from hiring any security guard and further permanently barring any such guard from further conducting any illegal activities under the instructions of the defendant and or stepping, accessing or carrying out any activities within the homestead, premises or farm as situated in W.Bukusu/ S.Mateka Bungoma County L.R No. 5406.
  - e. That this honourable court be pleased to issue and order directing the defendant to remove all his valuables, his possessions and household goods as they are in the 1<sup>st</sup> Applicants house within 24 hours after the determination of this suit failure to which the respondent should be evicted forcefully.
  - f. This honourable court be pleased issue an order allowing the 1<sup>st</sup> applicant to remove all materials used to construct her house as situated on a portion allocated to the defendant and demolish her house in toto on property known as W.Bukusu/ S.Mateka Bungoma County L.R No. 5406.
  - g. The officer commanding Kabula Police Station do assist the court in making the above orders effective.
  - h. Costs of this suit.
  - i. Interest on (j) and (k) above from time of filing suit till payment in full.
4. Before the matter could go for hearing of the main suit, various interlocutory applications were filed with the latest dated 05/05/2022 whose ruling is the subject of this appeal. In the said application dated 05/05/2022, the Respondents had sought the following orders;
  - a. An order directing Daniel Nyongesa Wekesa and Erick Walekhwa are in contempt, following the orders issued by this honourable court on 24/01/2022 barring the aforementioned and his agents and/or employees and/or servants and /or licensees from stepping, accessing and/or carrying out any activities within W.Bukusu/ S.Mateka Bungoma County L.R No. 5406.



- b. An order of committal to be made against Daniel Nyongesa Wekesa and Erick Walekhwa to prison for such period as this honourable court may see fit for the blatant disregard and continued stay on suit property W.Bukusu/ S.Mateka Bungoma County L.R.No. 5406 despite the issued court order made herein by this court on 20/01/2022.
  - c. An order that costs of and occasioned by this motion and for obtaining leave thereto be paid by Daniel Nyongesa Wekesa.
5. The application was based on the grounds on the face of the said application supported by the affidavit of Dorothy Sylvia Wekesa-the 1<sup>st</sup> respondent herein sworn on 05/05/2022. It was deposed that despite enforcement of the court's order issued on 24/01/2022 for the Appellant herein to vacate the suit premises and remove his belongings therefrom, he forcefully accessed the premises to her detriment.
6. In opposition thereto, the Appellant herein filed a Replying affidavit sworn on 20/06/2022 where he deposed that the terms of the orders of the court were ambiguous and that he is staying on his land and that the allegations by the Respondents herein were fictitious.
7. In determination of the said application, the trial Magistrate delivered a Ruling on 07/02/2023 (not 15/02/2023) which summoned the Appellant to attend court and explain why he failed to comply with the orders issued by the court.
8. Being dissatisfied with the trial courts riling, the Appellant preferred the current appeal on the following grounds;
  - a. That the trial magistrate erred in law and in facts when he proceeded and allowed the application dated 05/05/2022 against the weight of the evidence on record.
  - b. That the trial magistrate erred in law and in facts when he issued the notice to show cause against the appellant in toto disregard of the evidence on record.
  - c. That the trial magistrate erred in law and in facts when he proceeded and allowed the application dated 05/05/2022 in total disregard of the appellants submissions on record.
9. The Appellant therefore sought the following orders;
  - a. That the appeal be allowed with costs to the appellant
  - b. That the ruling of the trial magistrate be set aside and the honourable court do set aside and the honourable court give its ruling as per evidence on record.
10. When this appeal came up for directions, the parties agreed to have the same canvassed by written submission. However, neither of the parties filed submissions at the close of the timelines given.
11. I have considered the Memorandum of Appeal, the Record of Appeal, written submissions filed by the parties and the court record generally and the singular issue for determination is whether the trial erred in allowing the Respondents application and who bears the costs of the appeal.
12. From the synopsis of the pleadings and the application whose ruling is the subject of this appeal, it is clear that the parties herein are engaged in a fierce dispute over the sharing of the suit land. I must say that this is a matter that has found itself before this court in previous occasions on appeal arising from the trial court rulings and it seems that the parties herein are not keen on litigation on the main suit but filing applications upon applications which give rise to one appeal after another.
13. Having said that, I note that the order the Appellant herein has preferred in the current appeal is where he was directed to appear before the trial court for purposes of explaining why he did not comply with



an order issued previously. In his response, he argued that the court failed to consider the evidence and submissions on record in the impugned ruling. I have looked at the application dated 05/05/2022 and I note that the same sought to cite the Appellant herein for contempt of court orders issued by the trial court on 24/02/2022. My understanding of the impugned order is that it arises from the ruling delivered on 10/12/2021 in relation to an application dated 13/10/2021. In the said ruling, the trial court directed as follows;

“ ...That being the case parties are directed to maintain status quo as at the time of filing this suit...Consequently orders shall be granted as sought in prayer 2,3,4,5 & 7...”

14. Having looked at the said application and the impugned order/Ruling, I agree with the Appellant that the orders were ambiguous as the trial court directed the Appellant to maintain status quo and at the same time issuing an injunctive order against the Appellant and his proxies ordering him to vacate the 1<sup>st</sup> Respondents house and remove his belongings therefrom, an order barring the Appellant and one Erick Walekwa from accessing the suit land and for the OCS Kabula Police Station to provide security during the enforcement of the said orders. Therefore, the application dated 05/05/2022 which is based on an unclear order is untenable and the resultant ruling is inconsequential.
15. However, the above does not warrant either of the parties to go on rampage destroying property and denying access to the other beneficiaries to their homes. Both parties are represented by advocates who, I believe know the procedure to follow in the event the court issues an order that is incapable of enforcement and which require to be reviewed.
16. In view of the foregoing, I find this appeal merited and the same is hereby allowed and the orders of the trial Magistrate issued on 15/02/2023 in Bungoma CM-ELC No.E067 hereby set aside with each party to bear their own costs.
17. The original court file to be remitted back to the Chief Magistrate Bungoma for directions and fixing of a hearing date.

**DATED, SIGNED AND DELIVERED AT BUNGOMA THIS 13<sup>TH</sup> DAY OF FEBRUARY, 2025.**

.....

**HON.E.C CHERONO**

**ELC JUDGE**

In the presence of:

1. Appellant/Advocate-absent
2. Respondent/Advocate-absent
- 3 Bett C/A

