



**Obura & another v Okello; Okello (Exparte Applicant); Obura & another  
(Interested Parties) (Environment and Land Miscellaneous Application  
53 of 2015) [2024] KEELC 7468 (KLR) (13 November 2024) (Ruling)**

Neutral citation: [2024] KEELC 7468 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT BUSIA  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION 53 OF 2015  
BN OLAO, J  
NOVEMBER 13, 2024**

**BETWEEN**

**NELSON OBURA ..... 1<sup>ST</sup> PLAINTIFF**

**JOHN MAKOKHA ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**JOHN NAKHABI OKELLO ..... DEFENDANT**

**AND**

**JOHN NAKHABI OKELLO ..... EXPARTE APPLICANT**

**AND**

**NELSON OBURA ..... INTERESTED PARTY**

**JOHN MAKOKHA ..... INTERESTED PARTY**

**RULING**

1. To dismiss the Notice of Motion dated 24<sup>th</sup> April 2024 filed by John Nakhabi Okello (the Applicant herein) would clearly be the height of injustice. I am not about to earn that accolade now. Not because the Motion was not opposed. What rings in my mind are the words of Sheridan J in the case of *Sebei District Administration -v- Gasyali & Others* 1968 E.A 300 where the Judge observed thus:

“... I think it should always be remembered that to deny the subject a hearing should be the last resort of the court.”

The Applicant first approached this court, acting in person, vide his Notice of Motion dated 27<sup>th</sup> April 2015 and predicated under the provisions of Order 53 of the [Civil Procedure Rules](#) as well as Section



- 7 of the *Limitation of Actions Act* seeking the main order of Certiorari directed against the decision of the Funyula Land Disputes Tribunal (the Tribunal) in respect of the land parcel No Samia/Luanda/Mudoma/1260 which had been adopted as a decision of Busia Chief Magistrate's Court Land Disputes case No 20 of 2008. The Applicant was then acting in person but has since engaged the firm of D. K. Nabulindo & Company Advocates to act for him. The said firm filed a Notice of Appointment of Advocates which is not dated. I direct that they regularize that lapse forthwith. They may also need to amend the said Notice of Motion.
2. What is relevant for purposes of this ruling is that having filed the Notice of Motion dated 27<sup>th</sup> April 2015, the Applicant went to sleep. It appears that he slept so soundly for some seven (7) years and took no action towards prosecuting his application. Rumours must have started spreading that he had died.
  3. So on 13<sup>th</sup> July 2022, Mr Wanyama counsel for the Interested Party asked the court to mark the application as withdrawn. He informed the Court that the Applicant had died 1½ years earlier. Omollo J obliged and the case was marked as withdrawn.
  4. The Applicant has now approached this court vide his Notice of Motion dated 24<sup>th</sup> April 2024 and filed by the firm of D. K. Nabulindo & Company Advocates. It is premised under Sections 1A, 1B, 3A and 63 (e) of the *Civil Procedure Act* and Order 3 Rule 10 of the *Civil Procedure Rules*. He seeks the main prayer that the orders of this court made on 13<sup>th</sup> July 2022 dismissing his case be set aside.
  5. The application is based on the grounds set out therein and is also supported by the Applicant's affidavit of even date.
  6. The gravamen of the application is that having filed his Notice of Motion dated 27<sup>th</sup> April 2015, the Applicant visited the Court several time but his file could not be traced. He therefore engaged the services of counsel to follow up and that is when the file was found in the Archives and he discovered that the court had erroneously been informed that he had died yet it was the Interested Party who had died. That the dismissal order was made in his absence and he will suffer irredeemable loss if the dismissal orders are not set aside. Annexed to the application are several documents including a letter he wrote to the court on 27<sup>th</sup> October 2022 complaining, inter alia, that his case had been dismissed without notice to him.
  7. When the application came up before me on 19<sup>th</sup> September 2024, Mr Wanyama counsel for the Interested Party sought time to file a response. I directed that the application be canvassed by way of written submissions and the Interested Party were granted 14 days from date of service upon them of the application and Applicant's submissions to file their responses and submissions. The matter would then be mentioned on 14<sup>th</sup> October 2024 to confirm compliance and take a date for ruling.
  8. However, on 14<sup>th</sup> October 2024 only counsel for the Applicant attended court and confirmed having served the submissions on the other parties. Mr Wanyama did not attend court and neither had he filed any responses to the application or submissions. The application is therefore un-opposed.
  9. I have considered the application and the submission by Ms Nabulindo. It is not in dispute that the Applicant's Notice of Motion was dismissed principally on the wrong premises that he was deceased. As is now clear, he is alive and had even written to this court on 27<sup>th</sup> October 2022 enquiring about this case. His letter was stamped by the court upon receipt but was not acknowledged. Obviously a very poor reflection on the work ethics by the officer who received it. Letters must always be acknowledged and responded to even if the contents are not palatable. Hopefully, the officer(s) concerned will take note.



10. The Applicant's Notice of Motion having been withdrawn on 13<sup>th</sup> July 2022 on the erroneous allegation that he had died 1½ years earlier, the order must be set aside as a matter of course.
11. The up-shot of all the above is that having considered the Notice of Motion dated 24<sup>th</sup> April 2024, this court make the following disposal orders:
  1. The Notice of Motion dated 24<sup>th</sup> April 2024 is hereby allowed and the application dated 27<sup>th</sup> April 2015 be reinstated to hearing.
  2. The firm of D. K. Nabulindo & Company Advocates to regularize their appointment by signing the Notice of Appointment.
  3. The Notice of Motion dated 27<sup>th</sup> April 2015 be listed for hearing on 17<sup>th</sup> December 2024.
  4. No orders as to costs.

**RULING DATED, SIGNED AND DELIVERED BY WAY OF ELECTRONIC MAIL ON THIS 13<sup>TH</sup> DAY OF NOVEMBER 2024.**

**BOAZ N. OLAO**

**JUDGE**

**13<sup>TH</sup> NOVEMBER 2024**

