



REPUBLIC OF KENYA



**Okelo & 3 others v Ooko & another (Land Case Appeal E050 of 2024)
[2024] KEELC 13231 (KLR) (13 November 2024) (Ruling)**

Neutral citation: [2024] KEELC 13231 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY
LAND CASE APPEAL E050 OF 2024
GMA ONGONDO, J
NOVEMBER 13, 2024**

BETWEEN

BENARD ODHIAMBO OKELO 1ST APPELLANT

**ERICK OCHIENG PANYAKO & 2 OTHERS & 2 OTHERS & 2 OTHERS & 2
OTHERS & 2 OTHERS & 2 OTHERS 2ND APPELLANT**

AND

MICHEAL OOKO 1ST RESPONDENT

JOHN OUMA OLITH 2ND RESPONDENT

RULING

1. This ruling is in respect of an application by Mr Gembe instructed by Oduor learned counsel for the appellant that the respondents' replying affidavit sworn on 11th November 2024 in response to the applicants' notice of motion dated 23rd October 2024 (The motion), be expunged from the record herein for being an illegality.
2. It is the assertion of the applicants' counsel that the respondents have not complied with the court's orders given and issued on 29th October 2024. That the respondents' replying affidavit was filed outside the timeline set by court. That it has not been served on the applicants.
3. Ms Nyarige learned counsel for the respondents has opposed the application to the effect that the motion was served late. That however, the same has been responded to by the replying affidavit which can be served or re-served on the applicants for possible compromise of the motion.
4. Having considered the motion, the court's directions of 29th October 2024, the replying affidavit and the rival arguments herein, is the application merited?



5. The replying affidavit is in response to the motion. The same is in the spirit of the respondents' right of access to justice and unlimited right to fair hearing under Articles 48, 50 (1) and 25 (c) of the Constitution of Kenya 2010; see also Philip Chemwolo and another v Augustine Kubende (1986) eKLR.
6. It is trite law that the right to be heard is fundamental and permeates the entire justice system; see James Kanyiita Nderitu and another v Marios Philotas Gbikas and another (2016) eKLR.
7. I, therefore, find the application unmeritorious and hereby disallow the same with no orders as to costs.
8. Thus, I hereby order and direct as follows;
 - a. The respondents' replying affidavit sworn on 11th November 2024 is duly filed and the same shall be re-served upon the applicants' counsel forthwith.
 - b. The applicants' counsel to file and serve any rejoinder to the replying affidavit within fourteen days from the date of service of the said affidavit.
 - c. The motion is fixed for further directions on 4th February 2205.
 - d. The parties are encouraged to embrace alternative dispute resolution methods in the motion and the entire matter
 - e. Interim orders issued on 29th October 2024, extended.
 - f) Ordered accordingly

DATED AND DELIVERED AT HOMA BAY THIS 13TH DAY OF NOVEMBER 2024.

G. M. A ONG'ONDO

JUDGE

Present;

1. Mr. Gembe instructed by Oduor learned counsel for the applicants
2. Ms. Nyarige learned counsel for the respondents
3. F. Mutiva, court assistan

