



Mutevesi (Suing as Legal Representative of Mutevesi Lubwa alias Mutevisi Lubwa - Deceased) & another v Imboko & 9 others; Lubwa & 5 others (Interested Parties) (Environment & Land Case 140 of 2016 & 304 of 2017 (Consolidated)) [2024] KEELC 13875 (KLR) (17 December 2024) (Ruling)

Neutral citation: [2024] KEELC 13875 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT & LAND CASE 140 OF 2016 & 304 OF 2017 (CONSOLIDATED)
DO OHUNGO, J
DECEMBER 17, 2024

BETWEEN

SULUMENA LUBALE MUTEVESI (SUING AS LEGAL REPRESENTATIVE OF MUTEVESI LUBWA ALIAS MUTEVISI LUBWA - DECEASED) PLAINTIFF

AND

CHIVEU SHAMALA IMBOKO 1ST DEFENDANT
THE COUNTY LAND REGISTRAR 2ND DEFENDANT

AND

CHRISTOPHER LUBWA INTERESTED PARTY
DAVID SHIJENJE MUKOSHI INTERESTED PARTY
TIMOTHY TELLA INTERESTED PARTY
RODAH WERANGA SIKOLIA INTERESTED PARTY
ADVENTIST CHURCH E.A LTD INTERESTED PARTY
ISIYE CLEMENT MUYABILA INTERESTED PARTY

AS CONSOLIDATED WITH
ENVIRONMENT & LAND CASE 304 OF 2017

BETWEEN

CHIVEU S IMBOGO PLAINTIFF

AND



SULUMENA LUBALE MUTEVESI	1ST DEFENDANT
CHRISTOPHER KUBWA	2ND DEFENDANT
DAVID SHIJENJE MUKOSHI	3RD DEFENDANT
TIMOTHY TELLA	4TH DEFENDANT
RODAH WARONYA SIKOLIA	5TH DEFENDANT
THE DISTRICT LAND REGISTRAR	6TH DEFENDANT
THE DISTRICT LAND SURVEYOR	7TH DEFENDANT
THE ATTORNEY GENERAL	8TH DEFENDANT

RULING

1. This ruling is in respect of Notice of Motion dated 17th June 2024, filed by Chiveu Shamala Imboko, the First Defendant in ELCC No. 140 of 2016 who is also the Plaintiff in ELCC No. 304 OF 2017. The following orders are sought in the application:
 1. That the present application be certified urgent and be heard on priority basis.
 2. That the interested party herein do submit the original copies of the agreements dated 12.12.99 and 13.04.2000, and acknowledgments dated 22.12.99, 18.04.2000, 29.04.2000, 28.02.2000 and 31.05.2000 to the DCI Kabras Police Station together with known Signatures specimen from the witnesses named in the agreement for period between 1999 and 2000 for forensic investigation.
 3. That costs hereof be provided for.
2. The application is primarily targeted at Isiyee Clement Muyabila, the 6th Interested Party in ELCC No. 140 of 2016. It is supported by an affidavit sworn by Chiveu Shamala Imboko, the applicant. He deposed that he made a report at Malava Police Station concerning agreements which Isiyee Clement Muyabila annexed to his application in this matter and that upon the documents being submitted for forensic examination at the Directorate of Criminal Investigations (DCI), a report dated 23rd April 2024 was issued. That the police summoned Isiyee Clement Muyabila, but he was uncooperative.
3. Isiyee Clement Muyabila opposed the application through a Replying Affidavit in which he deposed that originals of the documents remained in possession of the vendor and that the Applicant should not be allowed to turn the Court into an investigative agency. That as a neutral arbiter, the Court cannot aid one party to investigate another and further that the Court lacks jurisdiction.
4. The other parties did not file any response to the application. The application was canvassed through written submissions. The Applicant and Isiyee Clement Muyabila filed written submissions. The rest of the parties did not file any submissions.
5. Nevertheless, in oral address to the Court, counsel for the Plaintiffs in ELC 140 of 2016 and for 1st, 3rd, 4th and 5th Interested Parties in ELC 140 of 2016 urged the Court to reject the application. On the other hand, counsel for 3rd Defendant in ELC 304 of 2014 and 2nd Interested Party in ELC 140 of 2016 argued that the application is meritorious.



6. I have carefully considered the application, affidavits and submissions. The record shows that Isiye Clement Muyabila was allowed to join the matter on 12th March 2024, upon his own application. The matter was partly heard as of that date, with PW1's evidence in chief having been taken. At the request of parties, directions were given that hearing proceeds from where it had reached. Thus, the suit is partly heard.
7. The application seeks orders to compel Isiye Clement Muyabila to avail originals of specified documents as well as specimen signatures for purposes of forensic investigation by DCI. The applicant has not provided any proof that the originals are in the custody of Isiye Clement Muyabila. The later has deposed that he does not have them. Further, the specimen signatures sought are not exclusively those of Isiye Clement Muyabila.
8. Forensic investigation is a criminal law process. This Court's jurisdiction is purely civil. Further, there is risk of the Court descending to the arena of conflict if it were to order one party to submit to a criminal law process in respect of the matters that are before it. Parties should pursue the criminal law process separately. Additionally, they should use their own industry within the civil procedure to obtain and present evidence in support of their cases.
9. I find no merit in Notice of Motion dated 17th June 2024. I dismiss it with costs to Isiye Clement Muyabila, the 6th Interested Party.

DATED, SIGNED, AND DELIVERED AT KAKAMEGA THIS 17TH DAY OF DECEMBER 2024.

D. O. OHUNGO

JUDGE

Delivered in open court in the presence of:

No appearance for the Plaintiff in ELC 304 of 2014

Mr Osango for the Plaintiffs in ELC 140 of 2016 and for 1st, 3rd, 4th and 5th Interested Parties in ELC 140 of 2016.

Mr Nyikuli for the 1st Defendant in ELC 140 of 2016

No appearance for 2nd Defendant in ELC 140 of 2016 and 6th to 8th Defendants in ELC 304 of 2014

Mr Getanda for 3rd Defendant in ELC 304 of 2014 and 2nd Interested Party in ELC 140 of 2016

6th Interested Party in ELC 140 of 2016 present in person

Court Assistant: M Nguyayi

