



Anyango & another v Oloo & 8 others (Environmental and Land Originating Summons E004 of 2024) [2024] KEELC 13813 (KLR) (11 December 2024) (Ruling)

Neutral citation: [2024] KEELC 13813 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT SIAYA
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS E004 OF 2024
AY KOROSS, J
DECEMBER 11, 2024**

BETWEEN

HELENA OMONDI ANYANGO 1ST APPLICANT

VICTOR OCHIENG OLOO 2ND APPLICANT

AND

NICHOLAS OKOTH OLOO 1ST RESPONDENT

THE LAND REGISTRAR -SIAYA LAND REGISTRY 2ND RESPONDENT

THE COUNTY SURVEYOR-SIAYA 3RD RESPONDENT

THE HON ATTORNEY GENERAL 4TH RESPONDENT

NDISI ACK CHURCH 5TH RESPONDENT

ALEX OTIENO ONGUTO 6TH RESPONDENT

ANDREW ONYANGO MALOWA 7TH RESPONDENT

JOSHUA OTIENO OCHIENG 8TH RESPONDENT

COLLINS ODHIAMBO ODIMAS 9TH RESPONDENT

RULING

Applicants' case

1. This ruling seeks to determine the notice of motion (motion) filed by the applicants dated 25/04/2024 in which they seek the following reliefs: -
 - a. Spent
 - b. Spent.



- c. The 2nd respondent be ordered to avail the transfer documents transferring land parcel no. Siaya/Bar- Olengo/585 from Stephen Onyango Oloo and Maria Wamunga W/O Omondi to the 1st respondent.
 - d. The 2nd respondent does avail proceedings and determinations that led to the removal of a caution lodged over Siaya/Bar-Olengo/2372 on 11/02/2019.
 - e. The 1st respondent be ordered to avail copies of death certificates of Stephen Onyango Oloo and Maria Wamunga W/O Omondi.
 - f. The 2nd and 3rd respondents be ordered to resurvey, re-establish, and determine the boundaries and actual sizes of land parcel nos. formerly Siaya/Bar-Olengo 585 and Siaya/Bar-Olengo 1590, 1591, 2292, 2373, 2467, 2871 and 2872.
 - g. That pending hearing and determination of the suit, the court does grant a temporary injunction restraining the respondents whether by themselves, their agents, and/or servants from transferring, subdividing, reallocating, trespassing, alienating, or otherwise interfering or dealing with land parcel nos. Siaya/Bar-Olengo 2292, 2373, 2467, 2871, and 2872.
 - h. The officer commanding Siaya police station enforces compliance with the above orders.
 - i. Costs be provided for.
 - j. The Hon. Court be pleased to make such further or other orders as it may deem just and expedient in the circumstances of this case.
2. The motion is supported by several grounds on the face thereof and on the 1st applicant's affidavit which is deposed on 24/04/2024.
 3. Essentially in both the grounds in support of the motion and depositions contained in the affidavit, the 1st applicant makes several assertions in support of the motion.
 4. It is his contestation Siaya/Bar- Olenga/585 (mother parcel) was registered in the names of his brother Stephen Onyango Oloo (Stephen) and his grandmother Maria Wamunga W/O Omondi (Maria) who are all deceased.
 5. He states without following the due legal process of probate proceedings, the 1st respondent who is his brother, illegally transferred the mother parcel to himself on 24/07/2017 and has since subdivided it and sold portions thereof to the 5th, 6th, 7th, 8th, and 9th respondents some of whom are in occupation and possession.
 6. Further, he contends on 11/02/2019, the 1st and 2nd respondents caused the caution that was registered against the suit properties to be removed. According to him, as a result of the illegal purchases, boundaries have been obliterated thus interfering with neighbouring parcels of land including those belonging to them.

2nd - 4th Respondents' case

7. Mr. Allen Masaka, entered an appearance for the 2nd to 4th respondents and filed grounds of opposition dated 23/05/2024 and raised the following: -
 - a. The motion lacks merit.
 - b. The caution was procedurally removed by the 2nd respondent.



- c. The suit and motion are bad in law and are short of legal basis.
8. Mr. Masaka urged the court to dismiss the motion with costs.

Respondents who entered an appearance

9. The 6th respondent who is represented by the law firm of M/s. Ken Omollo & Co. Advocates did not oppose the motion. The same applies to the 7th respondent who is represented by the law firm of M/s. Getanda Ochieng & Co. Advocates.

Respondents who never entered an appearance

10. The 1st, 5th, 8th and 9th respondents never entered an appearance and it suffices they never opposed the motion.

Parties' submissions

11. The motion was canvassed by Mr. Oloo's oral submissions made on 22/10/2024 where counsel submitted the motion should be allowed and that the applicants had abandoned prayer 5 of the motion. Mr. Naibei for the 7th respondent submitted the appropriate order would be the maintenance of the status quo. The other parties did not attend court for purposes of making their oral submissions.

Issues for determination

12. Having carefully given thought to the motion, its grounds, affidavit, grounds of opposition, and oral submissions, the issues that commend themselves for determination and which shall be addressed consecutively are: -
- a. Whether the entire suit is competent.
 - b. Whether this court has jurisdiction over boundary disputes.
 - c. Whether the motion is merited.
 - d. What orders should be issued including an order as to costs?

Analysis and determination

a. Whether the entire suit is competent.

13. Order 37 of the Civil Procedure Rules (CPR) sets out the nature of cases that can be instituted by originating summons (OS). In this case, the applicant's OS dated 25/04/2024 is anchored on Order 37 Rules 1(a), (f) (g), 2(a), and 5 of the CPR.
14. These provisions imply the applicants are seeking answers to questions on the rights or interest of the person claiming to be creditor, devisee, legatee, heir, or cestui que trust or, the approval of a sale, purchase, compromise or other transaction or, the determination of any question arising directly out of the administration of the estate or trust.
15. Further, one would assume they want to administer an estate or a trust of a deceased person or, the issue in dispute is on caveats over parcels of land that were registered under Section 116 of the Government Lands Act (repealed) or Section 57 of the Registration of Titles Act (repealed).



16. However, on reading the orders sought in the OS, it is evident they are not grounded on the provisions of law the applicants rely on. Visibly, the orders are amongst others challenging the 1st respondent's title over the mother parcel.
17. Further, they seek an order for revocation of title documents of land parcel nos. Siaya/Bar-Olengo 2292, 2373, 2467, 2871, and 2872 (suit properties) that are registered in some of the respondents' names. Under Section 80 of the [Land Registration Act](#), such cancellation is a preserve of the court.
18. When filing the OS and motion, the applicants without doubt overlooked the mandatory provision of Order 37 Rule 8 of the CPR which specifically bars a party from moving the court by an OS if they seek orders on cautions, inhibitions, and rectification of titles including cancellation of titles. This provision states: -

“ An application under the [Land Registration Act](#), 2012 other than under Part VII and Part VIII thereof shall be made by originating summons unless there is pending a suit involving the same lands when the application may be made in that suit.”
19. Having closely scrutinized the matter that is in dispute, the matters are complex and quite contentious and this court cannot grant the declaratory orders that are being sought by the applicants in the OS as a full hearing has to be conducted.
20. It appears the respondents were uncertain about how to respond to the strange pleadings that were filed by the applicants and decided not to file responses.
21. As was held in the case of *Ngomeni Swimmers Ltd v The Commissioner of Lands & c18 others* [2013] eKLR, in claims such as those sought in the OS, the applicants ought to have moved the court by a plaint.
22. When Mr. Oloo appeared before the court on 4/06/2024, he informed it that he had properly approached the court. Nevertheless, if how a suit is to be instituted is stipulated by a statute, a departure from it is proscribed and unacceptable.
23. In the end, I must thus conclude and find the OS is incompetent and a non-starter. It therefore follows the motion cannot stand. This renders a determination of issues (b) and (c) unnecessary.
24. On issue (d), it is trite law costs follow the event and since the entire suit has been struck out, the applicants shall bear the 2nd, 3rd, 4th, 6th, and 7th defendants' costs of the suit. This court hereby issues the following disposal orders: -
 - a. The applicants' entire suit is hereby struck out.
 - b. Costs are awarded to the 2nd, 3rd, 4th, 6th and 7th respondents.

It is so ordered.

DELIVERED AND DATED AT SIAYA THIS 11TH DAY OF DECEMBER 2024.

HON. A. Y. KOROSS

JUDGE

11/12/2024

Judgment delivered virtually through Microsoft Teams Video Conferencing Platform in the Presence of:

In the Presence of:



Mr. Oloo for the applicant

Mr. Gichobi h/b for Miss Essendi for the 2nd- 4th respondents

Mr. Naibei for the 7th respondent

N/A for the 1st, 5th, 6th, 8th and 9th respondents

Court assistant: Ishmael Orwa

