



**Arita v Ndubi & another (Environment and Land Miscellaneous Application  
E012 of 2024) [2024] KEELC 14086 (KLR) (11 December 2024) (Ruling)**

Neutral citation: [2024] KEELC 14086 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E012 OF 2024  
JM KAMAU, J  
DECEMBER 11, 2024**

**BETWEEN**

**EUNICE KEMUNTO ARITA ..... APPLICANT**

**AND**

**STEPHEN KINANGA NDUBI ..... 1<sup>ST</sup> RESPONDENT**

**LAND REGISTRAR, NYAMIRA COUNTY ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. Eunice Kemunto Arita moved this Court vide a Miscellaneous Civil Application ELC No.E012 of 2024 against one Stephen Kinanga Ndubi and Land Registrar, Nyamira under certificate of urgency seeking for Orders that this Court calls for the file in Nyamira Chief Magistrate’s Court ELC No.E002 of 2020 to ascertain the legality, correctness and propriety of the proceedings thereon, stay of execution of the Decree of 25/10/2023 by the said Court and for the setting aside of the Judgment and all the consequential orders. By doing so, the Court was requested to invoke its inherent powers. The Grounds upon which this Court was moved were that the suit in the lower court was statutorily time barred under the *Limitation of Actions Act*, 2015, one of a revoked and annulled Grant to found the case, that the 1<sup>st</sup> Respondent lacked locus to institute the suit, the subordinate Court lacked jurisdiction, it was a mistrial and that the 1<sup>st</sup> Respondent would suffer no prejudice if the sought for orders are granted. Before putting pen to paper and proceed with the Application before me, and after issues of Succession were raised I called for the lower court file in order to ascertain whether the same is a succession matter in which case this court has no jurisdiction, a purely ELC matter where this Court has jurisdiction or even a hybrid in which case the predominant issue(s) would determine the Court that has jurisdiction. The same was availed to me on 28/10/2024 and I have had the opportunity to peruse the file.



2. The Plaintiff Stephen Kinanga Ndubi suing as the legal representative of the Estate of Hezron Ndubi Ochenga (Deceased) filed suit on 29/9/2020 against one Eunice Kemunto Arita, Samwel Momanyi Ogechi and the Land Registrar, Nyamira County. The prayers therein are for:-
  - a. A Declaration that the sub-division of parcel No. L.R. North Mugirango/Boisanga/2516 was illegal, null and void.
  - b. Cancellation of the same and reversion to the original number
  - c. Eviction of the first 2 Defendants.
  - d. Injunction against their re-entry on the suit land.
3. In his Statement of Defence, dated 26/10/2020 the 2<sup>nd</sup> Defendant in the lower court averred that the said land North Mugirango/Boisanga/2516 was not part of the estate of the late Hezron Ndubi Ochenga as at the time of his death in 2012 since it had already been sub-divided way back in 2009 giving rise to North Mugirango/Boisanga/4598, 4599 and 4600 respectively. The 1<sup>st</sup> Defendant in the lower court who is the Applicant herein in his Defence dated 2/4/2022 admits that the suit land is not part of an Estate. This court is therefore amenable to Hearing the Applicant.

**RULING DATED, SIGNED AND DELIVERED AT NYAMIRA THIS 11TH DAY OF DECEMBER, 2024.**

**MUGO KAMAU**

**JUDGE**

In the Presence of: -

Court Assistant: Brenda

Applicant's Counsel: N/A

Defendants' Counsel: N/A

