



**Opiyo v Registrar of Land & another; Oucho (Intended Interested Party) (Environment & Land Case 121 of 2022) [2024] KEELC 13752 (KLR) (11 December 2024) (Ruling)**

Neutral citation: [2024] KEELC 13752 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT & LAND CASE 121 OF 2022  
NA MATHEKA, J  
DECEMBER 11, 2024**

**BETWEEN**

**PATRICK OMONDI OPIYP ..... APPLICANT**

**AND**

**REGISTRAR OF LAND ..... 1<sup>ST</sup> RESPONDENT**

**LAND ADJUDICATION OFFICER WAITIKI SETTLEMENT  
SCHEME ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**JOHN ABURA OUCHO ..... INTENDED INTERESTED PARTY**

**RULING**

1. The originating summons is dated 7<sup>th</sup> February 2023 and is brought under Order 22 and 51 Rule 10 of the Civil Procedure Rules and Section 1A, 2B 314 63(e) of the [Civil Procedure Act](#) seeking the following orders;
  1. That this Honourable Court do issue a vesting ORDER declaring the entire freehold Interest Plot No. 1960 Mombasa/ Likoni Settlement Scheme in to Patrick Omondi Opiyo.
  2. That an irregular allocation of the said plot to another person be declared null and avoid.
  3. That costs of this application be provided for.
2. It on is grounded on the annexed affidavit of Patrick Omondi Opiyo and grounds that in the year 2009, a claim was filed in ELC No. 2921 of 2009 by one John Abura Oucho against Patrick Omondi Opiyo alleging that he purchased land Plot No. 1960 Mombasa /Likoni settlement scheme from Patrick Omondi Opiyo. That the matter proceeded for hearing and during the pendency of the case the disputed plots were not assigned to anybody including Scheme Plot No. 1960 Mombasa/Likoni



Settlement Scheme until the dispute was resolved or judgment delivered by the Court. That on 26<sup>th</sup> March 2022 the Court delivered judgment and the Court Oder John Abura Oucho to return the documents for ownership Settlement Scheme Plot No. 1960 Mombasa/Likoni settlement scheme to Patrick Omondi Opiyo. That since the Plot No. 1960 Mombasa/Likoni Settlement Scheme had not been assigned to any one due to the dispute it's only just that the said plot No. 1960 Mombasa/Likoni Settlement Scheme be vested in the name of Patrick Omondi Opiyo by the land adjudication Officer Mombasa and the Registrar of title. That the Applicant hereby applies to this Honourable Court that the said Plot No. 76 Plot No. 1960 Mombasa/Likoni settlement scheme be vested to him.

3. The interest party submitted that confirms that a consent was entered in this matter and the applicant was issued with the lease title. That at the time of eviction the interested party was in possession and that is when he learnt of the court proceedings. He then applied to be enjoined in the suit and file his pleadings. That he has demonstrated that he is the legal owner. That the consent order be set aside and the originating summons be dismissed with costs.
4. I have perused the court file and find that on the 12<sup>th</sup> June 2023 this court entered a consent between the plaintiff Patrick Omondi Opiyo and the respondents Registrar of land and Land Adjudication Officer Waitiki Settlement Scheme in terms of prayer 1 which stated as follows;
  1. That this Honourable Court do issue a vesting order declaring the entire freehold interest plot No. 1960 Mombasa/Likoni Settlement Scheme to Parick Omondi Opiyo.
  2. That the matter be marked as settled.
5. By an application dated 21<sup>st</sup> February 2024 the Interested party sought to be enjoined and the court granted the same and allowed him to file his pleadings. The interest party never applied to set aside the said consent and the same still stands. It would be un procedural to try to argue the same within the amended originating summons as the same has already been settled and closed. I find that the interested party ought to move this court appropriately as there is no pending application before me. I find that the amended originating summons was granted in terms of prayer I and the matter was marked settled. That order has not been varied or set aside and still stands.
6. It is so ordered.

**DELIVERED, DATED AND SIGNED AT MOMBASA THIS 11<sup>TH</sup> DAY OF DECEMBER 2024.**

**N.A. MATHEKA**

**JUDGE**

