



**Chiponda & 860 others v Kassam & others (Environment & Land Case  
301 of 2015) [2025] KEELC 3018 (KLR) (27 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 3018 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT & LAND CASE 301 OF 2015**

**YM ANGIMA, J  
MARCH 27, 2025**

**BETWEEN**

**MARTIN CHIPONDA & 860 OTHERS ..... PLAINTIFF**

**AND**

**MAHMOOD KASSAM & OTHERS ..... DEFENDANT**

**RULING**

1. By a chamber summons dated 21.08.2024 expressed to be filed pursuant to Sections 1A, 1B, and 3A of the Civil Procedure Act (Cap 21), Order 16 Rule 1 of the Civil Procedure Rules and all other enabling provisions of the law, the plaintiffs sought an order for the Registrar of Titles Mombasa -Land registry to be summoned to court to produce all records relating to Plot Nos. 330, 817, 818 and 819 in Section II Mainland North including all resultant sub-divisions, transfers, leases, charges, evidence of payment of stamp duty and all other processes undertaken on the said properties. There also prayed for costs of the application to be provided for.
2. The application was based on the grounds set out on the face of the motion and the contents of the supporting affidavit sworn by John Mwangala Shauri on 21.08.2024. The plaintiffs contended that their suit was based on alleged fraudulent transactions and that their efforts to obtain copies of official records from the Land Registrar had not been successful. It was contended that in spite of requests the registrar had failed, refused or ignored to supply the documents sought.
3. The 1<sup>st</sup> -4<sup>th</sup> defendants filed grounds of opposition dated 24.10.2024 in opposition to the application raising the following grounds;
  - a. That the said application is incompetent and an abuse of the court process.
  - b. That the said application is a fishing expedition to aid the plaintiffs get information to build their case and this court should not aid them in their mission.



- c. That the plaintiffs are guilty of failure to conduct due diligence and obtain documents to support their case at the point of instituting the suit.
  - d. That the plaintiffs have failed to give a reason why they are seeking documents relating to the suit properties almost ten years after instituting the suit.
  - e. That nothing prevents the plaintiffs from amending the pleadings to introduce the Chief Land Registrar as defendant or interested party, who can then be accorded the opportunity to be heard in the context of a conventional hearing and even receive notice pursuant to Section 69 of the *Evidence Act* (Cap 80).
  - f. That the plaintiffs have grossly misinterpreted the importance and purpose of the Order 16 (1) as read together with the ensuing rules because, as opposed to a notice to produce under Section 69 of the *Evidence Act* which requires the party in custody of certain documents not available to the requesting party to produce original or certified copies of the said documents, the production pursuant to Order 16 is in relation to documents already filed and on record, which is not the case herein.
  - g. That without prejudice to the 5 above, nothing prevents the plaintiffs from instituting judicial review proceedings against the chief land registrar pursuant to Order 53 of the Civil Procedure Rules, to challenge the decision to refuse to provide documents and records sought.
  - h. That plaintiffs are not worthy of the prayers sought, after only sending only two letters to the land registry.
  - i. That the application dated 21.8.2024 is unmerited and ought to be dismissed with costs.
4. There is, however, no indication on record of the Attorney General having filed any response on behalf of the 5<sup>th</sup>-14<sup>th</sup> defendants at least by the time of preparation of the ruling.
  5. When the application was listed for directions it was directed that it shall be canvassed through written submissions. The parties were consequently granted timelines within which to file and exchange their submissions. However, by the time of preparation of the ruling none of the parties had filed submissions.
  6. The court has perused the plaintiffs' said application, the grounds of opposition on record as well as the material on record. The court is of the view that the main question for determination is whether or not the plaintiffs have made out a case for the grant of the orders sought.
  7. The gist of the plaintiffs' application is that they require certain official records from the registrar for the purpose of prosecuting their claim and that despite requesting for them the registrar had failed or neglected to supply them. It was also their case that the documents sought would demonstrate the fraudulent dealings upon which their suit against the defendants is based.
  8. Order 16 rule 1 of the Civil Procedure Rules which was cited by the plaintiffs stipulates as follows;

“At any time before the trial conference under Order 11 the parties may obtain on application to the court or to such officer as it appoints in his behalf, summonses to persons whose attendance is required either to give evidence or to produce documents.”
  9. The court is of the opinion that Order 16 of the Civil Procedure Rules deals generally with summoning and attendance of witnesses. Under the said order, a witness may be summoned to produce documents, or to adduce evidence or to do both. The plaintiffs claimed to the suit properties as their ancestral



land. They claimed to have occupied them since time immemorial as their community land hence they contended that any alienation thereof to private entities must have been undertaken fraudulently.

10. It would appear that the original suit properties may have been sub divided and alienated to third parties hence the plaintiffs wanted to have copies of the official records documenting the process of alienation together with a record of any transfers, leases, charges etc. affecting the suit properties.
11. The court is satisfied that the plaintiffs are entitled to such information and records not only under the Civil Procedure Act and the Civil Procedure Rules, but also under Article 35 of the Constitution of Kenya and the Access to Information Act. The court finds absolutely no legitimate reason why the land registrar should not be summoned to court to furnish the required information which may be directly relevant to the matters in controversy in the suit. The court is of the view that the records in the custody of the registrar are relevant to the suit and may assist the court in resolving the matters in controversy. The purpose of Order 16 of the Civil Procedure Rules is to enable the court to get all the necessary documents and evidence before the court so that it may arrive at a just decision.
12. As a result, the court is satisfied that there is merit in the plaintiffs' application for summons against the Land Registrar. Consequently, the court makes the following orders for disposal of the chamber summons dated 21.08.20204;
  - a. A witness summons to issue against the registrar of titles Mombasa to attend court and produce all records relating to the parcels known as No.330, 817, 818 and 819 in Section II/ MN including all resultant sub-divisions such as 14216, 14217, 14218 and 14220 including transfers, leases, charges and evidence of payment of stamp duty.
  - b. Costs of the application shall be in the cause.
  - c. Further mention on 03.06.2025 for pretrial directions.

It is so ordered.

**RULING DATED AND SIGNED AT MOMBASA AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS ON THIS 27<sup>TH</sup> DAY OF MARCH 2025.**

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**Y. M. ANGIMA**

**JUDGE**

In the presence of:

Court assistant Gillian

Mr. S. M. Kimani for plaintiffs

Mr. Mutugi for 1<sup>st</sup>-4<sup>th</sup> defendants

Mr. Mkan/Mr. Otara for applicants/plaintiffs

Ms. Saru for 5-15<sup>th</sup> defendants

