



Omollo (Suing under Article 22 of the Constitution for and Behalf of the Family of the Late John Mware Oyugi and Jane Oonje Okwogo) v Land Registrar Bondo (Environment & Land Miscellaneous Case E012 of 2024) [2025] KEELC 4055 (KLR) (30 January 2025) (Ruling)

Neutral citation: [2025] KEELC 4055 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT SIAYA
ENVIRONMENT & LAND MISCELLANEOUS CASE E012 OF 2024**

AE DENA, J

JANUARY 30, 2025

RULING

**IN THE MATTER OF ARTICLES 2,3,10,19,20,21,22,23,40,159,258
AND 259 OF THE CONSTITUTION OF THE REPUBLIC OF KENYA**

AND

**IN THE MATTER OF SECTIONS 25,25,26,79 AND 80 OF THE
LAND REGISTRATION ACT NO. 3 OF 2012 LAWS OF KENYA**

AND

**IN THE MATTER OF VIOLATION OF THE RIGHTS TO FAIR ADMINISTRATIVE
ACTION AND THE RIGHTS UNDER ARTICLE 40 OF THE CONSTITUTION**

BETWEEN

**JEREMIAH OMOLLO (SUING UNDER ARTICLE 22 OF THE CONSTITUTION
FOR AND BEHALF OF THE FAMILY OF THE LATE JOHN MWARE OYUGI
AND JANE OONJE OKWOGO) APPLICANT**

AND

THE LAND REGISTRAR BONDO RESPONDENT

RULING

1. The subject of this Ruling/ judgement is the Notice of Motion dated 20th July 2024. It is filed for and behalf of the family of the John Mware Oyugi And Jane Oonje Okwogo. The applicant seeks the following verbatim orders against the Land Registrar – Bondo (herein the Respondent);-

1. Spent.



2. That upon hearing this application interpartes, The learned Honourable Judge be pleased to order the nullification of entry nos. 2,3,4 & 5 appearing on the green card of LR. No. North Sakwa/Maranda/55 measuring approximately 2.8 Ha and issue an order directing the respondent to implement the same with immediate effect.
 3. That an order be issued directing the Sub-County Director of Survey-Bondo to establish the boundaries of the said parcel within seven (7) days and all illegal trespassers of the LR. NO. North Sakwa/Maranda/55 be evicted and the family of the deceased and Jane Oonje be granted peaceful occupation of the said land.
 4. Costs of this application be provided for,
2. The application is based on the following verbatim grounds;-
1. That at all the material times, the LR. No. North Sakwa/Maranda/55 measuring approximately 2.8 Ha has since pre adjudication time been owned by the family of John Mware Oyugi - Deceased who is survived by mama Jane Oonje Okwogo (Widow) whose home is located on the afore-cited piece of land as from the year 1968.
 2. That the said John Mware Oyugi died sometimes on or about the 2nd June 1991 leaving behind Jane Oonje Okwogo as the widow and children which was after he had been registered as the proprietor of the said piece of land in the year 1978, August 1st.
 3. That sometimes on or about the 29th May, 2003, twelve years after the death of John Mware Oyugi, the respondent wilfully, illegally, unlawfully and without a justified cause changed the ownership of the said piece of land from the deceased owner to one stranger to the family of the deceased proprietor namely Washington Omondi Genga of ID No. XXXXXXXXX as per the entry no. 2 without filing a succession cause since the proprietor had died.
 4. That the said Washington Omondi Genga is a total stranger to the estate of the deceased hence should not be granted any form of access to the deceased estate and the said transfer was an error of law on the part of the respondent.
 5. That the respondent later concealed his illegal actions by transferring the same to read the names of the deceased proprietor's widow - Jane Oonje Okwogo but still allowed the said Washington Omondi Genga to meddle in the management of the said land by selling its parts illegally while claiming that the said land was his but he only helped the said widow so he has right to sell its part.
 6. That it is in the interest of fairness that the said illegal transactions be nullified with the result that the land be reverted to the deceased owner to enable the widow Jane Oonje Okwogo to own it properly by way of a succession as required by law.
 7. That this application is brought in the interest of the public as the respondent is a public officer bound by the requirements of the law.
3. The Motion is supported by the Affidavit sworn by Jeremiah Omollo who describes himself as the applicant and civil society activist. It is deponed that sometimes in June 2024, the applicant received a complaint from a member of the public namely Jane Oonje Okwogo to the effect that the Land Registrar had changed her deceased husband's ownership to LR. No. North Sakwa/Maranda/55 (herein suit property) to read the names of a stranger namely Washington Omondi Genga and that the said person has been interfering with the management of the said land by selling it without her knowledge and initiating illegal transactions on it.



- 4 That together with the complainant they visited the Land office at Bondo and upon cross checking with the original green card they found that indeed, the said ownership of the land was changed from John Mware Oyugi to read Washington Omondi Genga on 29th May 2003. That upon inquiry they were told that the said change was done without filing a succession. That the said Washington was neither related to the deceased proprietor nor did he at any time live on the said land.
- 5 It is averred that accordingly the land parcel was initially registered on 1st August 1978 in the names of John Mware Oyugi (Deceased) and upon his death, the deceased left the complainant being his widow with her children living and working on the land to date.
- 6 That the rule of law is at the centrepiece of our lives and all persons, public or private are bound by the law and must work only in accordance with the rule of law requirements. It is contended that by transferring the said piece of land from the deceased proprietor to a strange new proprietor without considering the deceased had children who lived on the said piece of land and even without doing a succession amounts to an affront of the rule of law principles.
- 7 According to the deponent applicant, this Court is mandated under article 20,21,22,23,159 and 165 to safeguard the interests of our society by becoming the father and mother to the legally bereaved, society oppressed and the weak whenever the rules are tilted against them unlawfully. That under the law, the respondent's illegal acts of effecting the said illegal transfer was made in error of the law hence amounts to an abuse of discretion.
- 8 The applicant further depones the application is brought in good faith and in the interest of the public in consideration to the facts that the respondent is a public officer whose actions are bound to be in line with the rule of law principals.
- 9 Attached to the affidavit were copies of the deceased death certificate and the green card to the suit property.
- 10 The application is not opposed. The Respondent was served through the office of the Attorney General on 17th October 2024. The affidavit of service sworn by David Herald Obegi is on record. The court was satisfied with service. The application was heard by way of oral submissions.

Submissions

- 11 It was submitted Article 22 of *the Constitution* as read together with the provisions of section 10 of the *Fair Administrative Action Act*, allowed the applicant as a responsible Kenyan to institute an application of the nature before the court in the public interest. That the widow and who was blind could not understand the basis for preserving the deceased property. That the Respondent abused the powers of his office by failing to follow due process. That this gave rise to various malpractices and frustrated the family.
- 12 It was asserted that the people of Kenya in pursuit for good governance promulgated *the Constitution* with strong backing of fundamental human rights. They agitated for a government with social values, human rights, rule of law, social justice and transparency. It was posited that *the Constitution* is the supreme law and everyone is bound by it including all levels of government. In this regard the court was referred to article 2(1) of *the Constitution* and the case of Muslim for Human Rights & Another Vs the Inspector General of Police & 5 Others (2015) eKLR and paragraph 141 thereof.
- 13 The applicant also quoted an excerpt by Lord Bingham from the book 'Rule of Law' London Penguin 2010 which reiterated all parties within the state whether private or public should be bound by the benefit of the law. Consequently it was urged that the Respondent violated *the Constitution* and the



court was invited to invoke powers under article 23 of *the Constitution*. The applicant prayed that the application is allowed.

- 14 I directed that the above extract be availed as part of the applicants lists of authorities by close of business on 22/01/2025. The list of authorities was filed on 22/01/2025. However I note that additional authorities were included which had not been cited during the submissions being item 2, 3,5 and 6 which ought to be disregarded.

Determination

- 15 The Notice of Motion has been filed under articles 21, 22 and 23 of *the Constitution* read together with sections 1,3 & 3(a) of the *Civil Procedure Act* and all enabling provisions of the law.
- 16 Article 21 is on Implementation of Rights and Freedoms, Article 22 is on enforcement of the Bill of Rights and Article 23 confers authority to the court to uphold and enforce the Bill of Rights. Section 1 of the *Civil Procedure Act* is the short title and application of the Act, however 1A is on the overriding objectives of the Act which is to facilitate the just and expeditious resolutions of civil disputes governed by the Act. The court is enjoined in the exercise of its judicial powers to give effect to this overriding objective. Section 3A of the *Civil Procedure Act* is on saving the inherent powers of the court to make such orders as may be necessary for the ends of justice.
- 17 I note that during the proceedings of 15/10/24 the court inquired of the applicant if they wished to proceed with the application without there being a substantive suit. The Applicant's answer was in the affirmative. The question posed by the court was very pertinent and I will demonstrate shortly why I say so.
- 18 Firstly I must make the following observations . There are many ways of commencing proceedings before court, the most common being by way of Plaint. Other instances are by way of Originating Summons, Originating Motions where there is no outright procedure on how to commence proceedings, Judicial Review and Constitutional Petition, though the latter has separate rules. All these depends with the nature of the claim and orders sought. For example it is trite that a claim for adverse possession is commenced by way of Originating Summons (see order 37). There are also instances where proceedings are commenced by Miscellaneous applications but mostly where orders sought would not be conclusive and or substantive. In judicial review a litigant seeks to bring to court for scrutiny a decision made by a public body and the process deployed in arriving at the same for purposes of having it quashed.
- 19 But of utmost importance is whether the orders sought herein and their nature could be issued in the manner they have been brought before court, that is to say vide a Notice of Motion.
- 20 Section 19 of the *Civil Procedure Act* provides that every suit shall be instituted in such manner as may be prescribed by rules.
- 21 Order 3 rule 1 of the Civil Procedure Rules provides;-
- “Every suit shall be instituted by presenting a plaint to the court or in such other manner as may be prescribed”
- 22 In the case of Rono & 9 others v Kenya Forest Service & 4 others (Environment and Land Miscellaneous Application E049 of 2021) [2023] KEELC 535 (KLR) (2 February 2023) (Ruling) A. Omollo J faced with a miscellaneous application brought under section 1A and 3A of the *Civil Procedure Act* seeking orders of permanent injunction restraining the 1st Respondent and their agents



from interalia evicting the applicant selling, transferring, leasing, allocating the suit property, cited several authorities. The court stated thus:-

‘ 42. The Learned Judge in *Rajab Kosgei Magut Vs Nuru Jepleting Choge* [2020]eKLR cited with approval the decision in *Joseph Kibowen Chemor Vs William C Kasera*(2013)eKLR wherein the court defined the filing of suits as follows;

6. The word "suit" has several meanings. Black's Law Dictionary defines "suit" as any proceedings by a party or parties against another in a court of law .
7. "suit of a civil nature" is defined to be a civil action.
8. "A civil action" is an action brought to enforce, redress, or protect a private or civil right.
9. Section 2 of the *Civil Procedure Act*, defines "suit" as all civil proceedings commenced in any manner "prescribed"
10. "prescribed" under Section 2 means prescribed by rules.
11. "Rules" means rules and forms made by the Rules Committee to regulate the procedure of courts
9. "pleadings" includes a petition or summons, and the statements in writing of the claim or demand of any plaintiff, and of the defence of any defendant thereto, and of the reply of the plaintiff to any defence or counterclaim of a defendant.
10. Section 19 of the *Civil Procedure Act*, every suit shall be instituted in such manner as may be prescribed by rules. It will be observed that Section 19 does not pretend that the Civil Procedure Rules have a monopoly on how suits should be instituted. It provides that suits may be instituted in the manner prescribed by rules. There could be rules in other statutes on how Proceedings may be commenced. For example, the Probate & Administration Rules under the Succession Act, prescribe how matters touching on succession of estates of deceased persons need to be instituted.
11. It means therefore that where a person is commencing a civil suit (in this instance to enforce a civil action), he needs to follow prescribed rules.’

22 Justice A. Omollo further noted as follows:-

46. In the case of *Joseph Kibowen Chemjor Vs William C Kisera* (Supra), the Learned Judge observed as follows;

There are times when all that a person wants is an order of court where the rights of the parties are not going to be determined. There is no "action" being enforced or being tried. In many such instances, it is the discretion of the court being sought or a procedural issue sought to be endorsed. The court in such a case is not being asked to determine any rights of the parties. Now, the Civil Procedure Rules do not specifically provide for the procedure to be followed where there is no "action". In such instances, I think it is permissible for such person to file a miscellaneous application because the court is not asked to determine any issues between the parties.(emphasis is mine). This is common and permissible where all that the party wants is a mere order from the court which does not settle any rights or obligations of the parties. This for



instance can cover applications for leave to institute suit out of time or for leave to commence judicial review proceedings.

- 23 I think the above arguments resonate in the instant application. The orders being sought by the applicant herein have already been enumerated elsewhere in this Ruling/Judgement. My review of the said orders reveal that the orders sought are substantive orders seeking to nullify a number of entries in the green card for parcel LR. North Sakwa/Maranda/55, revert title to the alleged original owner and thereafter the eviction of illegal trespassers. I have further noted that there is an alleged change of ownership to one Washington Omondi Genga who has not been made party to these proceedings and whose alleged interest in the property would be affected were the orders to be issued. Clearly the Applicant seeks to settle ownership rights in the suit property by way of a Notice of Motion. There are no pleadings upon which the orders sought are grounded upon.
- 24 Further I will add that it is not clear from the title and the provisions relied upon whether the applicant intended the proceedings for a constitutional petition or even judicial review.
- 25 In *Tatecoh Housing and Co-op Sacco Ltd Vs Qwetu Sacco Ltd (2021)* eKLR the court held as follows;
- Without much ado, I will agree with the position of the respondentthat the appellant cannot seek the orders sought in the miscellaneous application without going through the process of filing suit. It will be observed that among the orders sought are orders of eviction. One will ordinarily only obtain an order of eviction after a full hearing of the case. What the appellant needed to do was therefore to bring a substantive suit for eviction through a plaint. It is upon the hearing of such suit and If successful, that an order of eviction would issue.’
- 26 Let me confess I did ponder over the provisions of article 159(2)(d) of *the Constitution* which provide that justice should be administered without undue regard to technicalities. I also looked at the inherent powers of the court. However my view is that the defect herein goes beyond technicalities and cannot be cured by the said constitutional provision or even by Section 1A and 3A of the *Civil Procedure Act*.
- 27 In view of the foregoing, the Motion before the court is not a competent suit. I will consequently not go into the merits of the application. The applicant has to go back to the drawing board and follow the procedure he will find appropriate to bring the claim.
- 28 The Notice of Motion dated 20th July 2024 is hereby struck out. There shall be no orders as to costs.

DELIVERED AND DATED AT SIAYA THIS 30TH DAY OF JANUARY 2025

A.E. DENA

JUDGE

Ruling delivered virtually through Microsoft teams Video Conferencing Platform in the presence of:

No Appearance for the Applicant

Court Assistant Ishmael

