



**Adera v Registrar of Deaths, Rongo & 2 others (Petition
E006 of 2024) [2025] KEHC 7245 (KLR) (30 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 7245 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MIGORI
PETITION E006 OF 2024
A. ONG'INJO, J
JANUARY 30, 2025**

BETWEEN

JOHNSON OTIENO ADERA PETITIONER

AND

REGISTRAR OF DEATHS, RONGO 1ST RESPONDENT

CHRISANTUS OWUOR ONDIEK 2ND RESPONDENT

ATTORNEY GENERAL 3RD RESPONDENT

RULING

1. The Application dated 13.9.2024 is brought pursuant to the provisions of Rules 19, 23 and 24 of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013. Seeking for an interim order in the nature of an injunction restraining the 1st and 2nd Respondents from using or altering in any forum whatsoever, giving or making any copies or in any other way or from relying on certificate of Death No. 1242300277 dated 19.5.2023 in the name of Ondiek Ogwang pending hearing and determination of the Application and Petition herein.
2. The Application is supported by the grounds on the face of the application and affidavit of Johnson Otieno Adera sworn on 13th September, 2024.
3. The contention is that the Certificate of Death in question was procured corruptly, illegally, irregularly and contrary to the express and mandatory provisions of the *Births and Deaths Registration Act* and the Rules thereunder. That the said Certificate of Death could not be issued to in a compulsory registration area without a burial permit that sets out the date, place and cause of death.
4. It was also contended that the Certificate of Death in question was deliberately back dated so as to defeat the title acquired by the Applicant over Kamagambo / Kanyimach/ 1302 and Kamagambo / Kanyimach / 1304.



5. That the death of the deceased is indicated as having occurred on 13.6.2010 and the said death was reported on 19.5.2023 and late registration effected on 19.5.2023 without following due procedure provided for under the Birth and Deaths Registration Act and Rules.
6. The Application is opposed by the Replying Affidavit sworn by Christantus Owuor Ondiek the 2nd Respondent on 29th October 2024 where it is averred that the petition and Application herein is made in bad faith with the sole aim of furthering fraud and seeking the validation of fraud by the court in respect of land that is currently the subject at Rongo SRM Court ELC No. E006 of 2023.

The 2nd Respondent averred that the Applicant had previously filed Migori H. C. JR No. E015 OD 2023 seeking similar orders against the same parties and the petition is an extension of forum shopping and an attempt to frustrate the trial in the magistrate court. That the application is a knee jerk reaction which has been instigated by the recovery of land proceedings already initiated through the Respondent's counter claim in Rongo Environment & Land Case.

The 2nd Respondent further averred that the process of applying for and being issued with the Certificate of Death was proper and flawless and there is no fraud that was committed during its issuance.
7. The 2nd Respondent averred further that the Applicant had not demonstrated any prejudice or irreparable damage he is likely to suffer to warrant the adverse orders restraining the use of the said certificate of death.
8. The Application dated 13.9.2024 was canvassed by way of written submissions. The Applicants submissions dated 12th November 2024 together with the authorities cited therein and the 2nd Respondents submissions dated 4th November, 2024 and the authorities cited therein have been taken into consideration and this court makes the following finding.
9. This Petition and Application arises out of the proceedings in Rongo Magistrates Court Environment and Land case No. E006 of 2023 where the Applicant is apprehensive that the Certificate of Death in question will be used to support the 2nd Respondents claim in the said suit. It appears that Rongo Magistrate ELC No. E006 of 2023 was initiated by the Applicant and that when 2nd Respondent entered appearance, he filed a counter claim to the Applicants claim.
10. The considered view by this court is that the trial court at Rongo should be in a position to interrogate, verify and confirm the authenticity of documents and / or exhibits that parties before it intended to produced before it in the context of the claim that is being adjudicated. For this court to issue injunctive orders in an ongoing matter will be tantamount to muzzling and/or micro managing the operations of the courts and thus occasioning delays in matters which may eventually come before the High Court on appeal.
11. This court finds that no prima facie case has been made sufficient to warrant grant of an order of injunction in the circumstances. The Application dated 13.9.2024 is dismissed with costs to the 2nd Respondent.

DELIVERED, DATED AND SIGNED AT MIGORI THIS 30TH DAY OF JANUARY, 2025.

A. ONGINJO

JUDGE

In presence of:-

Victor Court Clerk



Mr. Omondi Advocate for Petitioner

Mr. Achola Advocate for Respondent

Court: Copy of the Ruling to be accessed through CTS

Directions taken that Petition be heard by way of written submissions.

The 2nd Respondent granted leave to respond to Petition within 7 days. Upon service of response the Petitioner will have 14 days to file and serve submissions.

The Land Respondent will subsequently file submissions within 14 days.

Mention on 27.3.2025 for highlighting.

