



**Songito v Wesonga & 5 others (Environment & Land Case  
2 of 2019) [2025] KEELC 6 (KLR) (16 January 2025) (Ruling)**

Neutral citation: [2025] KEELC 6 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA  
ENVIRONMENT & LAND CASE 2 OF 2019  
DO OHUNGO, J  
JANUARY 16, 2025**

**BETWEEN**

**ALI JUMA SONGITO ..... PLAINTIFF**

**AND**

**SHEBAN OSUNDWA WESONGA ..... 1<sup>ST</sup> DEFENDANT**

**DAVID MANDA SALASIA ..... 2<sup>ND</sup> DEFENDANT**

**SAIDI OKANYA MUKABANA ..... 3<sup>RD</sup> DEFENDANT**

**BERNARD ODHIAMBO WANGUCHE ..... 4<sup>TH</sup> DEFENDANT**

**LUCY AUMA JUMA ..... 5<sup>TH</sup> DEFENDANT**

**THE BOM SECRETARY ST MAGDALENE ACADEMY ..... 6<sup>TH</sup> DEFENDANT**

**RULING**

1. Judgment was delivered in this matter on 19<sup>th</sup> February 2020 by N.A. Matheka, J. as follows:

I find that the plaintiff has established his case on a balance of probabilities against the defendant and I grant the following orders;

1. Declaration that the respondent holds in trust for the plaintiff/ applicant for portion measuring 2 acres of land parcel No. N/Wanga/Kholera/2083 the sub divisions of land parcel N/Wanga/Kholera/2016.
2. That the plaintiff/applicant be declared the owner portion measuring 2 acres of land parcel No. N/Wanga/Kholera/2083 sub divisions of land parcel N/Wanga/Kholera/2016 and which he occupies and to which they are entitled to by virtue of adverse possession and which the defendant/respondent be ordered to transfer the said suit land to the plaintiff/applicant within the next



30 days from the date of this judgement and in default the Deputy Registrar to sign the transfer documents.

3. No orders as to Costs.
2. Following delivery of the judgment, the Plaintiff passed away on 26<sup>th</sup> October 2020 and was substituted with Salim Otinn Ali, pursuant to orders made on 1<sup>st</sup> December 2020.
3. By Notice of Motion dated 5<sup>th</sup> June 2024, five litigants who have styled themselves as Proposed Second to 6<sup>th</sup> Defendants now seek the following orders:
  1. That this Application be certified as urgent and service of the same be dispensed with in the first instance.
  2. That this Application be heard on a priority basis.
  3. That pending hearing and determination of this Application inter - partes, there be a stay of execution of the Judgement and or Decree herein and or the subsequent Orders.
  4. That pending hearing and determination of this Application inter - partes, this Honourable Court do issue a temporary injunction restraining and or otherwise prohibiting the Plaintiff and or the Defendant, their servants, agents and/or employees from dealing, pledging, encumbering, trespassing or otherwise entering or remaining on, evicting the Proposed Defendants from and or interfering in any manner whatsoever with the Proposed Defendant's current possession and occupation of their respective portions of the suit property herein known as N/Wanga/Kholera/2083 or any part thereof and or demolishing their improvements erected thereon.
  5. That pending hearing and determination of this Application inter - partes, this Honourable Court do issue an Order staying the proceedings in the suit Mumias Environment and Land Court Case No. MCELC/E036/2024.
  5. That pending hearing and determination of this Suit, there be a stay of execution of the Judgement and or Decree herein and or the subsequent Orders.
  6. That the proceedings and judgment entered herein and or any consequential Decree or Order be set aside or varied upon such terms as are just.
  7. That the Proposed Defendants be joined as Parties hereto.
  8. That the Proposed Defendants be granted leave to file a Replying Affidavit and or any other necessary Defence to the suit herein and the same be heard afresh and determined on merit.
  9. That pending hearing and determination of this suit, this Honourable Court do issue a temporary injunction restraining and or otherwise prohibiting the Plaintiff and or the Defendant, their servants, agents and/or employees from dealing, pledging, encumbering, trespassing or otherwise entering or remaining on, evicting the Proposed Defendants from and or interfering in any manner whatsoever with the Proposed Defendant's current possession and occupation of their respective portions of the suit property herein known as N/Wanga/Kholera/2083 or any part thereof and or demolishing their improvements erected thereon.
  10. That pending hearing and determination of this suit, this Honourable Court do issue an Order staying the proceedings in the suit Mumias Environment And Land Court Case No. MCELC/E036/2024.



11. That costs of this Application be provided for.
4. The application is based on the grounds stated on its face and is supported by an affidavit sworn by Saidi Okanya Mukabana. He deposed that the Proposed Second to 6<sup>th</sup> Defendants/Applicants purchased various portions of land parcel No. N/Wanga/Kholera/2083 and are therefore innocent purchasers for value. He annexed various sale agreements and added that the Applicants are in possession and occupation. He further deposed that the Plaintiff is not in possession and occupation and had filed Mumias MCELC No. E036 of 2024 to gain possession.
5. The Plaintiff/Salim Otinn Ali opposed the application through Grounds of Opposition in which he averred that the Applicants were not parties to the suit when it was heard and determined and that the Court cannot introduce new parties at this stage since it is functus officio. That the Applicants were working with the Defendant to delay Mumias MCELC No. E036 of 2024 and that they should seek redress in the said case.
6. The application was canvassed through written submissions. The Applicants filed submissions dated 13<sup>th</sup> July 2024 while the Plaintiff/Salim Otinn Ali filed submissions dated 1<sup>st</sup> September 2024.
7. Although evidence of service upon him was availed, the Defendant neither responded to the application nor participated in its hearing.
8. I have carefully considered the application, the supporting affidavit, the grounds of opposition, the submissions and the authorities cited. I note that prayers 1 to 5 of the application are spent. The issues that arise for determination are whether the Applicants can be joined to the case at this stage and whether the other reliefs sought should issue.
9. The Applicants contend that they have a right to a hearing and that they can be joined at this stage. On the other hand, the Plaintiff/Salim Otinn Ali contend that it is too late in the day and that the court is functus officio.
10. There is no dispute that judgment was delivered on 19<sup>th</sup> February 2020 and that at that point, only the Plaintiff and the Defendant were parties to the case. Although the Applicants have styled themselves in their application as Proposed Second to 6<sup>th</sup> Defendants, their submissions have relied heavily on circumstances in which an interested party can join a suit, especially after delivery of judgment. They relied on the decision of the Court of Appeal in *Alton Homes Limited & another v Davis Nathan Chelogoi & 5 others* [2020] eKLR.
11. The Applicants contend that the Plaintiff/Salim Otinn Ali is not in possession and occupation and has filed Mumias MCELC No. E036 of 2024 to gain possession. Upon perusing a copy of the Plaintiff in the said case, which the Applicants annexed, I note that it the case concerns land parcel No. N.Wanga/Kholera/5481 which is said to be a subdivision of N.Wanga/Kholera/20851. On the other hand, the suit property in the present case is parcel number N/Wanga/Kholera/2083 which is a subdivision of N/Wanga/Kholera/2016. The Applicants have not drawn any nexus between N.Wanga/Kholera/5481, N.Wanga/Kholera/20851 and the suit property herein. Further, they have not exhibited a copy of the register in respect of the suit property herein to enable the Court to determine its status. If, as is suggested by the Applicants in their application, N.Wanga/Kholera/5481 and N.Wanga/Kholera/20851 are subdivisions of the suit property herein post-delivery of the judgment, then proceedings have been finally disposed of, and Order 1 Rule 10(2) of the Civil Procedure Rules is inapplicable.



12. While addressing joinder post-judgment, the Supreme Court stated in *Everton Coal Enterprises Limited v Karanja & 5 others* (Application E026 of 2023) [2023] KESC 98 (KLR) (10 November 2023) (Ruling):

Strictly speaking, though joined, the applicant was not a party to “the proceedings” in the Court of Appeal having been joined post-judgment, yet a joinder contemplates a situation where proceedings are still pending before the court and in terms of Rule 5 (d)(ii) of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 (Mutunga Rules) which is in pari materia with Order 1 Rule 10(2) of the Civil Procedure Rules, a party will only be added to on-going proceedings in order to enable the court adjudicate fully upon and settle all the questions involved in the particular proceedings before it.

Noting that the original dispute between the 1<sup>st</sup> to 4<sup>th</sup> respondents and the 5<sup>th</sup> and 6<sup>th</sup> respondents having been settled in a judgment rendered on 29<sup>th</sup> July 2016, there were no proceedings to which the applicant could properly join four years later on 5<sup>th</sup> June 2020 ...

13. in view of the foregoing, I find that the Applicants cannot be joined to the case at this stage. It follows therefore that the reliefs that they seek are not available.

14. I find no merit in Notice of Motion dated 5<sup>th</sup> June 2024. I dismiss it with costs to the Plaintiff.

**DATED, SIGNED, AND DELIVERED THIS 16<sup>TH</sup> DAY OF JANUARY 2025.**

**D. O. OHUNGO**

**JUDGE**

Delivered in the presence of:

Mr Ochieng for the Applicants

Mr Sichangi for the Plaintiff

No appearance for the Defendant

Court Assistant: B Kerubo

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