



Gem & another v Jura & 3 others; Land Registrar, Bondo (Interested Party) (Environment & Land Case E002 of 2022) [2023] KEELC 17425 (KLR) (18 May 2023) (Ruling)

Neutral citation: [2023] KEELC 17425 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT SIAYA
ENVIRONMENT & LAND CASE E002 OF 2022**

AY KOROSS, J

MAY 18, 2023

BETWEEN

CHARLES OTIENO GEM 1ST PLAINTIFF

ERICK OKOTH OTIENO 2ND PLAINTIFF

AND

NICHOLUS OMONDI JURA 1ST DEFENDANT

MICHAEL OTIENO JURA 2ND DEFENDANT

MARIKO AJWALA JURA 3RD DEFENDANT

RICHARD OKOTH JURA 4TH DEFENDANT

AND

THE LAND REGISTRAR, BONDO INTERESTED PARTY

RULING

1. This case had been reserved for judgment today. However, for the following reasons, I shall deliver a ruling and not a judgment.
2. Firstly, some of the documents produced by the plaintiffs and defendants were not legible particularly the bundle of photographs that were produced by the plaintiffs as 'Pex 1', minutes that were produced by the defendants as 'Dex 9' and a greencard for land parcel no. Siaya/Usigu/3443 that were produced as 'Dex 10'.
3. Secondly, from the adduced documents, the sub-county surveyor- Bondo was to conduct a ground assessment of land parcel no. Siaya/Usigu/1120 (suit property) together with other parcels of land allegedly registered in the 1st plaintiff's names which were land parcels no. Siaya/Usigu/3443 and Siaya/



Usigu/1125. There was no evidence if this exercise was ever done. It is the considered view of this court that the outcome of such a report would be relevant to this suit.

4. Lastly, there is no evidence the interested party who is ordinarily represented by the office of the attorney general was ever served with pleadings in this matter.
5. Within the provisions of Section 3A of the [Civil Procedure Act](#), this court has inherent power to make such orders as may be necessary for the ends of justice to be met.
6. In addition, by Section 22 of the [Civil Procedure Act](#), this court is vested with power to issue summons to a person whose attendance is required either to give evidence or to produce documents or such other objects.
7. While Section 173 (1) of the [Evidence Act](#) gives this court a wide latitude in obtaining evidence. It can exercise such power suo moto and may order the production of any document. This provision of law states as follows: -

‘A judge or magistrate may, in order to discover or to obtain proper evidence, ask any question he pleases, in any form, at any time, of any witness, or of the parties about any fact whether or not it is otherwise admissible; and may order the production of any document or thing; and neither the parties nor their agents shall be entitled to object to any such question or order, nor, without leave of the court, to cross-examine the witness upon any answer given in reply to any such question:

Provided that judgment shall be based only upon facts which are otherwise admissible and which have been duly proved. Emphasis added.

8. In considering Section 22 (b) of the [Civil Procedure Act](#) and Order 16 Rules 1 & (6) of the [Civil Procedure Rules](#), the bench in [Manchester Outfitters Ltd vs Pravin Galot 4 others \[2021\] eKLR](#), expressed itself as follows: -

‘The court on its own motion, may summon any person it deems fit as a necessary witness to aid it in arriving at the determination. A witness summoned by the court may also be intended to fill any void identified in the course of the proceedings and which void, if not filled, may undermine a just, objective and concise determination.’

9. Utmost, I hereby make the following orders: -
 - a. That within 7 days from the date of this ruling, the plaintiffs and defendants do serve all pleadings and documents pertaining to this suit on the interested party and the office of the attorney general.
 - b. That the plaintiffs and defendants do tender to this court legible copies of documents they produced before this court especially ‘Pex 1’, ‘Dex 9’ and ‘Dex 10’.
 - c. That at the shared cost of the plaintiffs and defendants, the Land Registrar-Bondo and District Land Surveyor-Bondo or any other designated officer do visit land parcels no. Siaya/Usigu/1120, Siaya/Usigu/3443 and Siaya/Usigu/1125 to establish their respective occupancy, use and encroachment (if at all).
 - d. That the Land Registrar- Bondo and District Land Surveyor-Bondo or any other designated officer do file their respective reports within 60 days hereof.
 - e. That once the reports have been filed, the matter shall be mentioned to confirm compliance and further directions on September 18, 2023.
 - f. Mention notice to be served upon the office of the attorney general by the plaintiffs.



It is so ordered.

DELIVERED AND DATED AT SIAYA THIS 18TH DAY OF MAY 2023.

HON. A. Y. KOROSS

JUDGE

18/05/2023

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform in the Presence of:

M/s Owenga for the plaintiffs

Mr. Otieno h/b for Mr. Korongo for defendants

Court assistant: Ishmael Orwa

