



REPUBLIC OF KENYA



**Benguzo & others v Samuel (Environment & Land Case 37 of 2013)
[2023] KEELC 20724 (KLR) (16 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 20724 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE 37 OF 2013
EK MAKORI, J
OCTOBER 16, 2023**

BETWEEN

KAVIHA MAKONGO BENGUZO & OTHERS PLAINTIFF

AND

MACKPHERSON SAMILI SAMUEL DEFENDANT

RULING

1. This matter was commenced on 26th of February 2013 seeking:
 - i. Injunctive order over Plot no Kambe/Ribe/Kikomani/Makobeni/337
 - ii. General damages
 - iii. Costs of the suit.
 - iv. Any other relief(s) the court deem fit.
2. A Certificate of Urgency was filed on 13th March 2014 seeking temporary injunctive orders pending the hearing of the matter.
3. The hearing of that application - as can be seen from the record was adjourned severally. On 20th June 2013, this court Angote J. issued orders that parties comply with the provisions of Section 21 (2) of the *Registered Land Act*. A date was set to confirm compliance.
4. The record shows some two survey reports were filed by the Land Registrar as per the proceedings of 20th April 2016. Summons were issued for the Land Registrar Kilifi to enlighten the court on the survey reports aforesaid. It seems this route was not followed to its logical conclusion. Instead, the suit was fixed for hearing.
5. The proceedings then show that one of the plaintiffs died and the matter went into a slumber due to substitution. Later one of the defendants also died and replacement was sought. The matter thereafter



was referred to the Deputy Registrar for pre-trial. Time was spent to amend pleadings due to the death of the parties as stated.

6. I can see from 14th March 2013 to 1st November 2022 this court has been dealing with preliminary issues and parties seem to have lost focus on the trial itself.

7. On 24th November 2023 this file was placed before this court- Odeny J. There was an application brought under Certificate of Urgency. Parties were absent. The judge directed:

“Matter not urgent. There are already orders of injunction. Applicant to take a date for the hearing of the main suit to Fast Track this matter. Mention before court no 2 to take a hearing date.”

8. When I look at the history of the file (which I think my sister looked at before issuing the orders alluded to above), Angote J. had issued *ex parte* orders on 14th March 2013 in tandem with a Notice of Motion dated 26th February 2013 in this manner:

“(1) That the matter be heard interpartes on 16th April 2013.

(2) That the application be served upon the defendant.

(3) That *status quo* be maintained.”

9. That application it will seem was never prosecuted to its finality.

10. A similar one has been brought seeking similar orders obvious of the one dated 26th February 2013. This then represents what is termed as an abuse of the court process. The court is being taken in circles on a simple boundary dispute pending since 2013.

11. There being already “*status quo* orders” obviously the suit ought to be set down for full trial.

12. The application dated 22nd November 2022 is hereby struck out with costs.

13. The *status quo* orders in place be in place till the suit is heard and determined.

DATED, SIGNED, AND DELIVERED AT MALINDI VIRTUALLY IN OPEN COURT ON THIS 16TH DAY OF OCTOBER 2023.

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E. K. MAKORI

JUDGE

In the Absence of

Mr. Mwadile for the Plaintiffs

Mr. Luganje for the Defendants

NB: Since the parties are absent, the ruling be transmitted to them electronically.

