



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT ELDORET**

**CIVIL CASE NO.3374 OF 1994**

**LALI SWALEH LALI (Suing through his Legal Administrator)**

**FAQIK KHALE SKEKUWE)..... 1<sup>ST</sup> PLAINTIFF**

**FAQIK KHALE SKEKUWE..... 2<sup>ND</sup> PLAINTIFF**

**KHALID BWANA MBERE.....3<sup>RD</sup> PLAINTIFF**

**=VERSUS=**

**STEPHEN MATHENGE WACHIRA.....1<sup>ST</sup> DEFENDANT**

**OMAR KHAMISI BALLETH.....2<sup>ND</sup> DEFENDANT**

**COMMISSIONER OF LANDS .....3<sup>RD</sup> DEFENDANT**

**HONOURABLE ATTORNEY GENERAL.....4<sup>TH</sup> DEFENDANT**

**LAND REGISTRAR (KILIFI) ..... 5<sup>TH</sup> DEFENDANT**

**JAMES RAYMOND NJENGA ..... 6<sup>TH</sup> DEFENDANT**

**WILSON GACHANJA ..... 7<sup>TH</sup> DEFENDANT**

**DIRECTOR OF SURVEYS ..... 8<sup>TH</sup> DEFENDANT**

**ALEXANDRINO KIMATI NJUKI ..... 9<sup>TH</sup> DEFENDANT**

**SAM K. MWAITA ..... 10<sup>TH</sup> DEFENDANT**

**HAGAI NYAPOLA ..... 11<sup>TH</sup> DEFENDANT**

**DANIEL RICCI ..... 12<sup>TH</sup> DEFENDANT**

## RULING

### I. Introduction/Procedure

1. The ten mile strip within the Coast province has been the subject of several files before this Court whilst sitting at the Lands & Environmental Law Division, it came to my attention the numerous cases touching on the same subject matter, namely the issue as to who is the owner within the ten mile strip. The lead advocate and the State Counsel were requested to compile a list of all the cases which have similar orders and judgments. Some cases were pending others finalized and a few concerned defamatory suits.

2. These orders were made in file HCC 3106/97 whereby all the advocates in the respective files were summoned to indicate the position of their files and to see how the same may be expeditiously disposed of. A summary of all cases was done by M/s S.K. Ritho and the learned Principal Counsel A. Ombwayo. Their briefs was used to summon all advocates and parties concerned in these cases.

3. The cases concerned including this present case were:

i) **1984**

HCCC 3428/84

ii) **1986**

HCC 3590/86

iii) **1987**

Misc. 185/87

Misc. 285/87

Misc. 286/87

Misc. 287/87

HCC 3670/87

HCC 2387/87

HCC 51138/87

HCC 5175/87

HCC 5176/87

HCC 5177/87

iv) **1994**

3374/94

v). **1995**

103/95

995/95

2009/95

vi) **1996**

2577/96

vii) **1997**

HCC 710/97

711/97

712/97

3100/97

3102/97

3103/97

3104/97

3105/97

3106/97

3107/97

3108/97

3109/97

3110/97

3111/97

3112/97

vii) **1998**

1563/98

1714/98

1715/98

2090/98

2274/98

1012/98

1567/98

viii) **1999**

HCCC 1015/99

Misc.app. 1458/99

ix). **2003**

35/03 Malindi

Missc. Appl. 120/03

956/03

996/03

1011/03

2/04

x). **2006**

75/2006

xi) **2007**

162/2007

341/2007 Malindi

Defamatory cases

xiii) **2005**

611/05

612/05

675/05

676/05

677/05

678/05

679/05

680/05

681/05

682/05

683/05

722/05

xiv) **2006**

78/06

79/06

80/06

81/06

82/06

178/06

## II. Application

15 March 2006.

4. This Court by its judgment of 31<sup>st</sup> March 2009 finalized the issue on the above cases as to who owns the ten mile strip within the Coast. The exception to the above cases were the following advocates and their case who had appeared to Court to indicate that they would not participate in the said proceedings, namely:

(i) M/s Khaminwa & Khaminwa & Co. Adv.

HCCC 75/2006

HCCC 34/2004

(ii) J. Thiongori & Co. Advocates

HCCC 2577/96

HCC Misc. Application CA 185/97

HCCC 2387/87

HCCC 955/95

HCCC 2577/96

(iii) Fadhili & Kalonzo & Co. adv.

HCCC 2577/1996

5. M/s J. Thiongori participated in the deliberation of the main suit of HCCC 3106/97 and was permitted to cross examine the witnesses but agreed not to be bound by this Court's decision of HCCC 3106/97.

6. As such the plaintiffs in this case HCCC 3374/94 applied to have the judgment in HCCC 3106/97 apply to this Court. It is the application of 15<sup>th</sup> March 2006 with a further affidavit of 25<sup>th</sup> February, 2010 filed on 1<sup>st</sup> March 2010.

7. The parcel of Land bein L.R.Kilifi/Chemche/Kibabamshe/427 situated within the ten mile strip. That the judgment of HCCC 3106/1997 be adopted to this case on the question of ownership of Land.

### III. Decision of HCCC 3106/1997.

8. The Court in its Judgment of 31<sup>st</sup> March 2009 held that Land parcel within the ten mile strip of the Coast Province have never been Crown Land nor government Land. That the Land, freehold is private Land and fall under the Trust Land as of 1<sup>st</sup> June 1963. Thereafter under the adjudication area as of 20<sup>th</sup> June 1978 the Commissioner of Lands attempts to survey and under above mentioned act and issue title vide Registration of Titles was done without authority. Indeed in the year 1986 the then commissioner of Land cancelled the titles and annulled them. This is what began the catalyst of cases being filed to Court. The Court of appeal in the case of **Lali Swaleh Lali & 3 others =vrs= Stephen Mathenge Wachira C.A. 271/97 Gicheru, Tunoi & Pall JJa** (as he then was) on an appeal from the ruling of **Ole Keiuwa J** of 31<sup>st</sup> July 1997 that dealt originally with a preliminary objection, that the suit was frivolous scandalous and a grave abuse of the process of Court (because title issued allegedly to the original Plaintiffs, thereafter the respondent, claiming Suit Land was Government Land). The Plaintiff /appeallant had no locus standi to the title.

9. The issue that the suit Land was not government Land arose in the appeal, namely is the suit in question Trust Land or Government Land. This needed to be adjudicated upon. The Court then set aside all the orders of the superior Court and then ordered that the case be heard afresh.

10. It is therefore noted that earlier in a HC.Misc.Appl.Case185/1987, application to bring judicial proceedings, **Shields J** in his brief Judgment held that the Commissioner of Lands had no right to cancel Title . In HCCC 2387/87, **Ransley J** likewise held as such. In a constitution matter Misc. application 730/89, **Rawal J** also upheld the findings that the Suit Land cannot have its title cancelled by the government, as the land had in the first place never belonged to the government.

11. The argument on the decision of **Rawal J** is that she never specifically said that the Land belonged to the government or that it was private Land.

12. In the case HCCC 3106/97, this Court held that the ten mile strip was never government land. The only exception was where public building were erected. If the government wants any land they must compulsory acquire the same, pay compensation then can title be theirs. See the decision of **Onyango Otieno J.**

13. I would therefore reaffirm the decision of the HCC 3106/97 and state that the owner of the Land Parcel herein is not the government. The said government have no authority to deal with the land. It is due to this that I hereby adopt the Judgment of HCCC 3106/97 to this case as to ownership . The issue of compensation must be set down for trial by way of formal proof.

### IV. Obiter Dictum

14. On the issue of representation, in this case, the firm of M/s Kariuki Muigua & Co. Advocates had always been on record. They were notified of this matter being in Court on 14<sup>th</sup> March, 2007. Later when HCCC 3106/97 was finalized, M/s Maranga Maosa & Co. Advocates came on record in this current file. They have been in attendance to this Court through R.M. Ogego who held brief till the 23<sup>rd</sup> March 2010 when the said advocate did not appear. There was no replying affidavit filed to the application.

### V. Costs

15. I award costs of this application to the Plaintiffs.

### In Summary

16. The application of 15 March 2006 filed on 16 March 2006 is allowed with costs to the applicant.
17. That damages to be proved by way of formal proof .

**DATED THIS 26<sup>TH</sup> DAY OF APRIL, 2010 AT ELDORET.**

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**M.A. ANG'AWA,**

**JUDGE.**