



**Hainja v Opondo (Environment & Land Case 50 of 2013)  
[2024] KEELC 1212 (KLR) (6 March 2024) (Judgment)**

Neutral citation: [2024] KEELC 1212 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT BUSIA  
ENVIRONMENT & LAND CASE 50 OF 2013**

**BN OLAO, J**

**MARCH 6, 2024**

**BETWEEN**

**PETER LUCAS HAINJA ..... PLAINTIFF**

**AND**

**PASKAL OKOCH OPONDO ..... DEFENDANT**

**JUDGMENT**

1. By his Originating Summons dated 3<sup>rd</sup> July 2013 and filed on the same day, Peter Lucas Hainja (the Plaintiff) claims to have acquired by way of adverse possession a portion of land measuring 70 ft by 100 ft comprised in the land parcel No Bunyala/Bukoma/306 (the suit land). He seeks a determination of the following issues as against Paskal Okoch Opondo (the defendant):
  - a. Whether the Plaintiff and his family have been in open and notorious possession of the portion of land measuring 70 feet by 100 feet comprised in the land parcel No Bunyala/Bukoma/306.
  - b. Whether the Defendant's purported ownership of the entire land parcel No Bunyala/Bukoma/306 became extinguished upon the expiry of over 50 years from the time the Plaintiff and his family went into possession of the portion of land measuring 70 feet by 100 feet.
  - c. Whether the secret intended acquisition of the whole parcel of land referred to as the land parcel No Bunyala/Bukoma/306 by the Defendant should be cancelled and the Plaintiff registered as the owner of a portion of land measuring 70 feet by 100 feet.
  - d. Who should pay the costs.
2. Arising out of the determination of the above questions, the Plaintiff sought judgment as against the Defendant in the following terms:
  - i. That the Defendant's right over the whole of the land parcel No Bunyala/Bukoma/306 got extinguished by adverse possession upon expiry of 12 years and over 50 years from the date the



plaintiff came into possession of the portion of land measuring 70 feet by 100 feet comprised in the land parcel No Bunyala/Bukoma/306.

- ii. That the Defendant be perpetually barred from taking, transferring and/or sub-dividing the land parcel No Bunyala/Bukoma/306 to the exclusion of the Plaintiff.
  - iii. That the Defendant do execute all transfer documents relevant to facilitate the transfer of a portion measuring 70 feet by 100 feet comprised in the land parcel No Bunyala/Bukoma/306 and that in default, the Deputy Registrar do execute the same in favour of the Plaintiff in place of the Defendant.
  - iv. That the Defendant be ordered to surrender the title deed to the land parcel No Bunyala/Bukoma/306 if any and in default, the production of the said title deed be dispensed with by the Land Registrar Busia/Teso Districts.
  - v. That the Defendants do pay the costs of this case.
3. The Originating Summons was supported by the Plaintiff's affidavit of even date in which he deposed, inter alia, that the suit land belonged to his nephew one Opondo Saola who, prior to his demise in or about 1970, had given him and his family a portion thereof measuring 70 feet by 100 feet in or about April 1961. That the plaintiff and his family have been living on the said portion peacefully and without interruption for over 50 years and have even buried their parents thereon. Following the demise of Opondo Saola, the defendant secretly filed a succession cause and caused the suit land to be registered in his name which necessitated the filing of this Originating Summons. It is the Plaintiff's case that his occupation of the portion of the suit land has been open notorious and adverse. Further, that the said occupation is a matter well known to the defendant.
  4. In addition, the Plaintiff filed a witness statement also dated 3<sup>rd</sup> July 2013. Therein, he goes on to add that other than the suit land, he and his family have no other land to live on and will be rendered homeless if they are evicted.
  5. The Plaintiff filed a copy of the Green Card to the suit land. It shows that the suit land was first registered in the name of Opondo Obinda on 20<sup>th</sup> May 1978 before being transferred to the defendant on 20<sup>th</sup> May 2002.
  6. In response to the Originating Summons, the Defendant filed an un-dated replying affidavit on 28<sup>th</sup> August 2013 in which he described it as built on lies, bad in law, an abuse of the court process, scandalous, vexatious and which ought to be dismissed with costs.
  7. He pleaded further that there is a pending suit being Busia ELC Case No. 28 of 2013 in which he has sued the Plaintiff for trespass on the suit land and this case is meant to defeat the cause of justice and is sub-judice. He denied that the Plaintiff is occupation of the suit land adding that he resides in another parcel of land.
  8. Although the defendant had filed his response through the firm of Ario & Company Advocates, he late filed a Notice of Intention to act in person on 12<sup>th</sup> August 2013. Then on 4<sup>th</sup> April 2022, the firm of Ipapu P. Jackah & Company Advocates came on record for him. Finally, by a Notice of Change of Advocate dated 3<sup>rd</sup> November 2023, the firm of Wanyama & Company Advocates came on record for him.
  9. The Plaintiff testified before Omollo J on 2<sup>nd</sup> February 2022. He adopted the contents of his statement adding that the suit land is the only home known to his family and where he has lived since 1962.



10. After a long delay, the Defendant testified on 27<sup>th</sup> July 2023 before me. He said the Plaintiff has his own land being parcel No Bunyala/Bukoma/309 which he has partitioned and distributed to his brother. He denied that the Plaintiff lives on the suit land and asked the Court to direct him to go back to his land.
11. The parties were the only witnesses who testified in support of their cases. And although the Defendant conducted his case in person on 27<sup>th</sup> July 2023, Mr Wanyama came on record for him when the case went before Hon. Serem Deputy Registrar on 16<sup>th</sup> October 2023 for purposes of confirming the filing of submissions.
12. Submissions have been filed both by Mr Ashioya instructed by the firm of Ashioya & Company Advocates for the Plaintiff and by Mr Wanyama instructed by the firm of Wanyama & Company Advocates for the Defendant.
13. I have considered the evidence by the parties and the submissions by counsel.
14. The Plaintiff's case is that he and his family have been in open, continuous peaceful and un-interrupted occupation of a portion of the suit land measuring 70 feet by 100 feet since April 1961. In his oral testimony he said since 1962. That the occupation has been open, peaceful, un-interrupted and with the knowledge of the Defendant for a period of over 50 years.
15. The Defendant describes the Originating Summons as bad in law, scandalous, vexatious and an abuse of the court process. He has pleaded that the plaintiff lives on another parcel of land.
16. The Plaintiff has approached this court for an order that he has obtained ownership of the suit land by way of adverse possession. Section 38(1) of the Limitation of Action Act empowers him to file such a claim against the Defendant who is the registered proprietor of the suit land. It reads:

38 (1) "Where a person claims to have become entitled by adverse possession to land registered under any of the Acts cited in Section 37 of this Act, or land comprised in a lease registered under any of those Acts, he may apply to the High Court for an order that he be registered as the proprietor of the land or lease in place of the person then registered as proprietor of the land."

In *Kasuve v Mwaani Investments Ltd & Another* 2004 I KLR 184, set down what a party seeking land by way of adverse possession must prove. It said:

"And in order to be entitled to the land by adverse possession the claimant must prove that he has been in exclusive possession of the land openly and as of right and without interruption for a period of 12 years either after dispossessing the owner or by the discontinuation of possession by the owner on his own volition".

Such possession must be without force, stealth and the permission of the owner – *Kimani Ruchine v Swift Rutherford Company Ltd* 1980 KLR 10. It must be open, continuous, peaceful, notorious and with the knowledge of the owner – *Robert Shume & Others v Samson Kazungu Kalama* 2015 eKLR.

17. In the case of *Mtana Lewa v Kahindi Ngala Mwangandi C.a.* Civil Appeal No. 56 of 2014 [2015 eKLR], the Court, described the doctrine of adverse possession in the following terms:

"Adverse possession is essentially a situation where a person takes possession of land and asserts rights over it and the person having title to it omits or neglects to take action against such person in assertion of his title for a certain period. In Kenya it is twelve (12) years. The process springs into action essentially by default or inaction of the owner. The essential



prerequisites being that the possession of the adverse possessor is neither by force or stealth or under the licence of the owner. This doctrine in Kenya is embodied in Section 7 of the [Limitation of Actions Act ...](#)”

18. I shall be guided by the above precedents among others as well as the applicable law in determining this dispute.
19. Before I do so, however, there is an important matter of jurisdiction which, though pleaded, was not canvassed by the parties. And being a matter that touches on this court’s jurisdiction, I must address it because, as was held in the case of Owners Of The Motor Vessel ‘lillian S’ v Caltex Oil (Kenya) Ltd 1989 KLR 1:

“Jurisdiction is everything, without it, a Court has no power to make one more step. Where a Court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A Court of law down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

In paragraphs 4 and 7 of his replying affidavit, the Defendant deposed thus:

4: “That I know for fact that there is pending before ELC Court at Busia Land Court case No28 of 2013 where I have sued the Applicant herein for trespass and the subject property in the instant suit is the same as the subject property in said land Court case No. 28 of 2013 and this suit give (sic) the applicant herein an opportunity to raise the allegation as are stated in the instant case (annexture marked POO-001 is a copy of the pleadings”

7: “That further, in view of the foregoing and to the extend that the instant suit involves the same parties and same subject property as in land case number 28 of 2013, this matter is sub-judice”.

An issue touching on the jurisdiction of the court ought to be raised and canvassed at the earliest opportunity. It is a matter so important that the court can even raise it suo moto. When the hearing commenced before Omollo J on 2<sup>nd</sup> February 2022, the plea of sub-judice was not raised. That is not surprising because the Defendant was not present. The parties counsel have also not raised it in their submissions. This court must however consider it.

20. The doctrine of sub-judice is provided for in Section 6 of the [Civil Procedure Act](#) as follows:

“No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or parties under whom they claim, litigating under the same title, where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed.”

Although not pleaded, the twin of the above provision is Section 7 of the same Act. It reads:

7: “No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.”

It is clear from the above that the twin doctrines of sub-judice and res-judicata are a complete bar to any court from hearing a case once pleaded and proved. Indeed they are a complete defence to a claim.



21. Although the defendant in paragraphs 4 and 7 of his replying affidavit made reference to the pendency of Busia ELC Case No 28 of 2013 between the same parties and involving the suit land and went on to state that it was annexure POO-001, no such annexure was filed and so the proceedings in that case were not availed by the defendant for the court's perusal. However, any judgments, orders or proceedings of a court of law are public documents. They are therefore automatically available not only to the courts but even to the public. Further, Section 43 of the *Evidence Act* provides that:

43: "The existence of any judgment, order or decree which by law prevents any court from taking cognizance of a suit or holding trial, may be proved when the question is whether such court ought to take cognizance of such suit or to hold such trial."

The Plaintiff did not dispute the existence of Busia ELC case No 28 of 2013. And since the said case was determined by this very Court differently constituted, nothing barred this court from calling for the file for my perusal to confirm if indeed such a case involving the parties herein and the subject matter at hand was infact either pending or had been heard and determined.

22. Upon perusal of the judgment in Busia ELC Case No 28 of 2013, I confirmed that it involved Pascal Okoth Opondo the Defendant herein as the Plaintiff and Lucas Peter Hainja (who is named in this case as Peter Lucas Hinja) as the 1<sup>st</sup> Defendant. The 2<sup>nd</sup> Defendant was one Nicholas Ombere Obiba and the dispute involved the land parcel No Bunyala/Bukoma/306 which is the same land subject of this suit. The plaintiff in that suit and who is the Defendant in this suit, was seeking an order of permanent injunction to restrain the Plaintiff in this suit and one Nicholas Ombere Obiba from the suit land. After hearing the parties, Omollo J delivered a judgment on 7<sup>th</sup> July 2022 dismissing the Plaintiff's (the defendant herein) suit with costs. It is clear therefore that the parties herein litigated over the suit land in Busia ELC case No 28 of 2013 in a competent court and a final judgment was delivered.

23. It is also clear from the judgment in Busia ELC case No 28 of 2013 that the Plaintiff herein and who was the 1<sup>st</sup> Defendant in Busia ELC Case No 28 of 2013 did not file any counter-claim in that case in which the suit land was the subject matter. Nothing stopped him from pursuing his claim in adverse possession in that suit. In the case of *Chevron (k) Ltd v Harrison Charo Wa Shutu C.A. Civil Appeal No 17 of 2016 [2016 eKLR]*, the Court declined to follow the case of *Njuguna Ndatho v Masai Itumu C.A. CIVIL APPEAL NO. 231 of 1999* where it had been held that claim for adverse possession could not be canvassed by way of a counter-claim. Instead the court held that:

"The courts, have since this decision held that a claim by adverse possession can be brought by a plaintiff. See *Mariba v Mariba Civil Appeal No 188 of 2002*. Counter-claim or defence as was the case here. See *Wabala v Okumu 1997 LLR 609 (CAK)*."

Similarly, in *Gulam Mariam Noordin v Julius Charo Karisa C.A. Civil Appeal No 26 of 2015* where the claim was raised in defence, the Court in rejecting the objection to the procedure stated as follows:

"Where a party like the respondent in this appeal is sued for vacant possession, he can raise a defence of statute of limitation by filing a defence or a defence and counter claim. It is only when the party applies to be registered as the proprietor of land by adverse possession that order 37 Rule 7 requires such a claim to be brought by Originating Summons. It has also been held that the procedure of Originating Summons is not suitable for resolving complex and contentious questions of fact and law. Be that as it may, and to answer the question whether it was erroneous to sanction a claim of adverse possession only pleaded in defence, we refer to the case of *Wabala v Okumu 1997 LLR 609 CAK* which, like this appeal, the claim for adverse possession was in the form of a defence in an action for eviction. The Court



of Appeal in upholding the claim did not fault the procedure. Similarly, in *Bayete Co. Ltd -v- Kosgey* 1998 LLR 813 where the plaintiff made no specific plea of adverse possession, the plea was nonetheless granted.”

Since *Busia ELC Case No 28 of 2015* was heard and a judgment delivered, the proper plea is that this suit is *res judicata*. That term is defined in *Black’s Law Dictionary 10<sup>th</sup> Edition* as:

“Latin, a thing adjudicated. An issue that has been definitively settled by judicial decision. An affirmative defense barring the same parties from litigating a second law suit on the same claim, or any other claim arising from the same transaction or series of transactions and that could have been – but was not raised in the first suit.”

Explanation 4 of Section 7 of the *Civil Procedure Act* which provides for *res-judicata* reads:

4: “Any matter which might and ought to have been made a ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.”

Finally in the English case of *Henderson v Henderson* 1843 – 60 ALL ER 378 and which has been followed in this country, it was held that:

“...where a given matter becomes the subject of litigation in, and adjudication by a Court of competent jurisdiction, the court requires the parties to that litigation to bring forward their whole case and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of a matter which might have been brought forward as part of the subject in contest but which was not brought forward only because they have, from negligence, inadvertence or every accident, omitted part of their case. The plea of *res judicata* applies, except in special case, not only to points upon which the court was actually required to form an opinion and pronounce a judgment, but to every point which property belonged to the subject of litigation and which the parties, exercising reasonable diligence might have brought forward at the time.

In *Busia ELC Case No 28 of 2013* in which the plaintiff herein was the 1<sup>st</sup> defendant, he and his co-defendant filed a defence but did not file any counter-claim claiming the suit land by adverse possession. Yet, as is now clear from the precedents cited above, he ought to have been made such counter-claim because the defendant herein and who was the plaintiff in that case was seeking the substantive remedy that he (Plaintiff herein) be permanently enjoined from interfering with the suit land. This claim to the suit land by way of adverse possession is, on the authority of *Henderson v Henderson* (*supra*) a matter which ought to have been litigated in *Busia ELC Case No 28 of 2013* since he claims to have entered the suit land in 1961. That means his claim in adverse possession had long crystallized by the time he filed *Busia ELC Case No 28 of 2013*. That he did not counter-claim in that case does not take away that this suit is *res judicata*. I accordingly make that finding.

24. That notwithstanding, and assuming I am wrong in my pronouncement of *res judicata*, I will still consider the merits or otherwise of the plaintiff’s claim.
25. It is not disputed that the Defendant is the registered proprietor of the suit land. Although the Green Card shows his name as Okoch Opondo, he has not denied that it refers to him. He has been the registered proprietor of the suit land since 20<sup>th</sup> May 2002. The first registered proprietor on 20<sup>th</sup> May 1978 was one Opondo Obinda. The suit land is 2.8 hectares but the plaintiff is not claiming the whole of it. He is only claiming a portion thereof. Identification of the portion was therefore crucial. In the



case of *Wilson Kazungu Katana & 101 Others v Salm Abdalla Bakshnein & Another* 2015 eKLR, the court observed that;

“The identification of the land in possession of an adverse possession is an important and integral part of the process of proving adverse possession. This was so stated by this court in the case of *Githu v Ndeete* 1984 KLR 776. The appellants did not discharge the burden of proving and specifically identifying or even describing the portions, sizes and locations of those in their respective possession from the larger suit premises that they sought to have decreed to them.” Emphasis mine.

26. In the case of *Gabriel Mbui v Mukindia Maranya* 1993 eKLR, Kuloba J said the following about identification of the land being claimed in adverse possession:

“The land or portion of the land adversely possessed must be defined or at least an identifiable portion with a clear boundary or identification. For this purpose, that which can be ascertained is certain, that which is definitive is positive. It must at least be so plotted that if not certain, it can be made certain.”

In this case, the identification of the portion of the suit land which the plaintiff is claiming by way of adverse possession is conflicted.

27. In paragraphs (a) and (b) of his Originating Summons, the plaintiff pleaded that he and his family have been in possession of a portion of land measuring 70 feet by 100 feet. However, on 2<sup>nd</sup> February 2022, the 100 feet was cancelled to read 400 feet. That amendment from 100 feet to 400 feet was not signed either by the court or the plaintiff’s counsel. It was also done on 2<sup>nd</sup> February 2022 when the plaintiff testified before Omollo J but there is nothing on record to show that Mr Otanga who was holding Mr Ashioya’s brief made an oral application to amend the portion to read 70 feet by 400 feet instead of 70 feet by 100 feet and that the application was allowed by Omollo J. In paragraph (c) of the same Originating Summons, the Plaintiff seeks that he be registered as proprietor of a portion of land measuring 70 feet by 100 feet.
28. In paragraphs (i) and (ii) of the Originating Summons where he has set out the prayers which he seeks, he has identified the portion as 70 feet by 100 feet.
29. Similarly, in paragraphs 3 and 8 of his supporting affidavit, the plaintiff described the portion of land as measuring 70 feet by 100 feet. When he testified before Omollo J on 2<sup>nd</sup> February 2022, he said:

“I am claiming a portion of the land where we have lived on since 1962. I am adopting my witness statement dated 3/7/2013 as my evidence in chief.”

In that statement, this is how he has identified the portion on land which he is claiming in paragraphs 1, 3, 8 and 11.

1: “That me and my elder uncle Casbar Obiba Ombere were given L.R No Bunyala/Bukoma/306 in or about April 1961 by one Opondo Saola now deceased who was the previous owner then He gave us 70 feet by 400 feet.”

3: “That we have put up our homes on the said land and have buried our parents on the portion of land measuring 70 feet by 400 feet comprised on L.R No Bunyala/Bukoma/306.”

8: “that I have been in actual possession and occupation of the 70 feet by 400 feet comprised on LR. No Bunyala/Bukoma/306 to the exclusion of the respondent herein.”



11: “That I have no other home other than the portion that we have been living on measuring 70 feet by 400 feet comprised on L.R No Bunyala/Bukoma/306 and we and members of my family would be rendered homeless should we be evicted by the respondent from the said portion of land that has been our home for over 50 years.”

From all those contradictions as to the exact size of land which the Plaintiff occupies, it is obvious that he himself is not clear as to what he wants from the court. It would be difficult in the circumstances for this court to even craft a decree for execution. The plaintiff is not claiming the whole suit land. He is only claiming a portion thereof and as was stated in *Wilson Kazungu Katana & 101 Others v Salim Abdalla Bakshwein* (supra) the identification of that portion “is an important and integral part of the process of proving adverse possession.” Clearly therefore, even if the plaintiff’s suit was to be determined on its merits, it would be for dismissal on that ground.

30. A person claiming land by way of adverse possession must also show that his occupation of the suit land is without the permission of the owner of the land. Any occupation of land which is being claimed but which is occupied by the claimant through a licence or with the permission of the owner does not amount to adverse possession. Possession which is permissive is inconsistent with adverse possession – *Gabriel Mbui v Mukindia Maranga* (supra). In the case of *Samuel Miki Waweru v Jane Njeru Ribhu C.A. Civil Appeal No 122 of 2001*, the Court of Appeal stated that a claim of adverse possession cannot succeed if the person asserting the claim is in possession with the permission of the owner.

31. Again, in paragraph 3 of his supporting affidavit, the plaintiff has deposed thus:

3: “That my deceased uncle gave me and my family a portion of land measuring 70 feet by 100 feet comprised on L.R No Bunyala/Bukoma/306 in or about April 1961.”

And in paragraph 1 of his statement dated 3<sup>rd</sup> July 2013 and which he adopted as his evidence during the hearing, he said:

1: “That me and my elder uncle Casbar Obiba Ombere were given L.R No Bunyala/Bukoma/306 in or about April 1961 by one Opondo Saola now deceased who was the previous owner then. He gave us 70 feet by 400 feet.”

The Green Card to the suit land shows that the 1<sup>st</sup> registered proprietor on 20<sup>th</sup> May 1978 was Opondo Obinda. The Defendant was only registered as the proprietor of the suit land on 20<sup>th</sup> May 2002. That means that Opondo Obinda, who this court must presume is the same person referred to as Opondo Saola in the plaintiff’s affidavit and statement, remained the registered proprietor of the suit land from 20<sup>th</sup> May 1978 upto 20<sup>th</sup> May 2002. Thereafter, between 20<sup>th</sup> May 1978 and 20<sup>th</sup> May 2002, the plaintiff and his family were on the suit land with the permission of the owner. And any occupation before 20<sup>th</sup> May 1978 cannot count for purposes of adverse possession because between 1961 when the plaintiff says he and his uncle were given the suit land by Opondo Saola and 20<sup>th</sup> May 1978 when the land was registered in the name of Opondo Obinda, the occupation was permissive. It was not adverse to the title of the registered proprietor. And even after the suit land was registered in the name of Opondo Obinda, on 20<sup>th</sup> May 1978, the plaintiff’s occupation continued to be with the permission of the registered proprietor. That permission only ended in 1970 when, as per paragraph 2 of the plaintiff’s affidavit, Opondo Saola died. It was until 20<sup>th</sup> May 2002 that the defendant acquired the registration of the suit land in his names. Therefore as per the Green Card, the suit land remained in the name of the deceased upto 20<sup>th</sup> May 2002. Before then, a claim for adverse possession could only be filed against the Estate of the deceased Opondo Saola. That was not done. The defendant was only registered as the proprietor of the suit land on 20<sup>th</sup> May 2002 and time for purposes of adverse possession could only start running against him from that date. That is because, as is clear from Section 38(1) of the *Limitation of Actions*



Act, a claim for land by way of adverse possession can only be against the registered proprietor of the suit land. As was held in *Mwinyi Hamisi Ali v Attorney General & Another C.A. Civil Appeal No. 125 of 1997 [1997 eKLR]*:

“Adverse possession can only be claimed against a properly registered owner, that is to say the possession must be adverse to that of the registered proprietor.”

Since the Defendant only became the registered owner of the suit land on 20<sup>th</sup> May 2002, that is when time must be computed for purposes of adverse possession. This suit was filed on 3<sup>rd</sup> July 2013 and therefore, the plaintiff had only been in occupation of the portion which he claims for a period of 11 years which is 1 year short of the 12 years required to mount a successful claim to land by way of adverse possession.

32. It is clear from the above that even if the plaintiff's suit was to be determined by its merits, his claim in adverse possession was still bound to collapse.
33. Ultimately and having considered all the evidence herein, this court makes the following disposal orders:
  1. The Plaintiff's suit is struck out for being res-judicata.
  2. The Plaintiff shall meet the Defendant's costs.
  3. This judgment has no bearing nor shall it affect the rights of the parties herein as determined in the judgment in *Busia ELC Case No 28 of 2013*.

**BOAZ N. OLAO**

**JUDGE**

**6TH MARCH 2024**

**JUDGMENT DATED, SIGNED AND DELIVERED BY WAY OF ELECTRONIC MAIL ON THIS 6TH DAY OF MARCH 2024.**

**Right of Appeal.**

**BOAZ N. OLAO**

**JUDGE**

**6TH MARCH 2024**

**Explanation Notes:**

**This judgment was due for delivery on 6<sup>th</sup> February 2024. However, I was away from office attending to a patient. The delay is regretted.**

**BOAZ N. OLAO**

**JUDGE**

**6TH MARCH 2024**

