



Mwaruwa & 11 others v Jembe & another (Environment & Land Case 43 of 2023) [2024] KEELC 13531 (KLR) (2 December 2024) (Ruling)

Neutral citation: [2024] KEELC 13531 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE 43 OF 2023
FM NJOROGE, J
DECEMBER 2, 2024**

BETWEEN

RAPHAEL KENGA MWARUWA & 11 OTHERS & 11 OTHERS & 11 OTHERS PLAINTIFF

AND

**DR TSUMA JEMBE 1ST DEFENDANT
LAND REGISTRAR KILIFI 2ND DEFENDANT**

RULING

1. The preliminary objection herein dated 15/1/2024 has been filed by the 1st defendant. It is based on the following:
That the 1st defendant lacks capacity to be sued in respect of the estate of the deceased;
The determination of land appeal 26 of 1976 estops the plaintiffs from instituting proceedings;
That the process of addressing or instituting proceedings for adverse possession is by way of originating summons under Order 37 CPR and not by plaint;
That the court lacks jurisdiction to entertain this matter.
2. On 3/6/2024 this court ordered that the preliminary objection shall be disposed of by way of written submissions. none were filed by any party. Notably the objectors and his counsel were absent on 19/9/2024 when the matter came up for issuance of a ruling date. As no other method save written submissions had been prescribed by court for the disposal of the objection, the omission to file any submissions by the objector shows disinterest and is a failure to prosecute, and for that reason I strike out the notice of preliminary objection dated 15/1/2024 with costs to the plaintiffs and the 2nd defendant.



**RULING DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON
THIS 2ND DECEMBER, 2024.**

MWANGI NJOROGE

JUDGE, ELC, MALINDI

