



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT MALINDI**

**CIVIL SUIT NO. 14 OF 2010**

**KAVUMBI NDENGE DUNGUMALE &**

**217 OTHERS.....PLAINTIFFS**

**VERSUS**

**KRYSTALLINE SALT WORKS LTD .....1ST DEFENDANT**

**MOMBASA SALT WORKS LTD .....2ND DEFENDANT**

**RULING**

1. The Defendants' application filed on 13th March, 2013 proceeded unopposed as the plaintiffs, despite service, did not file any replying affidavit or attend the hearing. The suit was filed in 2010. Sometime was taken up with preliminary applications, resting with this court's ruling delivered on 10th December, 2010. Nothing happened for almost two years. The plaintiffs appear to have been jogged into action by the defendants' action of listing the matter for mention with regard to restraining orders issued earlier against the defendants.

2. The subject matter of the suit property is a vast piece of land which my predecessor Omondi J. visited in 2010. In a ruling delivered on 25th May, 2010, regarding the plaintiffs' application to be allowed to cultivate the land, Omondi J. observed:

***“Both parties stake a claim on the land – the applicants by virtue of having occupied and cultivated over the years, respondents by virtue of title. Currently, both parties have been stopped from carrying out any activity on the land so as to ensure that no party is prejudiced .... I visited the premises in March, 2010 – I can confirm as a fact that trees are not planted everywhere...vast expanses (which) are literally fallow. I also saw machinery belonging to the respondent lying idle and it was explained that the non-use was due to the court's order....there was no undertaking for damages offered here...The respondents are paying a heavy price by having their operations stall- the sword of justice is double edged and must be seen to cut both ways”***

3. With that, the court declined the plaintiffs' application. It would seem that the plaintiffs while enjoying the interim orders went to sleep. When they were eventually prodded by the defence actions, they fixed the matter for hearing on 6th September, 2012. On that day however, their counsel Mr. Otara alluded to withdrawal of instructions communicated allegedly through one of his many clients. The matter was adjourned and by the time the present application was heard (3rd May, 2013) no step had been taken by the plaintiffs to prosecute this suit.

4. The court cannot allow such a situation of patent injustice to subsist. The plaintiffs while enjoying court orders have not shown any desire to move their claim forward. Considering all the foregoing, I do allow prayer 1 and 2 of the Defendants' Notice of Motion filed on 13th March, 2013. (Notices of ruling date sent out via Court Notice Board and Kenya Law Reports website).

Delivered and signed this **3rd October, 2013** in the presence of Mr. Kilonzo holding brief for Mr. Gakuo for defendants, Plaintiffs absent.

Court clerk – Makena

**C. W. Meoli**

**JUDGE**

**3-10-13**