

STEPHEN KIBOBI NJUGUNA.....PLAINTIFF

VERSUS

MORRIS KADZAGAMBA

GARAMA KAINGU

KAHINDI CHEA

CHARO KADZAGAMBA

MARTIN CHARO

SALIM ABDALLA.....DEFENDANTS

R U L I N G

Before me is the Notice of Motion dated 6th June, 2012 seeking that the 1st defendant be pushed for disobeying court orders issued on 21st November, 2011 that status quo be maintained in respect of the suit property. It is alleged in the supporting affidavit that the 1st defendant has proceeded despite the orders being served on him to drill a well, build houses and harvest stones or sand.

The application is brought primarily under Order 40 rule 3(1). In his affidavit in reply the respondent has admitted digging a well and undertaking some work on a house on the suit property, which he claims was renovation. He says he took these actions before he understood the true purport of the court order and he has now ceased the activities plugged the well and pledged to abide by the orders of this court. He says he had no intention of disobeying the court's orders.

Having considered all the relevant matters I think the respondent has given a reasonable explanation for the conduct complained of. Further, he has taken the initiative of filling in the well even before being ordered to do so by the court. He has attached photographs. He denies harvesting stones or sand and explains that other occupants on neighboring portions are doing so and he has no control over them. No need will be served in taking this matter any further in light of the 1st respondent's firm pledge to continue to obey the court orders now that he has understood them. I therefore decline to grant the prayers sought in the Notice of Motion but will award costs to the applicant.

Read, delivered and dated at Malindi this 3rd day of **September, 2012** in the presence of:

Court clerk - Leah, Evans

C. W. Meoli

JUDGE