



**Nyaguti v Ranguma & 4 others (Environment and Land Case 169 of 2013)  
[2025] KEELC 6528 (KLR) (29 September 2025) (Judgment)**

Neutral citation: [2025] KEELC 6528 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISUMU  
ENVIRONMENT AND LAND CASE 169 OF 2013  
SO OKONG'O, J  
SEPTEMBER 29, 2025**

**BETWEEN**

**MICHAEL OTIENO NYAGUTI ..... PLAINTIFF**

**AND**

**JACK RANGUMA ..... 1<sup>ST</sup> DEFENDANT**

**EVANS KIDERO ..... 2<sup>ND</sup> DEFENDANT**

**ALICE KAUDIA ..... 3<sup>RD</sup> DEFENDANT**

**DIRECTOR, NEMA ..... 4<sup>TH</sup> DEFENDANT**

**PS, MINISTRY OF ENVIRONMENT , WATER AND NATURAL RESOURCES  
(MEWNR) ..... 5<sup>TH</sup> DEFENDANT**

**JUDGMENT**

**The pleadings**

1. The Plaintiff brought this suit by way of a plaint dated 27<sup>th</sup> June 2013, which he later amended on 4<sup>th</sup> July 2013 and further amended on 3<sup>rd</sup> March 2023. The Plaintiff averred that he was engaged in voluntary community service within Kisumu City and was a member of Magnam Environmental Network (CBO). The Plaintiff averred that the 1<sup>st</sup> Defendant was the Governor of Kisumu and was the owner of all those parcels of land known as Title Nos. Kisumu/Korando/3755 and Kisumu/Korando/3756, while the 2<sup>nd</sup> Defendant was the Governor of Nairobi and was the owner of all those parcels of land known as Title Nos. Kisumu/Korando/5232, 3833, 3834, 3835, 3836, 2839, 4458 and 3831. The Plaintiff averred that the 3<sup>rd</sup> Defendant was the Environment Secretary in the Ministry of Environment, Water and Natural Resources (MEWNR) and was a co-owner of all those parcels of land known as Title Nos. Kisumu/Kogony/3582 and 3583.



2. The Plaintiff averred that every person has a right to a clean and healthy environment, which includes the right to have the environment protected for the benefit of the present and future generations through legislative and other measures, particularly those contemplated in Article 69 of the Constitution, and to have the obligations relating to the environment under Article 70 of the Constitution fulfilled. The Plaintiff averred that the state may regulate the use of any land or any interest in or right over any land in the interest of defence, public safety, public order, public morality, public health, or land use planning as provided for under Article 66 of the Constitution.
3. The Plaintiff averred that Article 75 of the Constitution enjoins the state officers to behave, whether in public or private life, in a manner that avoids any conflict between personal interest and public or official duties; compromising any public or official interest in favour of a personal interest or demeaning the office the officer holds.
4. The Plaintiff averred that under Article 22 of the Constitution, every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or is threatened, acting in their own interest, on behalf of another person or in the interest of the public.
5. The Plaintiff averred that, under the Environmental Management and Coordination Act 1999, rivers, lakes, and wetlands must be protected, and any activity affecting them can only be licensed after a properly instituted process of environmental impact assessment, with widespread public participation. The Plaintiff averred that any construction work that threatens the environment and public health should be brought down and the site restored to its original state before the works commenced.
6. The Plaintiff averred that the actions of the Defendants were illegal, unlawful, and in breach of the Constitution of Kenya. The Plaintiff averred that the community's right to a clean and healthy environment recognised and protected under Article 42 of the Constitution had been, was being, or was likely to be denied, violated, infringed, or threatened. The Plaintiff averred that the Defendants had unlawfully encroached on the wetland by putting fences beyond the demarcated boundaries of their parcels of land. The Plaintiff averred that the Defendants had also undertaken construction of residential buildings next to the lake without a properly carried out environmental impact assessment. The Plaintiff averred that the Defendants had exposed the local community that depends on the lake water to the possibility of consuming water polluted by untreated human waste that would be disposed of in the lake by the Defendants. The Plaintiff averred that the Defendants had also denied the members of the local community, domestic animals, and wildlife access to sustainable exploitation of wetland resources. The Plaintiff averred that he was willing to abide by any condition that the court could impose for granting the injunctive relief against the Defendants' illegal activities.

The Plaintiff prayed for judgment against the Defendants for;

- a. A declaration that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants had, by fencing beyond their demarcated boundaries, illegally encroached on the Lake Victoria wetland and wildlife grazing reserve, thus exposing the ecosystem to degradation and denying the community access to the waterfront;
- b. A declaration of the right of the community to access and sustainably exploit the natural resources of the Lake Victoria wetland;
- c. An order to the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants to prevent, stop, or discontinue any act or omission that is harmful to the environment around the lake;



- d. An order to the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants to remove any illegal fencing and to demolish any building that is not allowed to be in place around the waterfront under the supervision of the 4<sup>th</sup> and 5<sup>th</sup> Respondents;
  - e. An order to compel the 4<sup>th</sup> and 5<sup>th</sup> Defendants to take appropriate measures to prevent or discontinue any act or omission that is harmful to the environment around Lake Victoria;
  - f. A declaration that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants, being state officers, were in breach of Articles 3, 42, 43, 69, 73, and 74 of the *Constitution*;
  - g. A permanent injunction to issue directed at the Defendants, their employees, workers, agents, and or whomsoever serves under their orders jointly and severally restraining them from implementing or further engaging in any activity or construction works likely to cause harm to the environment in the disputed wetland area; and
  - h. Any other or further remedy this court deems just and expedient to grant.
7. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants filed a joint statement of defence on 29<sup>th</sup> August 2013. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants denied all the allegations made in the plaint except the description of the parties and the jurisdiction of the court. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants averred that they developed their parcels of land after an exhaustive and extensive environmental audit and obtaining all the relevant approvals. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants denied that they were involved in any illegality in the development of the said properties. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants averred that the Plaintiff was a busybody who was out to advance narrow self-interests under the guise of public interest. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants averred that as citizens of Kenya, they had the right to own and develop property as envisaged under Article 40 of the *Constitution*, subject to obtaining all the relevant approvals. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants averred that the Plaintiff's suit did not disclose any reasonable cause of action against them and therefore the orders sought could not be issued. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants prayed that the suit be dismissed with costs.
  8. The 3<sup>rd</sup> Defendant entered an appearance and filed a statement of defence on 29<sup>th</sup> August 2013. The 3<sup>rd</sup> Defendant admitted that she was a co-proprietor of land Title Nos. Kisumu/Kogony/3582 and Kisumu/Kogony/3583. The 3<sup>rd</sup> Defendant averred that the plaint disclosed no cause of action against her, was scandalous, frivolous, vexatious, and amounted to an abuse of the process of the court.
  9. The 3<sup>rd</sup> Defendant averred that she had put up on Title Nos. Kisumu/Kogony/3582 and Kisumu/Kogony/3583, a community training and environment education facility, a project that had been in place since 2009/2010. The 3<sup>rd</sup> Defendant denied that the said parcels of land and the structures constructed thereon were in a wetland. The 3<sup>rd</sup> Defendant denied that she had put a fence around the said parcels of land, which extended beyond the demarcated borders of the properties. The 3<sup>rd</sup> Defendant averred that the parcels of land, Title Nos. Kisumu/Kogony/3582 and Kisumu/Kogony/3583, and the structures thereon were more than 182 meters, from the high-water mark, which is generally understood as the historically recorded point of the highest level of contact between the water and the shore. The 3<sup>rd</sup> Defendant averred that Title Nos. Kisumu/Kogony/3582 and Kisumu/Kogony/3583, and the structures thereon were clear of the 26 meters from the high watermark, which is the distance from which one would be considered to be unduly encroaching onto a wetland. The 3<sup>rd</sup> Defendant denied that she was engaged in any activity on the said properties that was likely to have adverse effects on the wetland, nor had she blocked the lake from its normal course, nor erected or installed structures on or under the lake which would require environmental impact assessment. The 3<sup>rd</sup> Defendant averred that the facility that she had put up on land Title Nos. Kisumu/Kogony/3582 and Kisumu/Kogony/3583 had a septic tank and a soak pit, and as such, no waste was



- being discharged directly into the lake. The 3<sup>rd</sup> Defendant denied releasing pollutants into the lake. The 3<sup>rd</sup> Defendant denied that she had blocked the local community's access to the lake. The 3<sup>rd</sup> Defendant averred that the local community had access to and the space to exploit the common lake resources.
10. The 3<sup>rd</sup> Defendant averred that her properties were well-maintained and responsibly run facilities with lush grass that attracted hippopotamus and unlawful grazing and were therefore protected by a low barricade for the safety of the facilities, occupants, and the 3<sup>rd</sup> Defendant's reasonable and lawful riparian land owner rights.
  11. The 3<sup>rd</sup> Defendant averred that the Plaintiff was a frivolous, vexatious, and opportunistic litigant who was pursuing a selfish agenda in the suit. The 3<sup>rd</sup> Defendant averred that there were several landowners and occupiers of land in or around the subject areas, and that the choice of the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> Defendants was not a coincidence, given that they were prominent citizens who fit the profile that the Plaintiff wished to exploit. The 3<sup>rd</sup> Defendant averred that the Plaintiff was seeking personal benefit through the suit, which was not anchored in fact, law, or even a proper cause of action. The 3<sup>rd</sup> Defendant prayed that the suit be struck out and/or dismissed with costs.
  12. The 4<sup>th</sup> Defendant entered an appearance but did not file a statement of defence. The Attorney General entered an appearance on behalf of the 5<sup>th</sup> Defendant, but also did not file a statement of defence.

### **Surveys conducted before the trial and findings**

13. On 22<sup>nd</sup> June 2017, the court ordered that the County Land Registrar and Surveyor visit land parcels, Title Nos. Kisumu/Korando/3755 and 3756 belonging to the 1<sup>st</sup> Defendant, Title Nos. Kisumu/Korando/3831, 3832, 3833, 3834, 3835 and 3836, and Title Nos. Kisumu/Korando/2839 and 4458 belonging to the 2<sup>nd</sup> Defendant, and Title Nos. Kisumu/Kogony/3582 and 3583, belonging to the 3<sup>rd</sup> Defendant, for the purposes of confirming their boundaries with the lake, and reporting on the structural developments thereon, including fencing, encroachment on the riparian areas, and the extent of such encroachment, if any, and any development hindering the residents of the neighboring area from accessing the lake. The County Land Registrar and Surveyor were to file their report in court within 90 days from the date of the order.
14. Following that order, the County Land Registrar and Surveyor visited the parcels of land concerned and filed a report in court on 16<sup>th</sup> May 2018, which was limited to Title Nos. Kisumu/Korando/3755 and 3756 owned by the 1<sup>st</sup> Defendant and Title Nos. Kisumu/Kogony/3582 and 3583 owned by the 3<sup>rd</sup> Defendant. They did not trace the records for Title Nos. Kisumu/Korando/3831, 3832, 3833, 3834, 3835 and 3836, and Title Nos. Kisumu/Korando/2839 and 4458 owned by the 2<sup>nd</sup> Defendant, which, unknown to them, had been amalgamated to form Title No. Kisumu/Korando/5232.
15. In their report, the County Land Registrar and Surveyor found that the proprietor of Title Nos. Kisumu/Korando/3755 and 3756, who is the 1<sup>st</sup> Defendant, had fenced off part of the lake reserve with a concrete fence, and the extent of encroachment was estimated at 0.08Ha. As concerns Title Nos. Kisumu/Kogony/3582 and 3583, owned by the 3<sup>rd</sup> Defendant, the County Land Registrar and Surveyor, found that Title No. Kisumu/Kogony/3582 was far from the lake and had not encroached on the lake reserve. Concerning Title No. Kisumu/Kogony/3583, the County Land Registrar and Surveyor found that the proprietor had fenced off part of the lake reserve together with the access road indicated on the map, which was meant to traverse along the lake. They noted that two semi-permanent structures had been erected on the fenced area of the lake reserve.
16. On 10<sup>th</sup> December 2018, the court ordered that the County Land Registrar and Surveyor visit land parcels, Title Nos. Kisumu/Korando/ 3831, 3832, 3833, 3834, 3835 and 3836, and Title



Nos. Kisumu/Korando/2839 and 4458, which had been consolidated to form the land parcel, Title No. Kisumu/Korando/5232 and report on the extent of their encroachment into the lake reserve. Following this order, the District Land Registrar and the County Director of Surveys visited the properties and filed a report in court on 11<sup>th</sup> March 2021. In their report, the County Land Registrar and Surveyor found that the land parcel, Title No. Kisumu/Korando/5232 did not encroach on the lake reserve. The County Land Registrar and Surveyor observed, however, that there was an access road that traversed the property, which during the amalgamation that gave rise to the property was made to form part of the property. The County Land Registrar and Surveyor also observed the existence of wooden stumps, which the Plaintiff told them were the remains of the 2<sup>nd</sup> Defendant's fence. The County Land Registrar and Surveyor stated that the said stumps were falling within the lake reserve.

### **The evidence given at the trial**

17. At the trial, the Plaintiff, Michael Otieno Nyanguti (PW1), adopted his witness statement filed on 4<sup>th</sup> July 2013 as his evidence in chief. In the witness statement, PW1 stated that he was the chairperson of Magnam Environmental Network, a not-for-profit Community-Based Organisation that championed environmental conservation and sustainable exploitation of natural resources among the fishing community around Lake Victoria. He stated that the construction of residential buildings next to the lake poses a danger of pollution from raw sewage spill-over and domestic-generated waste entering the lake, thus threatening biodiversity along the lakeshore. He stated that the communities living around the lake, who depend on the lake water, must be protected against polluting agents. He stated that he wrote to the Defendants to address the community's environmental concerns, but no response was received. PW1 produced letters dated 4<sup>th</sup> October 2013 and 12<sup>th</sup> February 2013, an email message, a letter dated 23<sup>rd</sup> March 2013, an email message marked MON3, and an order to act as a pauper as Plaintiff's exhibits 1 to 6, respectively. He also produced a bundle of photographs as Plaintiff's exhibits 7 (a) to 7(f) respectively.
18. PW1 gave further evidence on 12<sup>th</sup> March 2024. PW1 told the court that he had filed a supplementary affidavit dated 2<sup>nd</sup> February 2024. He adopted the same as his further evidence in chief. He stated that the photographs attached to the said affidavit marked "MON-1S" to "MON-4S" showed the situation on the ground with regard to the suit properties. He stated that the photograph marked "MON 4S" showed the 2<sup>nd</sup> Defendant's property. He stated that the photograph showed what had been referred to in the Government Surveyor's report as stumps, which were encroaching on the lake riparian reserve. He stated that the stumps were in the form of angle line plates. He stated that the stumps could be seen in the foreground in photographs "MON-4S" and "MON-1S". He stated that the photograph "MON-1S" showed the lower part of the 2<sup>nd</sup> Defendant's property. He stated that the photograph showed the wetland that had been encroached. He stated that photographs marked "MON-2S" showed the side of the 1<sup>st</sup> Defendant's property on the lakefront. PW1 stated that the septic tank that was constructed for the 1<sup>st</sup> Defendant's property had been submerged in lake water. He stated that the photograph showed the encroachment complained of. He stated that the photographs marked "MON-3S" showed abandoned buildings on the 3<sup>rd</sup> Defendant's land. He stated that the buildings were submerged by the lake water and were abandoned. He stated that the 3<sup>rd</sup> Defendant had encroached on the lake. He stated that the photograph on the right showed the 3<sup>rd</sup> Defendant's neighbour's fence. He stated that the neighbour did not encroach on the wetland as he left a space between his land and the lake. He urged the court to visit the ground and see for itself the encroachment.
19. The 4<sup>th</sup> Defendant called Anthony Saisi Aura (DW1) as its witness. DW1 adopted his witness statement dated 8<sup>th</sup> December 2021 as his evidence in chief. He stated that when the suit was filed, he was the



County Director of Environment, Kisumu County. He stated that at the time of his testimony, he was the Regional Director of Environment, Western Region. He stated that he swore a replying affidavit, which was filed in court on 12<sup>th</sup> January 2017, which he adopted together with the attachments as his further evidence. He produced the annexures to the affidavit as Defence exhibits 1 to 3, respectively.

20. The next to give evidence was the 3<sup>rd</sup> Defendant, Alice Kaudia(DW2). DW2 told the court that she had retired and was engaged in small-scale farming. DW2 adopted her witness statement filed together with her statement of defence on 29<sup>th</sup> March 2013 as her evidence in chief. On examination by the court, the 3<sup>rd</sup> Defendant stated that it was not true that the structures she had put up on her parcels of land were covered with water when the lake level rose. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants did not give evidence at the hearing of the suit.

### **The site visit and submissions**

21. After the close of evidence, the court visited the site on 21<sup>st</sup> January 2025. The notes on the site visit are on record. The court, thereafter, directed the parties to make closing submissions in writing. Only the 3<sup>rd</sup> Defendant filed submissions. The Plaintiff, the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants had not filed submissions at the time of writing the judgment.

### **The 3<sup>rd</sup> Defendant's Submissions**

22. The 3<sup>rd</sup> Defendant filed submissions dated 28<sup>th</sup> February 2025. The 3<sup>rd</sup> Defendant submitted that the main issue for determination was whether she had encroached on the riparian area of the lake. The 3<sup>rd</sup> Defendant submitted that she had put up on the land parcel Title No. Kisumu/Kogony/3583, a community training and environmental education facility, a project that had been in place since 2009. The 3<sup>rd</sup> Defendant submitted that she had neither encroached nor trespassed in any way whatsoever on the wetland or riparian reserve.
23. The 3<sup>rd</sup> Defendant submitted that in the survey report that she produced, the surveyor concluded that she had not encroached or interfered with the riparian area. The 3<sup>rd</sup> Defendant submitted that the structures that the Plaintiff claimed had been built on the wetland were temporary structures which were outside the 3<sup>rd</sup> Defendant's land parcel, Title No. Kisumu/Kogony/3583. The 3<sup>rd</sup> Defendant submitted that her property never extended to the wetland reserve as claimed by the Plaintiff, nor did she block any access or create restrictions which could have caused inconvenience to the community surrounding the property in question. The 3<sup>rd</sup> Defendant submitted that there was no evidence clearly demonstrating that the 3<sup>rd</sup> Defendant had encroached into the riparian area. The 3<sup>rd</sup> Defendant submitted that, furthermore, her surveyor's report was sufficient proof on a balance of probability that there was no encroachment or trespass on the 3<sup>rd</sup> Defendant's part.
24. The 3<sup>rd</sup> Defendant admitted that there were old dilapidated structures on the wetland next to her property. The 3<sup>rd</sup> Defendant, however, submitted that these structures did not belong to the 3<sup>rd</sup> Defendant, nor were they built by her or on her authority. The 3<sup>rd</sup> Defendant submitted that this fact was confirmed by the court during the site visit on 21<sup>st</sup> January 2025. The 3<sup>rd</sup> Defendant cited *Beatrice Ngonyo Ndungu & another v. Samuel K. Kanyoro & 2 others* [2017] eKLR and *Cyrus Nyaga kabute v. Kirinyaga County Council* [1987] eKLR on the effect of a site visit in support of her submissions. The 3<sup>rd</sup> Defendant submitted that the plaintiff did not object to the findings by the court during the site visit that the 3<sup>rd</sup> Defendant's property had no structures that had encroached into the wetlands. The 3<sup>rd</sup> Defendant urged the court to find that the 3<sup>rd</sup> Defendant's property and the structures thereon were within the demarcated borders. The 3<sup>rd</sup> Defendant submitted that the Plaintiff had failed to prove



his claim against the 3<sup>rd</sup> Defendant. The 3<sup>rd</sup> Defendant urged the court to dismiss the suit with costs to the 3<sup>rd</sup> Defendant.

### **Analysis and Determination**

25. I have considered the pleadings and the evidence given by the parties, the survey reports filed in court on the orders of the court, the observations made during the site visit, and the submissions by the 3<sup>rd</sup> Defendant. I am of the view that the issues arising for determination in this suit are whether the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants encroached on the Lake Victoria riparian reserve/wetland, whether the Plaintiff is entitled to the reliefs sought, and who should bear the costs of the suit.

26. Article 42 of the [Constitution](#) of Kenya provides as follows;

“Every person has the right to a clean and healthy environment, which includes the right;

- (a) to have the environment protected for the benefit of present and future generations through legislative and other measures, particularly those contemplated in Article 69; and
- (b) to have obligations relating to the environment fulfilled under Article 70.”

27. Article 69 of the [Constitution](#) provides as follows;

“(1) The State shall—

- (a) ensure sustainable exploitation, utilisation, management and conservation of the environment and natural resources, and ensure the equitable sharing of the accruing benefits;
- (b) work to achieve and maintain a tree cover of at least ten per cent of the land area of Kenya;
- (c) protect and enhance intellectual property in, and indigenous knowledge of, biodiversity and the genetic resources of the communities;
- (d) encourage public participation in the management, protection and conservation of the environment;
- (e) protect genetic resources and biological diversity;
- (f) establish systems of environmental impact assessment, environmental audit and monitoring of the environment;
- (g) eliminate processes and activities that are likely to endanger the environment; and
- (h) utilise the environment and natural resources for the benefit of the people of Kenya.

(2) Every person has a duty to cooperate with State organs and other persons to protect and conserve the environment and ensure ecologically sustainable development and use of natural resources.”



28. Article 70 of the Constitution of Kenya 2010 provides as follows;

- “(1) If a person alleges that a right to a clean and healthy environment recognised and protected under Article 42 has been, is being or is likely to be, denied, violated, infringed or threatened, the person may apply to a court for redress in addition to any other legal remedies that are available in respect to the same matter.
- (2) On application under clause (1), the court may make any order, or give any directions, it considers appropriate—
- (a) to prevent, stop or discontinue any act or omission that is harmful to the environment;
- (b) to compel any public officer to take measures to prevent or discontinue any act or omission that is harmful to the environment; or
- (c) to provide compensation for any victim of a violation of the right to a clean and healthy environment.
- (3) For the purposes of this Article, an applicant does not have to demonstrate that any person has incurred loss or suffered injury.”

29. Regulation 14 (b) of the Physical and Land Use Planning (General Development Permission and Control) Regulations (Legal Notice 253 of 2021) provides as follows on the measurement of the lake riparian reserve:

- “The following standards shall apply during the measurement of riparian reserves for the purposes of these Regulations—
- (a) .....
- (b) for lakes, a riparian reserve of not less than one hundred metres and not more than two hundred metres as measured from the highest water mark shall be maintained for all lakes:

30. Provided that in the case of Lake Naivasha, there shall be observed a contour of one thousand eight hundred and ninety-two point eight metres above sea level;”

31. Section 9 (1) and (2) of the Environmental Management and Co-ordination Act 1999 provides for the objects and functions of the 4<sup>th</sup> Defendant as follows in part:

- “(1) The object and purpose for which the Authority is established is to exercise general supervision and co-ordination over all matters relating to the environment and to be the principal instrument of Government in the implementation of all policies relating to the environment.
- (2) Without prejudice to the generality of the foregoing, the Authority shall—
- (a) co-ordinate the various environmental management activities being undertaken by the lead agencies and promote the integration of environmental considerations into development



policies, plans, programmes and projects with a view to ensuring the proper management and rational utilization of environmental resources on a sustainable yield basis for the improvement of the quality of human life in Kenya;”

32. The Plaintiff’s case is that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants had encroached on the Lake Victoria riparian reserve and, as such, were likely to interfere with the biodiversity of the area through human activity and also expose the lake to pollution, thereby endangering the aquatic life and the lives of the local communities that depended on the lake for their livelihood. The Plaintiff had also claimed that the encroachment had interfered with the rights of the local community to access the lake. It is not disputed that the 1<sup>st</sup> Defendant owned the land parcels, Title Nos. Kisumu/Korando/3755 and 3756, and that he had developed the same. I am satisfied from the evidence on record that the 1<sup>st</sup> Defendant had developed the two parcels of land beyond their demarcated boundaries, thereby encroaching on the lake’s 100-meter riparian reserve. According to the survey report filed in court on 16<sup>th</sup> May 2022, following a court order, the 1<sup>st</sup> Defendant had fenced off the lake riparian reserve with a concrete fence and made it part of the two parcels of land. During the site visit, the court noted that the 1<sup>st</sup> Defendant’s development did not respect the 100-meter lake riparian reserve. There was, in fact, no space left between the 1<sup>st</sup> Defendant’s home and the lake. The development went right up to the lakeshore. It is therefore my finding that the 1<sup>st</sup> Defendant encroached on Lake Victoria’s riparian reserve.
33. The 2<sup>nd</sup> Defendant owned the land parcels, Title Nos. Kisumu/Korando/3232, 3833,3834, 3835,3836,2839,4458 and 3831, which were amalgamated into land parcel Title No. Kisumu/Korando/5232. It is common ground that the 2<sup>nd</sup> Defendant’s parcel of land is not developed. In the report filed in court on 11<sup>th</sup> March 2021, the Kisumu County Land Registrar and the County Surveyor stated that land Title No. Kisumu/Korando/5232 did not encroach on the lake riparian reserve. The only anomaly detected by the two officers was that an access road, which traversed the property, had been closed and formed part of the property. Although there was no encroachment on the lake riparian reserve, the evidence adduced by the Plaintiff and confirmed by the court during the site visit showed that, at the time the suit was filed, the 2<sup>nd</sup> Defendant had put up a fence around the property that had extended beyond the demarcated boundary to the riparian reserve. However, at the time of the hearing of the suit and the court site visit, the fence was not in place. It is my finding that the 2<sup>nd</sup> Defendant encroached on the lake reserve, but the encroachment has ceased.
34. The 3<sup>rd</sup> Defendant is a co-owner of the land parcels, Title Nos. Kisumu/Kogony/3582 and 3583. The 3<sup>rd</sup> Defendant denied that the two parcels of land encroached on the lake riparian reserve. In her testimony, the 3<sup>rd</sup> Defendant stated that the parcels of land were over 182m from the highest water mark. The survey report filed in court by the County Land Registrar and Surveyor on 16<sup>th</sup> May 2018, confirmed that Title No. Kisumu/Kogony/3582 was far away from the lake and had not encroached on the lake riparian reserve. The report noted, however, that the fence around Title No. Kisumu/Kogony/3583 had covered part of the lake riparian reserve and an access road that was meant to traverse along the lakeshore. The report also noted the existence of some temporary structures on the fenced portion of the riparian reserve. The 3<sup>rd</sup> Defendant denied fencing off the lake riparian reserve. The 3<sup>rd</sup> Defendant also denied ownership of the said temporary structures. The 3<sup>rd</sup> Defendant filed a survey report in court on 16<sup>th</sup> November 2023. The survey report by N.O.Obura, Licensed Surveyor, dated 10<sup>th</sup> March 2023, supported the 3<sup>rd</sup> Defendant’s contention that she had not encroached on the riparian reserve. When the court visited Title Nos. Kisumu/Kogony/3582 and 3583, neither the fence nor the temporary structures that the County Land Registrar and County Surveyor had observed on Title No. Kisumu/Kogony/3583 were in place. I have considered the evidence on record in its totality, including



the survey report filed by the 3<sup>rd</sup> Defendant. It is my finding that the 3<sup>rd</sup> Defendant, while fencing Title No. Kisumu/Kogony/3583 had encroached not only on the lake riparian reserve but also on a public road separating Title No. Kisumu/Kogony/3583 from the lake. The encroachment had, however, ceased at the time of the trial and the court visit to the property.

35. The Plaintiff and the community living along Lake Victoria are entitled to a clean and healthy environment guaranteed under Article 42 of the Constitution. Under Section 3(1) and (2) of the Environmental Management and Coordination Act 1999 (EMCA), a clean and healthy environment includes the right to access the various public elements or segments of the environment for recreation, education, health, spiritual, and cultural purposes. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants had no right to encroach on the 100-meter lake riparian reserve and to interfere with the Plaintiff and the local community's access to the lake.
36. Due to the foregoing, I am satisfied that the Plaintiff has proved his case against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants on a balance of probabilities. The Plaintiff did not, however, establish any wrongdoing on the part of the 4<sup>th</sup> and 5<sup>th</sup> Defendants. The Plaintiff has sought several reliefs against the Defendants. I am of the view that the Plaintiff is entitled to prayers (a), (b), (d), and (g) of the further amended plaint dated 3<sup>rd</sup> March 2023. On the issue of costs, I am of the view that this was a public interest litigation. Each party shall bear its own costs.

## Conclusion

37. In conclusion, I hereby enter judgment for the Plaintiff against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants for;
- a. A declaration that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants illegally encroached on the Lake Victoria riparian reserve by extending the fences around their parcels of land beyond their demarcated boundaries;
  - b. A declaration that the communities living along Lake Victoria have a right to unhindered access to the lake through the roads of access provided for that purpose, save where such access is restricted or limited by law;
  - c. An order for the 1<sup>st</sup> Defendant to remove within 90 days from the date hereof the illegal perimeter walls built beyond the demarcated boundaries of his two parcels of land, Title Nos. Kisumu/Korando/3755 and 3756 and extending to the lake riparian reserve, and to demolish within the same period any structures constructed on the lake riparian reserve, and limit the developments on his two parcels of land to the demarcated boundaries of the said parcels of land.
  - d. An order for the 2<sup>nd</sup> Defendant to re-survey at his cost the land parcel, Title No. Kisumu/Korando/5232 within 90 days from the date hereof and re-open the public access road that traverses through the property, which was closed following the amalgamation exercise that gave rise to the property;
  - e. A permanent injunction restraining the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants by themselves or through their employees or agents from implementing or engaging in any activity or construction works which interfere with the Lake Victoria riparian reserve; and
  - f. Each party shall bear its own costs.

**DELIVERED AND SIGNED AT KISUMU ON THIS 29<sup>TH</sup> DAY OF SEPTEMBER 2025**

**S. OKONG'O**



## **JUDGE**

Judgment delivered virtually through Microsoft Teams Video Conferencing Platform in the presence of:

The Plaintiff in person

Mr. S.M.Onyango for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants

Mr. S.M.Onyango h/b for Mr. Wasuna for the 3<sup>rd</sup> Defendant

Mr. Karimu h/b for Mr. Gitonga for the 4<sup>th</sup> Defendant

N/A for the 5<sup>th</sup> Defendant

Ms. Anne-Court Assistant

