



Masinde v Munyasi (Environmental and Land Originating Summons E011 of 2022) [2025] KEELC 5663 (KLR) (31 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5663 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E011 OF 2022
EC CHERONO, J
JULY 31, 2025**

BETWEEN

CAPTAIN (RTD) CHARLES MASINDE APPLICANT

AND

VINCENT MAKHOKA MUNYASI RESPONDENT

RULING

1. This ruling arises from the Notice of Motion application dated 05/05/2025 seeking the following orders;
 - a. That this application be certified as urgent and be heard before disposal of this suit which has already commenced
 - b. That the Honourable Court be pleased to order ground visit for all parties to the suit property LR No Bokoli/Kituni/114 which is disputed ownership between the Plaintiff and the Defendant.
 - c. That the cost of this application be in the cause.
2. The application is supported by grounds apparent on the face of the application and the affidavit of Roselyne Khamala advocate sworn on even date. The deponent deposed that having taken over this matter midway from the previous advocates, she examined the facts of the case and the evidence on record and formed the opinion that a ground visit by the Court is necessary. She stated that she further opined that this would be in the interest of both parties as it will help the court to arrive at a fair well-reasoned decision to the satisfaction of both parties as it will have an opportunity to interact with area locals as well as the area chiefs and neighbours for a quicker expeditious resolution of the dispute.
3. By way of a response, the Defendant/Respondent filed a Replying affidavit sworn on 08/05/2025 where he stated that on 13/5/2024, almost one years ago, the plaintiff closed his case after calling 5



witnesses. That there is no basis for this court to visit the suit land to hear the evidence of village elders and local chiefs and other area wananchi as sought by the Applicant herein. That if this court visits the suit land and hears from the village elders, chiefs and wananchi, then it will mean that the plaintiff will have been granted a back-door to amend his evidence. He cited the case of *Maisha Mabari Mills Limited V Farm Spares Limited* [2022] eKLR.

4. The Plaintiff/Applicant filed a further affidavit sworn on 19/05/2025 and deposed that the observation of the suit property would help the court to better understand the documents produced before it. That this court's independence and impartiality should not be in question as the application is anchored in law. She stated that the court will be well positioned to appraise itself with the subject matter by the visit to observe the suit property, developments if any activities more so on the question of adverse possession and if it pleases, the court may inquire on the ownership of the dwellings on site and the persons who reside therein and for any clarifications from the parties if the court deem it fit and such inquires or such visit cannot be seen as re-opening the case. They stated that the purpose of the requested visit is primarily to make the Court understand the nature of evidence adduced by the parties. Lastly, they cited the case of *E. Kangve v E. Bwana Kampala HCCS no. 38 of 1989* and *Zzfwa Salongo & Another vs. Kafumbe High Court Kampala CA no. 330 of 2012*.
5. When the application came up for directions, the parties urged the court to make a finding on the application based on their affidavit evidence.

Analysis and Determination.

6. Having considered the application and the respective affidavit evidence, the only issue that arise for determination is whether the court should visit the locus in quo. Courts are empowered by the provisions of Order 18 Rule 11 and Order 40 Rule 10 of the Civil Procedure Rules, 2010 to inspect any suit ("Locus in Quo") property so as to help determine the real issues. Conventionally, the visit would take place prior, during or even immediately after the proceedings depending on the surrounding facts and inferences of the case.
7. In the case of *Beatrice Ngonyo Ndungu & another – Versus - Samuel K. Kanyoro & 2 Others* [2017] eKLR the court had this to say of the object of site visits by the court:-

“From time to time it becomes necessary for the court to visit a site with a view to helping it reach a just decision in a matter. It must however be remembered that all decisions of the court are based on an interpretation of facts and the law. Facts are to be presented before the court as evidence whether oral or written. Evidence is the sole route through which parties introduce their version of facts before the court. In an adversarial system the burden of proof is always on he who alleges and the court never goes out to seek facts on its own. It is always incumbent on parties to adduce sufficient evidence to prove the facts which they assert. On the other hand the law can be cited by parties in pleadings or submissions. The court can access the law on its own. Needless to state, parties are free to urge the court to interpret the law one way or the other. If the court visits a site, it can only be for purposes of receiving evidence which will assist it make a just decision. So long as a site visit is incapable of yielding any evidence or for that matter any admissible evidence then the judge will be no better than a tourist satisfying curiosities and taking photographs during the site visit. A court in session must perform judicial functions and must resist distractions that take it away from its mission.”

8. It is important for this court to point out that the purpose of a site visit is not to adduce fresh evidence nor venture onto the veracity of the evidence already adduced during cross-examination or fill in gaps



in the evidence adduced by the parties but purely to check and confirm the evidence lest the court runs into the risk of turning itself a witness in the case.

9. In this particular case, the Plaintiff/Applicant closed his case after calling 4 witnesses and the defence case is currently ongoing with DW1 having testified. The Plaintiff/Applicant asserts that the site visit will assist the court in understanding the subject matter by interacting with the locals and the evidence produced before it. The Plaintiff/Applicant states that this court would be able to determine who resides and owns the structures in the suit land. This court however does not understand how it will be able to make that determination by visiting the land. I believe an expert report and sufficient evidence by the parties in support of their respective cases would, without a doubt, be useful.
10. This court is not persuaded that the application seeking a site visit after the Plaintiff/Applicant has already closed their case is made in good faith. This court is of the considered view that the application is meant to fill gaps in the Plaintiff/Applicants case which, as I have mentioned, was closed. Litigation must be conducted in an orderly and timely fashion, and parties are expected to present their full case, including any request for a site visit during pre-trial conference or at least before they close their evidence. Allowing the applicant to reopen proceedings at this stage would not only offend the principles of finality and procedural fairness but would also risk prejudicing the respondent who has already prepared their case based on the understanding that the applicant's evidence is complete.
11. The court is not a stage upon which parties may test out evidence by trial and error. Procedural discipline is a necessary part of ensuring fairness to both sides. I find no sufficient justification for the belated request and hereby decline to exercise the court's discretion in favour of the Plaintiff/Applicant.
12. The application is accordingly dismissed with Costs to be in the cause.

DATED, SIGNED AND DELIVERED AT BUNGOMA THIS 31ST DAY OF JULY, 2025.

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HON.E.C CHERONO

ELC JUDGE

In the presence of;

Mr. Oira H/B for Mr. Wamalwa R for the Plaintiff.

Defendant/Advocate-absent.

Bett C/A.

