



REPUBLIC OF KENYA



Akute v Pop & 8 others (Environmental and Land Originating Summons E006 of 2025) [2025] KEELC 7332 (KLR) (29 October 2025) (Ruling)

Neutral citation: [2025] KEELC 7332 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

ENVIRONMENTAL AND LAND ORIGINATING SUMMONS E006 OF 2025

CK NZILI, J

OCTOBER 29, 2025

IN THE MATTER OF AN APPLICATION FOR ORDERS UNDER SS. 37 & 38 OF THE LIMITATION OF ACTIONS ACT, CAP 22, LAWS OF KENYA

IN THE MATTER OF THE PARCEL OF LAND KNOWN AS L.R. NO. 8954/2 (IR. NO. 49515)

BETWEEN

SAMSON TEELA AKUTE PLAINTIFF

AND

DANEIL SIMIYU POP 1ST DEFENDANT

BEN WANJALA MATUMBETI 2ND DEFENDANT

NANCY JOHN MUTULA 3RD DEFENDANT

EUNICE NAKHUMICHA WANJALA 4TH DEFENDANT

GRACE NALIAKA JOHN 5TH DEFENDANT

CATHERINE NASAMBU MAKOKHA 6TH DEFENDANT

GAMA ENTERPRISES LIMITED 7TH DEFENDANT

THE CHIEF LAND REGISTRAR TRANS NZOIA COUNTY.. 8TH DEFENDANT

THE DIRECTOR, LAND ADJUDICATION & SETTLEMENT OFFICER 9TH DEFENDANT

RULING

1. On 16/7/2025, the court dismissed an application dated 5/5/2025 in which the plaintiff/applicant was seeking a temporary order of injunction, pending hearing and determination of his originating



- summons dated 5/5/2025. As a consequence, the orders of maintenance of the status quo issued on 20/6/2025, pending the hearing and determination of the application, were discharged or vacated.
2. The applicant has now come back through two applications dated 22/9/2025, one seeking leave to serve a summons against the 7th defendant by way of substituted service. The reasons are that attempts to physically serve have been unsuccessful, as per the attached annexure to the affidavit of Collins Kigen, sworn on 22/9/2025 as annexure CK-(1). The applicant wants to effect the same by way of registered post.
 3. The second application seeks maintenance of the status quo. The reasons are contained on the face of the application and in the supporting affidavit of Collins Kigen.
 4. Substituted service is provided under Order 5 Rule 17 of the *Civil Procedure Rules*. The court must be satisfied that the summons cannot be served personally upon the respondent. The applicant seeks to serve the 7th defendant through substituted service. Service upon a corporation is provided under Order 5 Rule 3 of the *Civil Procedure Rules*. It can be through its registered office, through prepaid registered post, by courier, where it carries on business, and or through its last known address.
 5. The affidavit of service sworn by Geoffrey Masinde Sitati does not describe any attempts to comply with Order 5 Rule 3(a)(b) (i), (ii), (iii), and (iv) of the *Civil Procedure Rules*. Under that Rule, a party does not require leave to effect service through the registered post against a company. The applicant has not explained whether any other means provided were exhausted. The application lacks merit. It is dismissed with no orders as to costs.
 6. An order maintaining the status quo is meant to preserve the existing state of affairs based on an existing factual scenario. See *Republic -vs- National Environment Tribunal, Ex parte Palm Houses Ltd & Another* [2013] eKLR. By maintaining the status quo, a court strives to maintain the situation so that the substratum of the subject matter in dispute before it is not eroded or radically changed, or that one of the parties to the dispute is not negatively prejudiced. See *Kenya Airline Pilots Association -vs- Co-operative Bank of (K) & Another* [2020] eKLR.
 7. Status quo also relates to maintaining the subject matter in dispute or the state of affairs as they existed before the impugned action crept in pending the determination of the issue in contention. See *TSS Spinning & Weaving Co. Ltd -vs- NIC Bank Ltd & Another* [2020] eKLR.
 8. Status quo has been defined as an auxiliary order for the preservation of the situation as it exists in relation to pending proceedings before the hearing and determination thereto. It is distinguishable from an injunction, which is a discretionary remedy granted upon the establishment of a prima facie case. See *Republic -vs- The Chairperson Business Premises Rent Tribunal (Mombasa) Ex parte Baobab Beach Resort Ltd & Another* Mombasa Misc. Civil Appl. JR. No. 26 of 2000.
 9. The onus is therefore on an applicant to succinctly define the exact status quo. He must bring the full picture of the facts that exist so that the court is able to make an informed decision.
 10. In the ruling delivered on 16/7/2025, the court held that the applicant had not established a prima facie case for infringement of a right. His claim is based on adverse possession, which is contested by the respondents. A copy of the register or title deed, in line with Order 37 of the *Civil Procedure Rules*, has not been attached to the affidavit in support, just like it was in the application dated 5/5/2025. The order made on 16/7/2025 has not been reviewed, set aside, or overturned.
 11. What has now changed between 16/7/2025 and the present application is not clear. No fresh material that was not available at the time the court dismissed the application for temporary injunction and



vacated the existing orders of status quo has been made available. The court had earlier ordered the status quo pending the determination of the application.

12. The doctrine of *functus officio* dictates that once a court delivers its judgment or ruling, it cannot re-open or review the matter unless as provided under specific provisions of law to ensure certainty, finality, and justice. See *Raila Odinga -vs- IEBC & Others* [2013] KESC 9 [KLR]. Once a court has fully and finally adjudicated upon a matter or issue, it cannot re-open or reconsider the matter unless through a successful application for review. See *Telkom (K) Ltd -vs- Ochanda* [2015] KESC 18 [KLR] and *Kenya Airports Authority -vs- Mitubell Welfare Society & Others* [2016] eKLR.
13. In the present application, the court is not being asked to review or set aside its ruling of 16/7/2025. It is being asked to issue an order of status quo as if it has not determined whether or not to issue a temporary injunction to preserve the status quo pending hearing. A status quo application cannot be used as a mechanism for challenging a judge's reasoning or exercise of discretion. The revisiting of orders can only arise on an application brought under review based on an error appearing on the face of the record or the emergence of new and important evidence that could not, with reasonable diligence, have been adduced earlier.
14. I find the application lacking merit. It is dismissed with costs.
15. Orders accordingly.

RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALÉ ON THIS 29TH DAY OF OCTOBER 2025.

In the presence of:

Court Assistant – Dennis

Kigen for applicant present

Katama for Kithi for 1st – 6th defendants/respondents present

7th defendant absent

8th and 9th respondents absent

HON. C.K. NZILI

JUDGE, ELC KITALÉ.

