

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT SIAYA**  
**ELC APPEAL CASE NO. E016 OF 2023**

**NICHOLAS OCHIENG OTWALA.....1<sup>ST</sup>**  
**APPELLANT/RESPONDENT**

**EVANS JUMA OTWALA.....2<sup>ND</sup>**  
**APPELLANT/RESPONDENT**

**JOSEPHINE ANYANGO OTWALA.....3<sup>RD</sup>**  
**APPELLANTRESPONDENT**

**POLYCAP OMOLO OTWALA.....4<sup>TH</sup> APPELLANT/**  
**RESPONDENT**

**EMMANUEL OMONDI OTWALA.....5<sup>TH</sup> APPELLANT**  
**RESPONDENT**

**VERSUS**

**JACOB ACHWANYO ABONYO..... RESPONDENT**  
**/APPLICANT**

**RULING**

**BACKGROUND**

1. The judgement in this matter was delivered by this court on 24/01/2025 by Lady Justice A.Y. Koross. The applicant has filed two applications dated 15<sup>th</sup> April 2025 and 2/7/2025. I issued orders that the same be heard concurrently. I will start with the first in time.

**Application Dated 15/04/2025**

2. The application dated 15/04/2025 seeks the following orders; -

- 1) THAT this Honorable Court do peruse, read,, interrogate and issue its interpretation and directions of the judgment and Orders dated 24th January, 2025 delivered by Hon.A.Y Koross of Environment and Land Court at Siaya in ELC Appeal Case No. E016 of 2023.
- 2) THAT this Honorable Court do issue an Order of Status quo by the parties pre delivery of judgment in PM ELC No. E43 of 2021 at Bondo pending the issuance by this Honorable Court of its interpretation and directions
3. The application is premised on the following verbatim grounds; -
  - 1) That on 9<sup>th</sup> November, 2023, Senior Principal Magistrate J.P.Nandi delivered judgment in Bondo PM ELC No. E43 of 2021 which judgment was in favour of the Applicant/ Respondent herein.
  - 2) That the Respondents/ Appellants appealed against the judgment of SPM J.P.Nandi at Environment and Land Court at Siaya in ELC Appeal Case No. E016 of 2023.
  - 3) That on 24th January, 2025 Hon.A.Y Koross of Environment and Land Court at Siaya in ELC Appeal Case No. E016 of 2023 delivered judgment and orders in the matter.
  - 4) That the judgment and orders by Hon. A. Y. Koross are confusing and not understood by all the parties

and Advocates of the parties as well as each party has its own interpretation.

- 5) That as a result of the confusion and misunderstanding of the judgment and orders by Hon. A.Y.Koross , the dispute has accelerated between the parties over the suit land as each party is claiming the right over the disputed land and this is particularly so as the said judgment dismissed both the Judgment and orders in Bondo PM ELC No. E43 of 2021 and also the Appeal.
  - 6) The judgment and orders of Hon.A.Y Koross in ELC Appeal Case No. E016 of 2023 is travesty to justice.
  - 7) That this application will not prejudice the Respondents in any way as its seeks a just way to come to the conclusion of this matter.
4. The application is supported by the Affidavit of Jacob Achwanyo Abonyo the Applicant/Respondent in the Appeal sworn on 15/04/2025. The same rehashes the grounds stated above.
  5. The application is opposed by the replying affidavit sworn on 9/07/2025 jointly by the appellants Nicholus Ochieng Otwala, Evans Juma Otwala, Josephine Anyango Otwala Polycap Omolo Otwala, and Emmanuel Omondi Otwala.
  6. The appellants aver that once a court of law issues judgment, it becomes functus officio, having already dispensed with the appeal. That the application is an invitation of this court by the applicant to review the

matter/judgment delivered by this court on 24th January 2025 and come up with different findings contrary to what was delivered by this court in its judgment dated 24th January 2025 and without following the due process of law.

7. It is deponed that the applicant/defendant herein ought to have filed an appeal against this court's judgment within the legal stipulated timelines and has not demonstrated to court why he did not file an appeal against this court's judgment if he felt that the court arrived at erroneous findings as he averred in paragraphs 7 of his supporting affidavit.
8. The Respondents state that they properly understood the judgment and orders issued by this court, that this application is brought in bad faith following a realisation that time to file appeal had lapsed and an afterthought. The court is invited to dismiss the application.

### **Submissions**

9. The Applicants appellant submissions are dated 5/08/2025 and the Respondents are dated 27/10/2025.

### **Directions**

10. This court has anxiously and keenly perused the application and the responses thereto as well the submissions of the parties. I have formed the view that I must address the question whether this court as constituted should seat on a determination of the present application.

11. The applicant has invited the court to look at its judgement and interpret it to the parties. The other party states interalia that they have well understood the judgement. The judgement herein was delivered by my sister Korross J. who is still in the service of the judiciary albeit in the ELC at Machakos.
12. In my considered view it is my sister Judge who is best placed to consider the grounds upon which the court is called upon to interpret the judgement herein including the issue of jurisdiction.
13. The file shall therefore be forwarded to the learned Justice A. Y. Korros for a determination of the application dated 15<sup>th</sup> April 2025. I note that submissions by both counsels appearing have been filed on the application, parties shall appear before the judge for Mention on 5/05/2026.

**Application dated 2<sup>nd</sup> July 2025**

14. The application dated 2<sup>nd</sup> July 2025 seeks the following orders;-
  - 1) THAT this Application be certified as urgent and be heard ex-parte in the first instance.
  - 2) THAT pending the hearing and determination of this Application, this Honourable Court be pleased to issue a temporary injunction restraining the Respondents/Appellants, their agents, servants, workers or any persons acting on their behalf from entering, constructing, cultivating, harvesting, cutting

down trees or crops, or interfering in any manner whatsoever with the suit land.

- 3) THAT this Honourable Court be pleased to issue an order maintaining status quo as it existed before the judgment delivered on 24th January 2025 in Siaya ELC Appeal No. E016 of 2023, pending interpretation and directions thereof.
  - 4) THAT the Officer Commanding Bondo Police Station do supervise compliance with these Orders.
  - 5) THAT costs of this Application be provided for.
15. The application is premised on the grounds that the Applicant has been in occupation of the suit land for over 30 years. That Respondents have unlawfully encroached, destroyed property, constructed illegal structures and issued threats. That the matter is pending before this Honourable Court for interpretation of judgment; That the Respondents caused arbitrary arrests of the Applicant under Criminal Case No. E063/2025; That unless restrained, irreparable harm will result.
16. The application is also based on the supporting affidavit of Jacob Achwanyo Abonyo sworn on 2<sup>nd</sup> July 2025. The affidavit reiterates the above grounds. In addition, photos of the encroachment and destruction are attached. It is averred that the actions of the respondent are meant to intimidate and frustrate the applicant pending the interpretation of the judgement.

17. The application is brought under the provisions of sections 1A, 1B and 3A of the Civil Procedure Act and article 159 (1a, b, d) of the Constitution of Kenya 2010.
18. In view of the decision of this court to forward the file for the determination of the application dated 15/04/2025 and applying the inherent jurisdiction of this court under Section 3A, and having considered the depositions in the supporting affidavit to the application dated 2<sup>nd</sup> July 2025 the court must intervene in the interests of justice to ensure the status quo is maintained.
19. I find it necessary to highlight the meaning and rationale of an order of status quo explained in judicial decisions
20. The court in the case of **Fatuma Abdi Jillo v Kuro Lengesen & another [2021] eKLR** gave a distinction on the nature of status quo orders vis a vis injunctive orders, it was stated as follows: -

*“Murithi Jin Boabab Beach Resort as quoted by F. Tuiyot Saifudeen Abdullahi & 4 Others in Mombasa High Court Misc. Civil Cause No. 11 of 2012, described the nature of a status quo order as follows: “In my view, an order to Status quo to be maintained is different from an order of injunction both in terms of the principles for grant and the practical effect of each. While the latter is a substantive equitable remedy granted upon establishment of a right, or at interlocutory stage, a prima facie case, among other principles to be considered, the former is simply an*

ancillary order for the preservation of the situation as it exists in relation to pending proceedings before the hearing and determination thereof. It does not depend on proof of right or prima facie case. In its effect, an injunction may compel the doing or restrain the doing of a certain act, such as, respectively, the reinstatement of an evicted tenant or the eviction of the tenant in possession. An order for status quo merely leaves the situation or things as they stand pending the hearing of the reference or complaint."  
Emphasis is mine

21. In the case of **Thugi River Estate Limited & another v National Bank of Kenya Limited & 3 others [2015] eKLR, Onguto J (May his soul rest in peace)** stated that an order of status quo can be given by the court exercising its general jurisdiction and that the order need not necessarily be prayed by the parties and in fact, can be originated by the court.

"Firstly, an order of status quo will issue through a judicial process. Where the court in exercise of its general or statutory jurisdiction grants orders for maintenance in situ of a particular state or set of facts... the second or alternative order for status quo is the one issued by the court as a case management strategy. It is issued to provide assistance to the case. It also maintains a particular state of affairs or set of facts. Unlike a conservatory order or injunctive order, it is not descriptive. It is originated either by the court

*or by the consent of the parties. Often the court would not have been moved by either party. The court then expects an existing state of affairs or facts be preserved until a particular occurrence or until the courts' further orders. It is intended to also freeze the state of affairs.'*

22. My understanding of the status quo that requires to be maintained is that the applicant must remain where he is and that peace is maintained by both the parties pending the determination of the application dated 15<sup>th</sup> April 2025.

23. The following orders therefore issue on the two applications;-

**Application dated 14<sup>th</sup> April 2025**

24. The file shall be forwarded to the learned Justice A. Y. Korros for determination of the application dated 15<sup>th</sup> April 2025. The matter shall be Mentioned on 5/05/2026 before the Honourable Judge.

**The Application dated 2<sup>nd</sup> July 2025**

25. The application dated 2/7/2025 is disposed by issuing the following orders; -

- 1) An order hereby issues that the status quo on the suit properties South Sakwa Bar-Kowino/11245, South Sakwa Bar-Kowino/11246, South Sakwa Bar-Kowino/11247, South Sakwa Bar-Kowino/11248 and South Sakwa Bar-Kowino/11249 be maintained. That the Applicant shall be allowed to stay where he

is in occupation and both the parties shall maintain the peace pending the determination of the application dated 15/04/2025.

- 2) That upon determination in 1) above the status quo orders shall automatically terminate.
- 3) There shall be no orders as to costs.

Orders accordingly.

**Dated, signed and delivered at Siaya this 16<sup>th</sup> day of February 2026.**

**HON. JUSTICE A. E. DENA**  
**JUDGE**  
**16/02/2026**

**Ruling delivered virtually through Microsoft Teams Video Conferencing Platform in the Presence of:**

Mr. Onyatta for Respondent/Applicant

Mr. Mulinge for Respondents

Court assistant: Elisha Mboya