



REPUBLIC OF KENYA



KENYA LAW
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**Freudenthal & another v Ryrie & another (Environment and Land Case
E051 of 2023) [2026] KEELC 2468 (KLR) (28 April 2026) (Ruling)**

Neutral citation: [2026] KEELC 2468 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT AND LAND CASE E051 OF 2023**

FM NJOROGE, J

APRIL 28, 2026

BETWEEN

EMMANUEL FREUDENTHAL & ANOTHER PLAINTIFF

AND

SONIA RYRIE 1ST DEFENDANT

CHARLES BRUCE ARTHUR 2ND DEFENDANT

RULING

1. The motion dated 24th October 2025 seeks that order number 2 granted by the court on 15th October 2025 in the Notice of Motion dated 13th October 2025 be set aside to allow the said application to be heard fully on its merits.
2. The circumstances of the present application are that the application dated 13th of October came up on 15th of October 2025 for directions we are upon the god granted prayer number 2 thereof.
3. The order issued reads as follows

“In the interim prayer number two in the side application is granted as prayed.”

4. Prayer no. two in the application had been framed as follows:

“That pending the hearing and determination of this suit the plaintiffs and the defendants herein be directed to jointly appoint a registered surveyor and commission a survey over the 40-acre portion of land (from which it is alleged that brought numbers 676 derives) situated in the Kitangani Takaungu Adjudication Section, excised from the Mazrui ancestral lands and allocated to Usama Nabhan within 14 days from the date of this order. ”



5. The main ground relied on is that the order was granted without affording the defendants an opportunity to be heard notwithstanding that the intended survey directly affects numerous individuals and entities who are neither parties to this proceedings nor formally represented in the matter; that many families occupy the 40-acre portion and have proprietary and possessory interest while the plaintiffs' suit and pleadings exclusively concern a plot of land referred to as number 676 measuring approximate 4.3 acres; that the survey covering 40 acre portion is therefore ultra vires the pleadings and a gross expansion of the scope of this litigation; that ex parte interim orders should not issue where they prejudice other parties or determine substantive issues before inter partes hearing, and the order must have been issued in error.
6. This court has perused the court record for the present case. It is true that no response had been filed by the time that order was issued. Now there is a response by the second defendant vide an affidavit dated 24th October 2025 in opposition to the application dated 13th October 2025. I do not wish to get into the details in that affidavit as it concerns the merits of the said application.
7. This court has considered the plaintiff's submissions dated 4th November 2025. They also substantively delve into the merits of the application dated 13th October 2025 and I do not wish to get into the merits at the moment.
8. What is of concern is that the respondent in the application dated 24th October 2025 wishes to be heard before any substantive orders are given. A look at prayer number 2 of the said application shows that the same the order issued in effect compels that pending the hearing and determination of this suit the plaintiffs and the defendants herein do jointly appoint a registered surveyor and commission a survey over the 40-acre portion of land (from which it is alleged that brought numbers 676 derives) situated in the Kitangani-Takaungu Adjudication Section, excised from the Mazrui ancestral lands and allocated to Usama Nabhan within 14 days from the date of the order. It is true that the plaintiff was compelled into the exercised involuntarily by such order and without being heard first and in view of article 50(1) of the constitution the court may have been in error in granting the same in the absence of the defendant's counsel.
9. To be heard before a decision is made the right of every person is a constitutional right under Article 50(1). It cannot be taken away arbitrarily. Whereas the court may have deemed that it is a matter that simply involves a survey which would expedite the disposal of both the application and the suit, the affidavit evidence and the grounds in the present application suggest otherwise. Besides, serious allegations have been made, that other persons who are not parties to this case would be affected by such a survey. These are the issues that the parties would be entitled to address at the hearing of the application dated 13th October 2025.
10. I find that there is good reason to set aside the orders made on 15th October 2025 with respect to the application dated 13th October 2025 in so far as they ordered the survey to be conducted without having the opinion of the defendants on the issue being heard.
11. The application dated 24th of October 2025 therefore has merit and the same is granted in terms of prayer number 3 thereof. This matter shall be mentioned on 14th May 2026 for directions on the hearing of the application dated 13th October 2025.

DATED, SIGNED AND DELIVERED AT MALINDI ON THIS 28TH DAY OF APRIL, 2026.

**MWANGI NJOROGE,
JUDGE, ELC, MALINDI.**

