



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MALINDI

ELC NO. 109 OF 2014

ANDERSON

**MUNYAYA.....PLAIN
TIFF**

VERSUS

**JOHN KAVIHA RANDU.....
DEFENDANT**

RULING

- 1.** The plaintiff has petitioned the court for a judgment on admission pursuant to Sections 17 and 18 of the Evidence Act. The application is based on the facts outlined therein, notably that the plaintiff has concluded their case; the defendant, in paragraphs 3 and 4, acknowledged the plaintiff's claim but denied having any rights over the suit land.
- 2.** On the previous four occasions when the matter was scheduled for the defense case to be heard, the defendant failed to appear in court. However,

counsel indicated that the defendant intends to prepare and submit a survey report to contest the District Surveyor's report, which was submitted under the cover of a letter dated 26th July 2019, following a court order.

3. The defendant was granted leave to respond to the application because his counsel had become ill on the last hearing date. At the time of preparing this ruling, I had received submissions from counsel for the plaintiff but not from counsel for the defendant.
4. Based on the materials before me, the issues I frame for the Court's decision are whether to allow the current application seeking judgment on admission and who should bear the costs of the motion.
5. Counsel for the plaintiff submits that this suit was commenced by Anderson Mole Munyaya in 2014. The defendant filed a statement on May 17, 2016, admitting that the plaintiff is the registered owner of the suit land, Ngomeni Squatter Scheme/947. By an order dated May 18, .2018, Angote J. ordered:

"...that the extent of the boundaries between the parties' land, as settled, if possible, by the Registrar of Lands and the District Surveyor, be fixed by the Kilifi Scheme/947 and the Malindi Land Surveyor for the Ngomeni Settlement, and that a report be filed in this court within 45 days. The

parties to share the costs of fixing the boundary equally on a 50:50 basis."

- 6.** After this order, the District Surveyor, Malindi, filed a report under cover of a letter dated 26th June 2019. This same survey report, already filed in the court file in compliance with the above-mentioned order, was produced at the hearing of the plaintiff's case as plaintiff's Exh. 9. It is clear that the boundaries were fixed in compliance with the court order. A report was filed in the court file.

- 7.** When the matter came on for a defense hearing on October 14, .2025, the defendant's counsel was taken ill, and the assistant had no instructions to conduct the matter beyond applying for an adjournment. Despite the plaintiff's protests that this was an old matter and, according to him, there was no issue outstanding, following the admission in evidence of the survey report fixing the different suit land survey boundaries and the defendant's perennial default in failing to file a statement to contradict the District Surveyor's report, the plaintiff moved the court for merely procrastinating judgment on admission after realizing that the defendant had filed a statement of defense acknowledging the plaintiff's title and renouncing any interest in the suit land.

8. Counsel submits that in this case, the defendant admits that the plaintiff is the owner of the suit land. This is a judicial admission, made in the statement of defense, which stands on a higher ground than an "evidentiary admission." It can serve as the basis for the parties' rights. The defendant says that he has never had any interest in the plaintiff's said land. Instead, he says he is living on his three plots in the same neighborhood. There is no need to prove admitted facts. Admission is substantive evidence - *proprio vigore*. In the present case, the evidence of the District Surveyor fixing the boundaries of the plaintiff's land, filed in the court file with the court's leave and produced as plaintiff Exh. 9, has not been contradicted. The defendant has been given many chances to contradict, by cogent evidence, the only issue before the court: which plots he has built his family's houses or homesteads on. The rest of his defense is merely an evasive denial, which is tantamount to admission. In these circumstances, there is no issue outstanding to go to trial, as the defendant cannot contradict his own admission that he has no interest in the suit land without approbating and reprobating in the same pleading. Put differently, the

doctrine of estoppel estops the defendant from contradicting the admission he has made expressly in his statement of defense. Section 120 of the Evidence Act is instructive. Privity of contract or otherwise is not necessary for a party to benefit from an estoppel. In other words, the defendant's denial and renunciation that he never sold the land to the plaintiff in the first place are of no avail. (See **Eagle Star & British Dominions Insurance Co. v. Heller (1924) 140 S.E. 314 (Supreme Court of Virginia)**).

9. While I fully agree with the learned counsel for the plaintiff on the ingredients for judgment on admission, it should be noted that this matter has been heard on its merits and was awaiting the defense's filing. The defense has not submitted any evidence. This matter has been in court since 2014, with the survey report admitted into evidence. To my mind, the best course for the plaintiff is to seek closure of the defendants' case and obtain judgment on the merits, as the current application does not raise any matters not pleaded in the defense. At best, the application further delays the matter.

10. Consequently, the motion application dated August 2, 2025, is hereby dismissed, with directions that the matter be set for a defense hearing and judgment on the merits.

11. No orders as to costs.

Dated, signed, and delivered virtually in Nyeri on this 23rd day of April, 2026.

E. K. MAKORI

JUDGE

In the Presence of:

Mr. Kimani for the Plaintiff

Dennis: Court Assistant

In the Absence of:

Mr. Otara for the Defendant.