



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT MALINDI**  
**ELC CIVIL CASE NO.55 OF 2014**

**1. ABDULLAHI HARET MAALIM**

**2. ABDI AHMED HASSAN**

**3. ISMAIL A. KASSIM**

**4. ADEN MUKHTAR**

**5. BARE FARAH SAHAL.....PLAINTIFFS/RESPONDENTS**

**=VERSUS=**

**COUNTY GOVERNMENT OF TANA RIVER.....DEFENDANT/APPLICANT**

**R U L I N G**

**Introduction:**

1. On 12<sup>th</sup> September 2014, I allowed the Plaintiff's Application dated 3<sup>rd</sup> March 2014 for injunctive orders.
2. The Defendant has now filed an Application dated 5<sup>th</sup> December, 2014 seeking for the following orders:
  - (a) **That the Honourable court be pleased to review, vacate, and /or set aside the orders issued on the 12<sup>th</sup> day of September 2014.**
  - (b) **That in the alternative the Honourable court be pleased to discharge and/or vary and/or set aside the orders issued on the 12<sup>th</sup> day of September 2014.**
  - (c) **Any other or further or better relief that this honourable court may deem fit and just and convenient to grant in the circumstances.**
3. The Application is premised on the ground that the Defendant has recovered the Physical Plans for the entire County Government of Tana River which was not placed before the court and that the Physical Plans will enable the court make a proper assessment of the situation on the ground and a clear determination of the exact location of the disputed parcels of land.
4. According to the Defendant, the Plaintiffs tendered evidence of allotment letters that describe their parcels of land as located in Madogo and Sale location, which areas falls within Madogo Division

- and not Majengo Kinakomba location in Wanja Division.
5. It is the Defendant's case that the alleged letters of allotment to the Plaintiffs are not dated and have no proof of any minutes or procedural steps taken for allocation of the subject land to the Plaintiffs.
  6. According to the Defendant, there has been great tension after the order of this court of 12<sup>th</sup> September 2014 and security has been compromised.
  7. In his response, the 1<sup>st</sup> Plaintiff deponed that this court delivered its Ruling based on facts and evidence availed to it and that the maps attached on the Application do not mean anything.
  8. The 1<sup>st</sup> Plaintiff deponed that the Defendant is the custodian of Minutes; that the Minutes annexed on the Defendant's affidavit are from a Chief's Baraza and the Application is not made in good faith.
  9. I have considered the submissions filed by the parties.
  10. Order 45 Rule 1 of the Civil Procedure Rules allows a person aggrieved by an order of the court to apply for review upon discovering a new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of record, or for any other sufficient reason.
  11. The Defendant's Application for review and or setting aside my Ruling of 12<sup>th</sup> September 2014 is principally based on the ground that it has recovered the physical maps of the entire County Government of Tana River which was not produced before the court.
  12. The Map for Tana River County has been annexed on the Application. I do not understand how a County Government could not have availed to this Court the geographical map of the County which is a public document. The map showing the boundaries extent of a County is in my view the first document that any County Government should have in its records. How would a County Government carry out its political, economic and social functions without the map of the area it is supposed to govern?
  13. I am not persuaded that the Defendant in this matter could not procure the map of the Tana River County after due diligence when the Application dated 3<sup>rd</sup> March 2014 came up for hearing.
  14. What the Defendant is doing in this proceedings is to answer the questions that the court raised in its Ruling of 12<sup>th</sup> September 2014 by producing the maps that have all along been in its custody. In its Ruling, the court stated as follow:-

**“If indeed the Plaintiffs were allocated land by the Defendant's predecessor in an area which is different from what is captured in the PDP'S, then it was incumbent for the Defendant, as the custodian of the maps, including the Development Plans of the County Government of Tana River, to produce them to show to this court where Madogo, Sela and Majengo areas are in relation to the suit property.”**

15. In the said Ruling, the Court observed that the County Government's Physical Planner could not point out exactly where the Plaintiffs' land is notwithstanding that the Plaintiffs were in possession of the approved PDPs.
16. Now that the Defendant seems to have answers to the questions raised in the Ruling, and considering that the information in respect to the Locations and Divisions within the County were all along in the Defendant's possession, let the Defendant produce this evidence during trial.
17. The Ruling of this court was not premised on which location or division the suit properties are located, but on the fact that the Defendant had acknowledged that indeed the Plaintiffs were in occupation of the suit property.
18. The question of who between the Plaintiffs and Kinamulenda Women Farmers Association was lawfully allocated the land was also not addressed in my Ruling. That is an issue for trial.
19. In the circumstances, I find and hold that the Defendant's Application does not meet the threshold for the granting of an order of review or setting aside of a Ruling.
20. Consequently, the Application dated 5<sup>th</sup> December 2014 is dismissed with costs.

**Dated and delivered in Malindi this 26<sup>th</sup> day of June, 2015.**

**O. A. Angote**

**Judge**