



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**ELC CIVIL SUIT NO. 115 OF 2013**

**SWALEH HUSSEN SHERMAN SWALEH suing on his behalf and on behalf of AWADH  
SALEH and SAID SALEH SAID as their Attorney .....PLAINTIFF**

**VERSUS**

**KENYA RURAL ROADS AUTHORITY MOMBASA..... DEFENDANT**

**RULING**

1. The plaintiff/applicant moved the Court under Order 40 and Order 1 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act seeking temporary orders of injunction to restrain the defendants and or its employees from dealing, constructing, selling, wasting, damaging, intruding, trespassing and or interfering with plots Nos. Mombasa Block XIV/147, XIV/162, 177, 192 and 206 pending hearing and determination of the suit. The application was filed on 30th May, 2013 and obtained ex parte orders on the same date.
2. From the record, for one reason or another, the application did not proceed to hearing. On 26th August, 2013 parties agreed to dispose of the application by way of written submissions and have the interim orders extended which indeed were extended. The matter came up in Court on 22nd April, 2014 by which time none of the parties had not filed the written submissions. The Court made a note of this when Mukunya Judge stated that eight months later the parties had not filed their submissions and directed the application to proceed by way of viva voce evidence. On 11th April, 2014. On this date, the parties were absent and the matter stood over generally. The submissions on record shows filing of submissions by respondent on 17th February, 2014 and by the applicant on 15th May, 2014.
3. This application has been in Court for unnecessarily too long. The nature of the prayers sought in the plaint makes it a boundary dispute. Since the interim orders issued on 30th May, 2013 are still in force as when they were extended on 26th August, 2013, there was no time limit indicated. None of the parties have stated there has been any activity on the ground. To save on time, instead of going to the merits of this application or otherwise, I do make an order that the present application be determined as compromised in terms that the status quo obtaining as a result of the interim orders issued be maintained. In order to fast track the determination of the case, this Court suo moto direct that the county surveyor – Mombasa in the presence of the parties and their witnesses if need be do visit the disputed plots Nos. Mombasa Block XIV/147, 162, 177, 192 and 206 with a view to establishing their beacons and record whether the defendant has encroached on them or not. The cost of the survey if any to be shared by both parties equally. The surveyor to visit and file his report within 60 days of service of this order. The matter be mentioned after sixty days to confirm if the report is filed and for further orders.

Ruling signed, dated and delivered at Mombasa this **24th** day of **July**, **2015**.

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**A. OMOLLO**

**JUDGE**

**In the presence of:-**

Learned Counsel for the Plaintiff/Applicant Mukan

Learned Counsel for the Defendant/Respondent Mwangi

Court clerk Jescah