



**Kengen Staff Retirement Benefits Scheme v Weyilley Investments Limited & another; Pegi Company Limited (Interested Party) (Environment and Land Case Civil Suit E009 of 2023) [2024] KEELC 3853 (KLR) (24 April 2024) (Ruling)**

Neutral citation: [2024] KEELC 3853 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ENVIRONMENT AND LAND CASE CIVIL SUIT E009 OF 2023  
EK MAKORI, J  
APRIL 24, 2024**

**BETWEEN**

**KENGEN STAFF RETIREMENT BENEFITS SCHEME ..... PLAINTIFF**

**AND**

**WEYILLEY INVESTMENTS LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**ABDI SALAT AGALAB ..... 2<sup>ND</sup> DEFENDANT**

**AND**

**PEGI COMPANY LIMITED ..... INTERESTED PARTY**

**RULING**

1. Notice of Motion dated August 9, 2023 seeks injunctive relief(s). A temporary injunction was issued by this court on August 10, 2023 (Dena J.) Service of the order was effected.
2. On August 30, 2023 another application was filed by the applicant seeking to have the Respondents cited for contempt on grounds that the orders issued by this court were disobeyed and that other than damaging the wall, the Respondents went further and hived off the applicant’s land.
3. The two applications were opposed. Meanwhile, a third party was by consent joined in these proceedings by dint of the application dated October 13, 2023.
4. When the parties appeared before me through their counsels who submitted orally on the two applications, the court formed its mind that it was prudent to send the Registrar of this Court to determine “the status on the ground”.
5. She was there on February 7, 2024. She filed a Report whose findings were:

Location



- i. The subject land is located within Malindi Town, near Ocean Beach Resort and Spa, off Golf Beach Road. The property is next to Kijani Suites Apartments.

Status

- ii. The land in dispute has marking Y6 to Y8. The Interested Party's property, Y4, is the first property that one approaches from the road. The Defendant's property is adjacent to the Interested Party's property and this is where the dispute lies. This property is accessible through a black metallic gate which is owned by the Defendants.
- iii. The Plaintiff's property is adjacent to the Defendant's property. The Plaintiff accesses its property through a temporary gate made of iron sheets.
- iv. The demolished stone wall is stated to have been constructed by the Plaintiff. The wall separates the property owned by the Interested Party and the contested property which the Defendant lays claim. According to the Plaintiff, the wall is rightfully within its land. The debris from the stone wall shows that it extended from the main entrance all through leading to the beach.
- v. There are posts that separate the Defendant's and the Plaintiff's property. These posts were put up by the Defendant.
- vi. Inside the Defendants' property there is a pit latrine whose construction is disputed by the Plaintiff and the Defendants. There are concrete posts on the Defendants' property which they claim marks the boundary of their property.

Conclusion

- vii. The suit land claimed by the Plaintiffs and the Interested Party overlaps the Defendants' property.
6. From the report what emerges is that there seems to be either a boundary or ownership dispute - because each of the parties claims ownership of the suit property or encroachment which will require experts to resolve.
  7. At this point then, it will be difficult to cite and subsequently punish for contempt and or issue injunctive orders as proposed by the applicants. The best the court can do is to order for "the status quo" as obtained on the ground- each party to stick to its portion until this matter is heard and determined.

**DATED, SIGNED, AND DELIVERED AT MALINDI VIRTUALLY ON THIS 24<sup>TH</sup> DAY OF APRIL 2024.**

**E. K. MAKORI**

**JUDGE**

In the presence of:

Mr. Wafula for the Applicant

Mr. Gitonga for the Defendants

Court Clerk: Happy



In the absence of:

Ms. Bujra for the Interested Party.

