



Mahamud & 9 others v Wambua & 2 others (Environment & Land Case E049 of 2023) [2025] KEELC 2938 (KLR) (26 March 2025) (Ruling)

Neutral citation: [2025] KEELC 2938 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND CASE E049 OF 2023
NA MATHEKA, J
MARCH 26, 2025**

BETWEEN

**HUSSEIN ABDI MAHAMUD 1ST PLAINTIFF
ABDINOOR ABDULLAHI SHEIKH 2ND PLAINTIFF
ORTO SORI 3RD PLAINTIFF
OMAR MOHAMED ABDILLE 4TH PLAINTIFF
AHMED YUSUF 5TH PLAINTIFF
AHMED HADI & ISMAEL BURO 6TH PLAINTIFF
AMINA MAHAMUD DAGANE & SHUKRI ABDI 7TH PLAINTIFF
MOHAMED MAHAMUD KASSIM 8TH PLAINTIFF
ISMAIL HASSAN HUSSEIN 9TH PLAINTIFF
SAADIA ABDI HASSAN 10TH PLAINTIFF**

AND

**TIMOTHY MUTUA WAMBUA 1ST DEFENDANT
THE CHIEF LAND REGISTRAR 2ND DEFENDANT
ALI ADAN ABDI 3RD DEFENDANT**

RULING

1. The application is dated 6th September 2024 and is brought under Order 18 Rule 11 and Order 51 Rule 1 of the *Civil Procedure Rules* and Sections 1A, 1B, 3A and 63(e) of the [Civil Procedure Act](#) seeking the following orders;



1. That the matter be certified urgent and service be dispensed with in the first instance.
 2. That the Honourable Court do conduct a site visit (*locus in quo*) and inspect the suit property and generate a Report.
 3. That costs of this Application be in the cause.
2. It is based on the grounds that it has become necessary that the Honourable Court visits and inspects the locus quo of the suit property to establish the real status of the property as is on the ground. That the Plaintiffs' claim to have developed and or built houses on the suit property when actually that is not the case. That the Plaintiffs' claim to be living on the land with their families yet that is not the case. That it therefore absolutely necessary for the Honourable Court to visit and inspect the locus quo for an independent report to help the court make an informed decision when hearing and determining the suit. That the question as to whether the Plaintiffs are living on the suit property is key in this suit especially regarding the claim of adverse possession in their alternative prayer in the Amended Plaint. That the 1st Defendant has always maintained on the other hand that there is only one incomplete permanent building on the suit property and a wall constructed thereof, in which case it is important for the Honourable Court to have its own independent report in the circumstances. That it is in the interest of justice that this Application be allowed.
3. The respondents opposed the application stating that it is intended to waste the court's time. That the 1st Defendant has never controverted the fact that the Respondents have been in occupation of the suit property. That the main issue in this suit is ownership.
4. This court has considered the application and the submissions therein. The Applicant argues that the Plaintiffs' claim to have developed and or built houses on the suit property when actually that is not the case. That the Plaintiffs' claim to be living on the land with their families yet that is not the case. The Plaintiffs argue that the court issued temporary injunctive reliefs against all the Defendants from interfering with the suit property and has preserved the status quo. That visiting the scene is a waste of time and meant to delay the main suit which is the determination of ownership.
5. Section 1A(1) of the *Civil Procedure Act* provides that the overriding objective of the *Act* and the rules made thereunder is to facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes governed by the *Act*. Section 1B(1) of the said *Act* provides as follows-
- For the purpose of furthering the overriding objective specified in section 1A, the Court shall handle all matters presented before it for the purpose of attaining the following aims-
- (a) the just determination of the proceedings;
 - (b) the efficient disposal of the business of the Court;
 - (c) the efficient use of the available judicial and administrative resources;
 - (d) the timely disposal of the proceedings, and all other proceedings in the Court, at a cost affordable by the respective parties; and
 - (e) the use of suitable technology.”
6. Be that as it may, from the pleadings and documents on record it is not clear exactly what is on the ground given the opposing positions and it will be important to establish the status quo. I find that no prejudice will be suffered by the Plaintiffs/Respondents if the orders sought herein are granted. In the interest of justice I order that the Deputy Registrar ELC Machakos visits the suit property and file a report on the status of the same in court within the next 60 days.



It is so ordered.

DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 26TH DAY OF MARCH 2025.

N.A. MATHEKA

JUDGE

