



**Muranga Road Motor Mart Limited v Kingori & 5 others (Environment & Land Case E038 of 2022) [2023] KEELC 16964 (KLR) (20 April 2023) (Ruling)**

Neutral citation: [2023] KEELC 16964 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E038 OF 2022**

**LN MBUGUA, J  
APRIL 20, 2023**

**BETWEEN**

**MURANGA ROAD MOTOR MART LIMITED ..... PLAINTIFF**

**AND**

**JANE WAIRIMU KINGORI ..... 1<sup>ST</sup> DEFENDANT  
TABITHA WARUGURU MAINA ..... 2<sup>ND</sup> DEFENDANT  
NANCY WATURI NJONJO ..... 3<sup>RD</sup> DEFENDANT  
DIRECTOR OF SURVEY MINISTRY OF LANDS ..... 4<sup>TH</sup> DEFENDANT  
NAIROBI CITY COUNTY GOVERNMENT ..... 5<sup>TH</sup> DEFENDANT  
OCPD BURUBURU POLICE STATION ..... 6<sup>TH</sup> DEFENDANT**

**RULING**

1. This suit was filed contemporaneously with an application dated February 7, 2022 where plaintiff sought various orders restraining the 1<sup>st</sup> – 3<sup>rd</sup> defendants from any dealings in the properties being subdivisions of LR 11379/3/ (Embakasi).
2. On March 3, 2022 the aforementioned application was compromised by consent in lieu of maintenance of *status quo*. The court also gave other orders again via consent of the advocates in the following terms:

“The Director of Survey is to visit the site in company of the parties or their appointed representatives and to compile and file a report thereof.”

Subsequently, a report dated June 24, 2022 was availed before this court.



3. The 1<sup>st</sup> – 3<sup>rd</sup> defendants have now brought forth an application dated July 29, 2022 seeking orders to have the said report expunged from the records.
4. The application is based on the Supporting Affidavit of the 1<sup>st</sup> defendant (Jane Wairimu). The applicants contend that the Government surveyor who conducted the site visit is one Miriam Kigathi who prepared a report and gave it to them (applicants). They contend that the said report of Miriam Kigathi differs from the one of Wilfred Muchae, claiming that the report filed by Muchae has been doctored and he was never at the scene.
5. The plaintiffs have opposed the application vide the Replying Affidavit of one Francis Nganga Mundia dated September 19, 2022, averring that the claim of the applicants are fictitious and should be dismissed.
6. The 4<sup>th</sup> defendant has opposed the application via the Replying Affidavit of one Wilfred Muchae dated February 17, 2023. He identifies himself as a principal Land Surveyor in the department of survey, and he terms the application as vexatious and frivolous.
7. He avers that pursuant to the court order of March 3, 2022, he was instructed by Director of Survey to proceed to the scene of where the ground visit was conducted on April 8, 2022 and thereafter, he prepared a survey report. He contends that the report allegedly filed by one Mirium Kigathi who purports to have visited the site is false.
8. I have considered the issues raised herein. This is a situation whereby all the parties are in agreement that the scene visit was conducted on April 8, 2022. However, the applicants contend that the officer from survey department who conducted site visit was one Mirium Kigathi while plaintiffs and 4<sup>th</sup> defendant contend that it is Wilfred Muchae who conducted the site visit and prepared the report.
9. I find that the officer identified as Mirium Kigathe has not filed any affidavit to buttress the averments of the applicants. What more, the applicants have not demonstrated that they made any efforts to reach out to the said officer to file an affidavit to that effect, nor did they express their sentiments and or complaints to the relevant office that is the Director of Survey.
10. I decline to expunge the survey report from the records. The applicants are at liberty to call the said Miriam Kigathi as their witness to avail her report.
11. The application dated July 29, 2022 is hereby dismissed with costs to plaintiff and 4<sup>th</sup> defendants.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 20<sup>TH</sup> DAY OF APRIL, 2023 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

In the presence of:-

Joe Murage for Plaintiff

M/s Odhiambo holding brief for Mr. Bake for 5<sup>th</sup> Defendant

Were for the 1<sup>st</sup> - 3<sup>rd</sup> Defendants

Allan Kamau for Attorney General

Court assistant: Joan

