



REPUBLIC OF KENYA



**KENYA LAW**

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**In re Estate of Norah Okoyo Ongata (Deceased) (Succession Cause  
7 of 2023) [2023] KEHC 22964 (KLR) (28 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 22964 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT SIAYA  
SUCCESSION CAUSE 7 OF 2023  
DO OGEMBO, J  
SEPTEMBER 28, 2023  
IN THE MATTER OF THE ESTATE OF NORAH OKOYO  
ONGATA (DECEASED)**

**BETWEEN**

**GEORGE OMBIRO OBUNGA ..... PETITIONER**

**AND**

**CHARLES OGUTU OCHIRI ..... OBJECTOR**

**RULING**

1. The Protester herein Charles Ogutu Ochiri has opposed and protested the adoption of the Survey report filed herein and dated May 12, 2021. In the Affidavit in support of his opposition, the protester has deponed that the same is misconceived, incompetent and bad in law, defective and not in compliance with the court order since the Land Registrar visited the site in the absence of the County Surveyor. That even the elders present were denied audience and the map used was done contrary to court orders and amended without authority.

The parties have canvassed this objection by way of written submissions. In the submissions of the Objector, it was submitted that the Hon Justice Majanja had ordered the County Commissioner and the County Surveyor to determine what the protestor is entitled to on Parcel No Gem/Ramula/168 and prepare a report. That a report dated October 17, 2017 was prepared by the County Surveyor. And that following an application by the Petitioner, the court made an order for resurvey. A survey report dated April 24, 2017 was duly filed.

2. According to the Protester, the resurvey that was done on May 4, 2021 was fair as both parties were present. That should the Petitioner have been aggrieved by the findings of the Surveyor, he should have appealed to the Chief Land Registrar for recourse. That in case, Petitioner has not shown the specific actions of the Surveyor that were in line with his mandate in terms of conducting a survey. It was urged



that the Affidavit in opposition of Adoption of the survey report dated May 12, 2021 ought to be dismissed with costs to the Objector.

From the Petitioner's side, it was submitted that the resurvey was done without the participation of the parties including the County Surveyor contrary to the express orders of the court in respect of the repeat exercise. That though the elders were present, they were not given audience of the basis that it was not a "baraza". That this was only affirmation of the illegality of that Protestor and his agents had earlier through the illegal sub-division. And that the Registrar who attended the exercise were hell bent to reproduce the earlier visit.

3. I have considered the submissions of the 2 opposing sides. It is clear that what the Petitioner challenges herein is the adoption of resurvey report dated on May 12, 2021. This was a resurvey after the initial survey report was objected to, leading to the order of the court for a re-survey. The Objector / Petitioner has mainly raised the grounds that the County Surveyor was not present during the exercise and that the elders, though present, were denied the chance to make any presentations, contrary to the orders of the court.

The issue is therefore whether the re-survey was conducted in accordance with the orders of the court.

I have considered the said court order by which the Honourable court (the Hon FA Ochieng J, as he then was), made on October 9, 2018. The court issued the following orders: -

- i. That the District Commissioner and the County Surveyor will conduct a resurvey in line with the court order dated April 24, 2017 and will file their report in court within the next 14 days.
  - ii. That the Petitioner shall meet the costs for the resurvey.
  - iii. The case was fixed for mention on 30-10-2018 for further directions.
4. It has now turned out that the County Surveyor did not participate in the re-survey exercise. In the absence of the County Surveyor, who was specifically named in the order issued by the court, the said exercise of re-survey cannot therefore be said to have been competent or done in accordance with the order of the court.

It is for this reason that I find merit in the objection raised by the Petitioner against the adoption of the re-survey report. I accordingly order therefore that the re-survey report dated May 12, 2021 be expunged from the record of this case.

I accordingly order that a re-survey be done as earlier ordered by the court on October 9, 2018. A report of the said re-survey to be filed herein within 21 days. And the Petitioner shall bear the costs of this resurvey exercise. This case is then fixed for further directions on November 8, 2023.

Orders accordingly.

**DATED, SIGNED AND DELIVERED AT SIAYA THIS 28TH DAY OF SEPTEMBER, 2023**

**D.O. OGEMBO**

**JUDGE**

**Court:**

Ruling read out in court (online) in presence of Mr. Ogonda for the Objector / Charles Ogutu Ochir and in the absence of Mr. Aduol Nyanga though aware of the date.

**D.O. OGEMBO**

**JUDGE**



28.09.2023

Court:

It is further ordered:

- i. The Objector to serve Advocate for the Petitioner and Petitioner with this order.
- ii. The Objector to extract this order and serve same on the parties to this suit.
- iii. The Objector to serve hearing Notices.

**D.O. OGEMBO**

**JUDGE**

September 28, 2023

