



Adika & 12 others v Maina & 5 others (Environment & Land Case 315 of 2014) [2025] KEELC 1357 (KLR) (20 March 2025) (Ruling)

Neutral citation: [2025] KEELC 1357 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT & LAND CASE 315 OF 2014**

**E ASATI, J
MARCH 20, 2025**

BETWEEN

**GEORGE OMOLLO ADIKA 1ST PLAINTIFF
ROSEBELLA ACHIENG WAGA 2ND PLAINTIFF
CHARLES AWITI AGWANDA 3RD PLAINTIFF
JARED WAGARA 4TH PLAINTIFF
EDWINA ADHIAMBO OTIENO 5TH PLAINTIFF
LUCIA AKELLO ODONGO 6TH PLAINTIFF
WYCLIFFE OTIENO MIDEGA 7TH PLAINTIFF
GEORGE STEPHEN AYANGA 8TH PLAINTIFF
JUDITH A. MIGUDA ATTYANG 9TH PLAINTIFF
BEATRICE ANYANGO OWITI 10TH PLAINTIFF
NAAMAN ADUDA ABIRA 11TH PLAINTIFF
SIPROSA ACHIENG OGANGA 12TH PLAINTIFF
GORDON SAMUEL OGWA 13TH PLAINTIFF**

AND

**PAUL MAINA 1ST DEFENDANT
DISTRICT LAND REGISTRAR KISUMU 2ND DEFENDANT
CHAIR, NATIONAL LAND COMMISSION 3RD DEFENDANT
NATIONAL LAND COMMISSION 4TH DEFENDANT
ANDREW ONGUKA OMBWAYO 5TH DEFENDANT**



RULING

1. This ruling is in respect of the Notice of Motion application dated 15th October, 2024 brought on behalf of the 5th and 6th Defendants and expressed to be brought pursuant to the provisions of Order 11 Civil Procedure Rules and section 22 of the Civil Procedure Act.
2. The application seeks for orders that: -
 - a. The Director of Survey to provide the record and/or the certified record of the suit land including the Deed Plan to the Plaintiffs' title/Lease/Grant and witness summons to issue to him for purposes of trial;
 - b. The letter dated 8th April, 2014 by the Director Survey be expunged from the Plaintiffs' record;
 - c. The Land Surveyor Patrick Opiyo be cross-examined on his role of defending justice in this case.
 - d. Costs of the application.
3. The application was supported by the contents of Supporting Affidavit of Andrew Ombwayo, the 5th Defendant.
4. The Applicants' case is that the Plaintiffs' suit was based on a letter dated 8th April, 2014 by the Director of Survey which was initiated by the letter dated 24th October, 2013 by Land Surveyor Patrick Opiyo.
5. That when the Applicant applied for records of the suit property, he was initially given a map F/R No.216/20 from which the 1st Defendant's land had been processed on map F/R No.54/26.
6. That later the Applicant found out that the map had been altered and map F/R NO.275/87 had replaced the 1st Defendant's. That the Plaintiffs and the Director of Survey seem to be altering the records to suit the Plaintiffs.
7. Further that Land Surveyor Patrick Opiyo knew that the Plaintiffs' suit was a sham but nonetheless, initiated the process of legitimizing his title vide his letter dated 24th October, 2013.
8. That it is important that discoveries be made and directions be given on the same.
9. The application was opposed vide the contents of the Replying Affidavit sworn by George Omolo Adika, the 1st Plaintiff on 23rd October, 2024. The case of the Plaintiffs is that the application is misconceived, premature and an attempt to litigate issues meant to be canvassed in the main trial. That prayer 1 of the application can be remedied by witness summons issued during the hearing of the suit and the Applicant's attempt to compel the witness to adduce evidence at this stage is premature. That prayer 2 if granted will deny the court the opportunity to interrogate the evidence and will deny the Plaintiffs the opportunity to prove their case on a balance of probabilities. That prayer 3 can be handled at the hearing as the Surveyor will be a witness.
10. The application was argued orally on 30th January, 2025.
11. I have considered the application, the grounds of opposition thereto and the submissions.



12. Section 22 of the *Civil Procedure Act* pursuant to which the application is brought gives the court power to order for discovery. In the case of Oracle Productions Ltd vs Decapture Ltd & others [2024]eKLR it was held that pre-trial discovery is so central to litigation that the entire of Order 11 of the Civil Procedure Rules is now substantially devoted to it. And in *Lustman & Company (1990) Limited vs Corporate Business Centre Limited & 4 Others (Civil suit 311 of 2018) 2022) KEHC 42 (KLR) (Commercial and Tax) (4 February 2022) (Ruling)* the court held that discovery is a formal pre-trial process through which a party to litigation may seek to discover evidence and facts that are crucial to his case as long as the evidence/facts sought are relevant to the case. The court further held that whether or not the court should order discovery and production of documents is a matter of discretion to be exercised in a judicious manner for the ends of justice.
13. In the present case the application seeks firstly for an order that the Director of Survey do provide the record and/or the certified record of the suit land including the Deed Plan to the Plaintiff's title/Lease/Grant and witness summons to issue to him for purposes of trial. The applicant alleges that documents are being or have been altered to suit the plaintiffs' case. There is no evidence on this. Discovery is aimed at fair disposal of the suit. If production of the record in respect of the suit land and particularly the Deed plan requested for will aid fair disposal of the suit, I see no prejudice in making an order allowing the same.
14. The next prayer seeks for an order that the letter dated 8th April, 2014 by the Director of Survey be expunged from the Plaintiffs' record. I find that no basis has been laid for expunging the letter from the plaintiffs' documents. As the case is yet to be heard, the Defendants have a chance to testify, cross-examine and submit on the said letter. Only then will the court be able to determine as to whether the letter is authentic/admissible or not.
15. Regarding the prayer that the Land Surveyor Patrick Opiyo be cross-examined on his role of defending justice in the case, cross-examination is a right of the applicant which he will be entitled to exercise once the witness testifies at the trial.
16. I find that the application is partly merited and allow it in the following terms
 - i. The Director of Survey is hereby directed to produce and serve upon the applicant certified copies of the record for the suit land and the Deed Plans for the Plaintiffs' Titles/Lease/Grant within 30 days from the date of service of this order upon the Director of Survey and payment of the requisite charges, if any, by the applicant.
 - ii. The details of the suit land and the plaintiffs' titles/lease/grant in respect of which the certified record and Deed plan is being sought be served upon the Director of Survey by the applicant together with this order.
 - iii. Costs in the main suit.

Orders accordingly.

RULING, DATED AND SIGNED AT KISUMU, READ VIRTUALLY THIS 20TH DAY OF MARCH, 2025 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.

E. ASATI,

JUDGE.

In the presence of:

Maureen - Court Assistant.



No appearance for the Applicants.

No appearance for the Respondents.

