



REPUBLIC OF KENYA



KENYA LAW
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Sumbeiywo Primary School & 3 others v Aiyabei & 3 others (Environment & Land Case 11 of 2016) [2023] KEELC 17393 (KLR) (15 May 2023) (Ruling)

Neutral citation: [2023] KEELC 17393 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE 11 OF 2016**

EO OBAGA, J

MAY 15, 2023

BETWEEN

**SUMBEIYWO PRIMARY SCHOOL 1ST PLAINTIFF
PAUL CHEBIEGO 2ND PLAINTIFF
JACOB BARMAO 3RD PLAINTIFF
MICHAEL MAIYO 4TH PLAINTIFF**

AND

**KIPSAT AIYABEI 1ST DEFENDANT
KANGOGO CHEBIATOR 2ND DEFENDANT
NATIONAL LAND COMMISSION 3RD DEFENDANT
LAND REGISTRAR, UASIN GISHU COUNTY 4TH DEFENDANT**

RULING

1. On 7/12/2022 when this case was proceedings for hearing, PW4 Moses Kipkemboi Komen sought to produce a map containing the suit property. Mr Ochieng counsel for the 1st defendant objected to the production of the map arguing that the map sought to be introduced was introduced to these proceedings by way of a further supplementary list of documents which had been filed by the plaintiffs without leave of the court.
2. In response to the objection by Mr Ochieng, Mr Odongo for the 4th defendant argued that the map which was in the process of being produced was not a new document in that during the hearing of this case on 8/5/2001 before Justice Nambuye (as she then was), PW1 Michael Kandie Maiyo who has since died alluded to the said map which was marked as MFI 9. MR Odongo further argued that there



will be no prejudice suffered if the map is marked for identification for production by a surveyor. He further stated that counsel for the 1st defendant will have opportunity to cross –examine on the same.

3. In response, Mr Ogongo urged the court to deem the plaintiffs’ further list of documents as having been properly filed. He stated that he learnt of the demise of PW1 Michael Kandie Maiyo the previous day. He stated it is the late Michael Kandie Maiyo who introduced the map in 1998 when this case was filed.
4. In response to the submissions by the counsel for the plaintiffs and the 4th defendant’s counsel, Mr Ochieng argued that the introduction of the map was meant to fill the gaps which had emerged and that section 34 of the Evidence Act was clear on instances when evidence of a deceased person can be admitted.
5. I have considered the objection to the production and or marking of the map which was being introduced by PW4. I have also taken into account the submissions by Mr Ogongo and Mr Odongo. This case was filed in 1998. The case was fully heard and a judgement was written by Justice Nambuye (as she then was) who forwarded it to Justice Dulu to deliver. The judgement was duly delivered but there was an appeal which was filed before the Court of Appeal. An issue was raised before the Court of Appeal on grounds that the judgement which had been written by Justice Nambuye (as she then was) and delivered by Justice Dulu was neither dated nor signed by Justice Nambuye (as she then was) who wrote it nor signed and dated by Justice Dulu who delivered it.
6. The judgement was declared a nullity and the file was remitted back to the High Court for re-trial. The High Court later transferred the file to the Environment & Land Court. There is no contention that in the hearing before Justice Nambuye (as she then was), PW1 Michael Kandie Maiyo who is now deceased alluded to the map which is now being objected to. The map was marked as MFI 9. This is therefore not a new document.
7. This court is only concerned with dispensing justice. There is no doubt that there was a supplementary list of documents which was filed by the Plaintiffs without leave of the court. Mr Ogongo pleaded with the court to deem the filed documents as having been duly filed. Considering the history of this case and the importance of the maps in determination of the dispute in this matter, I allow Mr Ogongo’s request and proceed to deem the further supplementary list of documents filed on 5/12/2022 as having been properly filed.
8. On the issue of the map which was objected to, I find that this map has been known to the parties since 1998 and its introduction in evidence will not prejudice the 1st defendant. Michael Kandie Maiyo, died after he had testified. The witness who was in the witness box testifying is the one who took over as secretary of the farm from the deceased. I therefore allow the introduction of the map through PW4.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 15TH DAY OF MAY, 2023.

E. O. OBAGA

JUDGE

In the virtual presence of;

Mr. Ogongo for Plaintiffs.

Mr. Ochieng for 1st Defendant.

Ms. Obino for National Land Commission.



Mr. Odongo for 4th Defendant.

Court Assistant –Laban

E. O. OBAGA

JUDGE

15th MAY, 2023

