



Kagwe Tea Factory Limited v Kipchoim & 84 others; Kenya Forest Service & 3 others (Interested Parties) (Environment & Land Case 79 of 2023) [2023] KEELC 21200 (KLR) (26 October 2023) (Ruling)

Neutral citation: [2023] KEELC 21200 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT OL KALOU
ENVIRONMENT & LAND CASE 79 OF 2023
YM ANGIMA, J
OCTOBER 26, 2023**

BETWEEN

KAGWE TEA FACTORY LIMITED PLAINTIFF

AND

GRACE JELAT KIPCHOIM & 84 OTHERS & 84 OTHERS & 84 OTHERS & 84 OTHERS DEFENDANT

AND

KENYA FOREST SERVICE INTERESTED PARTY

DIRECTOR OF SURVEYS INTERESTED PARTY

DEPARTMENT OF LAND ADJUDICATION & SETTLEMENT INTERESTED PARTY

NATIONAL LAND COMMISSION INTERESTED PARTY

(FORMERLY NYAHURURU ELC NO. 58 OF 2018)

RULING

1. By a notice of motion dated 27.09.2022 and filed on 22.05.2023 expressed to be based upon Order 2 rule 15 & Order 51 rule 1 of the *Civil Procedure Rules*, 2010, Sections 1A, 1B, 3 & 3A of the *Civil Procedure Act* (Cap. 21) and all other enabling provision of the law the Plaintiff sought the following orders:
 - a. ...Spent.
 - b. ...Spent.



- c. That this honourable court be pleased to order a survey be conducted on all the suit parcels of land.
 - d. That the Laikipia County Surveyor with the assistance of the Land Registrar Laikipia District in which the suit premises is situated be directed to conduct a survey on the suit properties.
 - e. That the Officer Commanding Station Rumuruti avail security during the conduct of the survey.
 - f. That the Laikipia County Surveyor do file in court a survey report and a ground report highlighting the history of the suit properties from the time of creation of the land register in court.
 - g. That the survey and ground report be filed in court within thirty days of survey.
 - h. That the costs of this application be awarded to the Plaintiff/Applicant.
2. The application was based upon the grounds set out on the face of the motion and the contents of the supporting affidavit sworn on 19.05.2023 by Ivy Mouti the advocate having the conduct of the suit on behalf of the Plaintiff. It was contended that in order for the Plaintiff to make a meaningful amendment to the plaint it would require a survey and ground report from the government surveyor and the land registrar – Laikipia County on the history of the suit properties from the time of their creation and registration.
 3. The Plaintiff contended that the report from the land surveyor and the land registrar shall substantially settle some of the issues in controversy in the suit. It was also stated that it would be in the interest of justice for the application to be allowed since it shall not prejudice any of the parties to the proceedings.
 4. By the time the said application was listed for inter partes hearing on 24.07.2023 none of the parties had filed any opposition thereto. The advocate for the 2nd, 4th – 82nd Defendants informed the court that he did not wish to oppose the application. The Attorney General for the 2nd and 3rd Interested Parties and the 83rd and 84th Defendants was also not opposed to the application. It was only the 3rd Defendant's advocate who requested for more time to consider whether or not to file a response to the application. However, by the time of preparation of the ruling no response had been filed by the 3rd Defendant.
 5. The court has taken into account the nature of the action as well as the reliefs sought by the Plaintiff. The dispute amongst the parties arises from the sale of 82 parcels of land which the Plaintiff intended to acquire from the 1st – 82nd Defendants. Among the reliefs sought in the suit are a declaration that the suit properties were at the material time part and parcel of Marmanet Forest which was a gazetted forest and that the relevant sale agreements were void for fraud illegality and non-disclosure of material facts. The court is thus of the opinion that a comprehensive report on the history and status of the suit properties would not only help the disputing parties in settling or narrowing some of the issues in controversy but may also assist the court in resolving the dispute in a just and expeditious manner.
 6. In the circumstances, the court is inclined to allow the Plaintiff's application in the following terms:
 - a. The notice of motion dated 27.09.2022 is hereby allowed in terms of Orders (d), (e), (f) & (g) thereof save that the survey and ground reports shall be filed in court within 60 days upon service of the extracted order upon the concerned government officers.
 - b. Since the suit property is located within Laikipia County, the court file shall be transferred to Nyahururu ELC for trial and disposal of the suit.
 - c. Costs of the application shall be in the cause.



It is so ordered.

RULING DATED AND SIGNED AT OL KALOU THIS 26TH DAY OF OCTOBER, 2023 AND DELIVERED VIA MICROSOFT TEAMS PLATFORM.

Y. M. ANGIMA

JUDGE

In the presence of:

Ms. Ivy Mouti for the Plaintiff

Mr. Gitonga for the 2nd, 4th – 82nd Defendants

Mr. Kaburu for the 3rd Defendant

N/A for the Attorney General for 83rd & 84th Defendants and 2nd and 3rd Interested Parties.

N/A for the 1st Interested Party

C/A - Nyagah

