



**Maiyo & 4 others v Land Adjudication & Settlement Officer, Nandi  
County & 8 others (Environment & Land Petition 7 of 2021)  
[2023] KEELC 21030 (KLR) (19 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 21030 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET  
ENVIRONMENT & LAND PETITION 7 OF 2021  
MN MWANYALE, J  
OCTOBER 19, 2023**

**BETWEEN**

**JOEL KIPYEGO MAIYO ..... 1<sup>ST</sup> PETITIONER  
DAVID KIRWA KEMBOI ..... 2<sup>ND</sup> PETITIONER  
JONATHAN KIPSAINA KEMEI ..... 3<sup>RD</sup> PETITIONER  
DAVID KIPCHIRCHIR LELEI ..... 4<sup>TH</sup> PETITIONER  
JOHN KIPTARUS LELEI ..... 5<sup>TH</sup> PETITIONER**

**AND**

**THE LAND ADJUDICATION & SETTLEMENT OFFICER, NANDI  
COUNTY ..... 1<sup>ST</sup> RESPONDENT  
THE DIRECTOR OF ADJUDICATION & SETTLEMENT MINISTRY OF  
LANDS, HOUSING & URBAN DEVELOPMENT ..... 2<sup>ND</sup> RESPONDENT  
THE DIRECTOR OF SURVEYS MINISTRY OF LANDS URBAN  
DEVELOPMENT ..... 3<sup>RD</sup> RESPONDENT  
THE LAND SECRETARY MINISTRY OF LANDS HOUSING & URBAN  
DEVELOPMENT ..... 4<sup>TH</sup> RESPONDENT  
THE DIRECTOR OF KENYA FOREST SERVICE ..... 5<sup>TH</sup> RESPONDENT  
THE COUNTY CONSERVATOR OF FOREST NANDI  
COUNTY ..... 6<sup>TH</sup> RESPONDENT  
THE MINSITRY OF LAND & ENVIRONMENT NANDI  
COUNTY ..... 7<sup>TH</sup> RESPONDENT  
THE NATIONAL LAND COMMISSION ..... 8<sup>TH</sup> RESPONDENT**



**RULING**

1. On 3<sup>rd</sup> March 2020, this Court differently constituted in the presence of the parties ordered as follows;
  - i) That the directors of survey together with a representative of Kenya Forest Service mapping and survey Section to undertake a survey to confirm boundaries of the suit land.
  - ii) The Director of survey to produce the original map of the area in dispute within 30 days.
  - iii) That the parties to share the costs Petitioners and the Kenya Forest Service
  - iv) That mention on 15/2/2020.
2. An undated report was filed in Court on 5<sup>th</sup> June 2020 and the Petitioner has now filed an application seeking the sole substantive order of; -
  - i) Spent
  - ii) the Honourable Court be pleased to reject the undated report filed on 5<sup>th</sup> June 2020 by the 3<sup>rd</sup>, 5<sup>th</sup> and 6<sup>th</sup> Respondents pursuant to the Court order issued on 3/3/2020.In support of the application the Petitioner /Applicant has cited the following grounds;
  - i) that the 3<sup>rd</sup>, 5<sup>th</sup> and 6<sup>th</sup> Respondents did not comply with the Court order that was made on 2<sup>nd</sup> March 2020, and the non-compliance was deliberate and meant to render the entire proceedings nugatory.
  - ii) that the report was filed by the 5<sup>th</sup> and 6<sup>th</sup> Respondents as opposed to 3<sup>rd</sup> Respondents as directed by the Court.
  - iii) that the report was prepared in absence of the parties to the suit, it is not dated and not known when and where it was prepared
  - iv) that the 3<sup>rd</sup> Respondents has failed to produce the original maps of the area in dispute within 30 days as ordered by the Court.
3. The report is in breach of Article 35(i) 50, 60 (a) 40 (3) (b) 43, 47 of the Constitution as well as offends to national values under Article 10 of the Constitution.
4. In opposing to the application, a replying affidavit by 5<sup>th</sup> and 6<sup>th</sup> Respondents sworn by Anthony Musyoka was filed. In which Mr. Musyoka depones that the report herein was filed on 5/6/2020 but was inadvertently not dated and that the report was prepared by the joint efforts of the Director of Survey and the head of survey and mapping at Kenya Forest Service as directed by the Court.
5. Another replying affidavit was filed by Mr. Odongo Esquire Advocate on behalf of the 8<sup>th</sup> Respondent, in which Mr. Odongo depones narrating the history of the matter leading to the filing of the report sought to be expunged from the record.
6. The deponent stated that the report though undated was filed in Court on 5/6/2020.
7. The deponent states that the report was jointly prepared by a Mr. E. K. Aluda Head of Mapping and Survey in the Kenya Forest Service and John Mwaniki on behalf of Director of Surveys.
8. The Court directed parties to file submissions which the Court has considered.



9. At the outset, the application was provoked when the 3<sup>rd</sup> Defendant indicated that they would rely on the affidavit of Grace Ondiga as her witness statement and rely on the report as part of their evidence in the matter.
10. The petition is part – heard, the Petitioner, 5<sup>th</sup> and 6<sup>th</sup> Respondents had closed their case, the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup>, 4<sup>th</sup>, 7<sup>th</sup> and 9<sup>th</sup> Respondents were all relying of Ms. Grace Ondiga as their witness and the case would have been finalized had the application not been filed.
11. From the Court orders giving rise to the report and hence the application, the report was to be prepared by the Director of Survey with a representative of Kenya forest Service.
12. The gravamen of the application is that the report was prepared by the 5<sup>th</sup> and 6<sup>th</sup> Respondents and not the 3<sup>rd</sup> Respondent. I have perused the original report filed in Court and the same is signed by Mr. E. K. Aluda head of survey and mapping Kenya Forests Survey and a Mr. John K. Mwaniki who signed for Director of Surveys.
13. The allegation that is was prepared and filed by the 5<sup>th</sup> and 6<sup>th</sup> Respondents is thus misleading.
14. The preparation of this report did not require participation of any other person other than the two officials as per the Court order.
15. The Court order further required original maps to be filed in the matter which the Applicant had raised via a previous application but I note that the survey report filed herein has attached original maps No. NN001 and NN002 which cures the issue the Applicant raised of filing of the original maps.
16. The application is thus not merited as report was filed by the persons mandated by the Court to do so, and the original maps were filed alongside the report too.
17. The application is thus not merited and it is dismissed. The undated report shall assume the date it was filed.

**DELIVERED AND DATED AT KAPSABET THIS 19<sup>TH</sup> DAY OF OCTOBER, 2023.**

**HON. M. N. MWANYALE,**

**JUDGE**

In the presence of;

Mr. Ogongo for 5<sup>th</sup> and 6<sup>th</sup> Defendant

Mr. Murgor for Petitioner

