



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT BUNGOMA**  
**CIVIL SUIT NO. 68 OF 2009 (OS)**

**ALFRED KHISA MUNYANG'ANYI.....PLAINTIFF**

**VERSUS.**

**1. FLORIAN MUKHWANA NYAPARA**

**2. FELIX SUTO MBAYA.....DEFENDANTS**

**RULING**

[1]. By a consent of the parties dated 12<sup>th</sup> November, 2015, the parties herein agreed that the Lands in dispute be surveyed so that the applicant shall have the land he is occupying and cultivating be hived out and its acreage determined with the first defendant paying for the same and having him apply for the land control board for subdivision and transfer the subdivided portion to the applicant.

This matter came for mention on 25/2/2014. This was a date agreed by the parties and the order was adopted as the order of the Court. There has been no application to set aside the surveyors report. The respondent herein has failed to honour his part of the bargain forcing the applicant herein to bring this application, praying that the Deputy Registrar of this court to sign transfer forms, application for consent and mutation forms on behalf of the 1<sup>st</sup> defendant in regard to land parcel No. E. Bukusu/S. Nalondo/1960 in order to give effect to the order issued on 12/11/15.

[2]. The Respondent filed a replying affidavit. He admits that he was part of the consent order and that the surveyor came on to the land. He avers that the surveyor was accompanied by one Brian E. Kubwa. That the Surveyor followed the directions of the applicant and he acted contrary to the order of the Court and hived off excessive land that was not being used by the applicant but by a third party one Florence Mukhwana Mukhebi. That the surveyors report is contrary to the court order.

[3]. There is no application to set aside the surveyors report filed herein. There is no application to set aside the adoption of that order of the Court. A surveyor report should not necessarily please all. I find the application merited the same is allowed as prayed.

Ruling read in Open court in presence of the Counsels.

**Dated, Signed and delivered on 29<sup>th</sup> September, 2016.**

**S. MUKUNYA**

**JUDGE.**

**In the presence of:**

Court Assistant – Joy

Mr. Murunga: For the Plaintiff/Applicant

Mr. Were: For the Defendant/Respondent