



REPUBLIC OF KENYA



**KENYA LAW**  
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**Gori & 9 others v Karanja & 7 others (Environment & Land Case  
349 of 2017) [2022] KEELC 3751 (KLR) (28 July 2022) (Ruling)**

Neutral citation: [2022] KEELC 3751 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT & LAND CASE 349 OF 2017**

**JM MUTUNGI, J**

**JULY 28, 2022**

**BETWEEN**

**ELIKANAH ONYANCHA GORI ..... 1<sup>ST</sup> PLAINTIFF**  
**JOSEPH KIBE MUHORO ..... 2<sup>ND</sup> PLAINTIFF**  
**PETER DISMAS ANGWENYI ..... 3<sup>RD</sup> PLAINTIFF**  
**MARY WAMBUI MUIRU ..... 4<sup>TH</sup> PLAINTIFF**  
**ROBERT KABAGE ..... 5<sup>TH</sup> PLAINTIFF**  
**MARY MBUGUA ..... 6<sup>TH</sup> PLAINTIFF**  
**DAVID NDEGWA NDUGO ..... 7<sup>TH</sup> PLAINTIFF**  
**JOHN NJOGU MUCENE ..... 8<sup>TH</sup> PLAINTIFF**  
**STANLEY K THUKU ..... 9<sup>TH</sup> PLAINTIFF**  
**GRACE WANJIRU NJERI ..... 10<sup>TH</sup> PLAINTIFF**

**AND**

**SCHOLASTICA MUTHONI KARANJA ..... 1<sup>ST</sup> DEFENDANT**  
**THE COMMISSIONER OF LANDS ..... 2<sup>ND</sup> DEFENDANT**  
**NATIONAL LAND COMMISSION ..... 3<sup>RD</sup> DEFENDANT**  
**DIRECTOR OF SURVEY ..... 4<sup>TH</sup> DEFENDANT**  
**DIRECTOR OF PHYSICAL PLANNING ..... 5<sup>TH</sup> DEFENDANT**  
**THE CHIEF LAND REGISTRAR ..... 6<sup>TH</sup> DEFENDANT**  
**DIRECTORS OF MWARIKI FARM COMPANY LTD ..... 7<sup>TH</sup> DEFENDANT**  
**SIMON KARANJA MWANGI ..... 8<sup>TH</sup> DEFENDANT**



## RULING

1. On February 3, 2020, the court made an order directed at the land registrar and the surveyor in the following terms: -
  1. It is evident that the issue in this matter relates to physical location of land parcels Nakuru/municipality block 27/743,744,745,746,747,872,873,875,876,877,888,889.
  2. That the plaintiff contends that parcels numbers Nakuru/municipality block 27/888 and Nakuru/municipality block 27/889 have been super imposed on what otherwise was an access road.
  3. In the premise the court directs the land registrar Nakuru and the county surveyor to visit the suit parcels of land and to delineate the parcel belonging to the plaintiffs and the 7<sup>th</sup> and 8<sup>th</sup> defendants and in doing so ascertain and determine where the road access serving the plots ought to be.
  4. The land registrar and the surveyor to file a report within the next 90 days from today.
  5. That mention on May 4, 2020 for further directions.
2. After several court mentions without the surveyor filing his report, the surveyor eventually filed his report dated January 13, 2022 on January 17, 2022. The parties advocates took their time also to obtain copies of the report filed by the surveyor. As at July 15, 2022 when the court reserved the matter for ruling in regard to the report it was not clear whether the 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> defendants had been furnished with and/or had obtained a copy of the surveyor's report.
3. The court has reviewed the report and has particularly noted the conclusion where the report states thus:-

### Conclusion

- i. The physical location of parcels Nakuru/municipality block 27/888 & 889 as they appear on survey plan F/R No 332/67 is approximately 450m from parcels Nakuru/municipality block 27/743,744,745,746,747,872,873,875,876 & 877
- (ii) There is no survey plan that supports parcels Nakuru/municipality block 27/888 & 889 that appear on the registry index map (RIM) sheet 5 of Nakuru municipality block 27 (marked A3). The parcels have been superimposed on the 25m wide road and the 10m open space earmarked for tree planting. The amendment of registry index map (RIM) sheet 5 to reflect parcels Nakuru/municipality block 27/888 & 889 is therefore suspect and ought to be brought to question for it is the genesis of this land case.
4. Considering the first part of the conclusion, it is not understandable how the physical location of land parcels Nakuru municipality block 27/888 and 889 would be 450 metres from the plaintiffs parcels of land yet as per the survey plan F/R No 225/96 (annexture A1) they ought to be neighbouring the plaintiff's plots.
5. The second part of the conclusion suggests that land parcels Nakuru municipality block 27/888 & 889 may have been irregularly created on what was a road reserve and therefore ought not to be there. To adopt the surveyor's report for implementation would basically mean the titles to land parcels Nakuru municipality block 27/888 & 889 be revoked and/or cancelled and the registry index map (RIM) be amended appropriately.



6. The report by the regional surveyor does not indicate whether the parties, notably the 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> defendants who stand to be directly affected if the report were to be implemented were present and were given a hearing when the surveyors visited the site. They needed to be present and to be afforded a chance of being heard. It is possible they could have an explanation as to how they acquired the parcels of land which are registered in their names. It is a cardinal rule of natural justice that a party who is likely to be affected by the decision or an outcome must be accorded a chance of being heard before the decision is given. To the extent that there is no evidence that the said affected parties were afforded the opportunity of being heard, it would not be safe to adopt the surveyor's report as it is for implementation.
7. Given the circumstances, the court is of the view that the surveyors report should be admitted to form part of the court record and evidence. Any party who may wish to place reliance on the report shall be at liberty to call the regional surveyor as a witness to produce, explain and be cross examined on the report at the hearing of the suit.
8. Accordingly, it is the court's direction that the parties should comply with order 11 of the [Civil Procedure Rules](#) within the next 45 days from the date of this ruling. The matter is fixed for pretrial directions on September 26, 2022.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 28<sup>TH</sup> DAY OF JULY 2022.**

**J M MUTUNGI**

**JUDGE**

