



Githua v Kimaru; Muindi & 3 others (Interested Parties) (Suing on their own behalf and as Officials of Village D Welfare Association Members) (Environment & Land Case E046 of 2021) [2022] KEELC 3975 (KLR) (25 July 2022) (Ruling)

Neutral citation: [2022] KEELC 3975 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND CASE E046 OF 2021
CA OCHIENG, J
JULY 25, 2022

BETWEEN

GEORGE GICHUKI GITHUA PLAINTIFF

AND

JOSEPH MWANGI KIMARU DEFENDANT

AND

RICHARD NZIOKA MUINDI INTERESTED PARTY

CONSOLATA MWATHI INTERESTED PARTY

MARY MUSYIMI INTERESTED PARTY

KIMATU MUTUKU INTERESTED PARTY

**SUING ON THEIR OWN BEHALF AND AS OFFICIALS OF VILLAGE D
WELFARE ASSOCIATION MEMBERS**

RULING

1. What is before Court for determination is an objection raised by the Defendant's counsel on 10th May, 2022 in respect to production of the Valuation Report from Messrs Paragon Property Valuers Ltd. The Counsel relied on Section 36(1) of the [Survey Act](#) to anchor his objection. The Plaintiff's Counsel insisted that the said document was already produced as an exhibit. Further, that the Defendant's counsel was served with the impugned document awhile back and has raised the objection late in the day. The Counsel for the Interested Party associated herself with the objection by the Defense Counsel. Counsel for the Defense reiterated that integrity of the proceedings is key and lie in the competency of a witness.



2. At this juncture the only issue for determination is whether PW2 who is a registered surveyor working under a licensed Surveyor can produce the valuation report from Messrs Paragon Property Valuers Ltd.
3. PW2 in his introduction stated that he studied Geomatic Engineering which is equivalent to Land Surveying. He explained that he was hired by the Plaintiff to establish beacons to LR No. 15051/20 and prepared a report to that effect whose production forms the fulcrum of the objection. During cross examination he confirmed that he operates under a licensed surveyor but he is a registered surveyor, a member of the Institute of the Surveyors of Kenya and recognized by the Land Surveyors' Board.
4. The Survey Act describes a "licensed surveyor" as 'a surveyor duly licensed as a surveyor under or by virtue of the provisions of this Act but shall not include a Government surveyor'.

Section 21(1) of the Survey Act states that:

"Every surveyor shall carry out every survey undertaken by him in such manner as will ensure that the survey accords in all respects with the provisions of this Act and any regulations made thereunder, and shall be responsible for the correctness and completeness of every survey carried out by him or under his supervision."

While Section 36 (1) of the Survey Act provides that:

- "(1) no person, other than a surveyor, shall -
- (a) survey any holding or land for the purpose of preparing any plan which is attached to, or is referred to in, any document or instrument purporting to confer, declare, transfer, limit, extinguish or otherwise deal with or affect any right, title or interest, whether vested or contingent to, in or over any holding or land, being a document or instrument which is required to be registered, or is ineffectual until registered, under any written law for the time being in force relating to the registration of transactions in or of title to land; or
 - (b) Perform any survey which affects or may affect the delimitation of the boundaries, or the location of survey marks, of any holding or land registered or to be registered under any written law for the time being in force relating to the registration of land or of title to land."

5. In this instance, PW2 confirmed he works under a licensed Surveyor and was the one who undertook measurements of the suit land. The Defendant and Interested Party opposed the production of the report but PW2 confirmed being its maker. From evidence of PW2, I note he indicated that his role was to identify the position of beacons of the suit land. In relying on the legal provisions cited above, and in the interest of justice, I find that since PW2 was the maker of the document and worked under a licensed Surveyor, while the Survey Act allows this position, the objection is ill intended as this issue was never raised at the point of pre-trial directions. Further, I note the impugned report was already produced as an exhibit during PW1's examination in chief and nothing bars the Defendant including the Interested Party from furnishing their own Surveyor's report in Court.

In the circumstances, I will decline to uphold the objection.

Costs will be in the cause.



**DATED, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 25TH DAY OF JULY,
2022**

CHRISTINE OCHIENG

JUDGE

