



**Khamis v Lamir (Environment & Land Case 217 of 2019)
[2025] KEELC 3641 (KLR) (8 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3641 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE 217 OF 2019**

JO OLOLA, J

MAY 8, 2025

BETWEEN

SAID MZEE KHAMIS PLAINTIFF

AND

SEIF LAMIR DEFENDANT

RULING

1. By the Notice of Motion dated 31st October, 2023, Seif Lamir (the Defendant/Applicant) prays for an order that the Surveyor's Report dated 4th April, 2022 prepared by the Government Land Surveyor pursuant to the Court order dated 3rd March, 2023 be expunged from the court record.
2. The application which is supported by an Affidavit sworn by the Defendant is premised on the grounds:
 1. That the Plaintiff herein alleges to have bought the suit property from estate of the late Ali Nguma;
 2. That the suit property has never been part of the Estate of Ali Nguma but was initially owned by Mr. Mulji who gave it to one of his employee Kennedy Kitsao who subsequently sold it to the Defendant;
 3. That the purported transaction between the Plaintiff and the estate of Ali Nguma is therefore illegal and without any legal basis; and
 4. That when the Court ordered for the suit property to be surveyed, the surveyor proceeded in the absence of the Defendant and his representatives to put up new beacons thereby changing the boundaries.
3. Said Mzee Khamis (the Plaintiff) is opposed to the application. In his Replying Affidavit sworn on 16th May, 2024, he avers that he purchased the suit property after ascertaining that it belongs to the late Ali



Bin Nguma. The Plaintiff avers that the Defendant trespassed on his land and operated an unlicensed garage thereon.

4. The Plaintiff further avers that the Defendant challenged the findings by the Surveyor and filed his own Report dated 15th July, 2022. Later on the Defendant informed the court he was satisfied with the Surveyor's Report and the parties consented to the hearing to proceed.
5. I have carefully perused and considered the application and the response thereto. I have similarly perused and considered the submissions placed before the court by the Learned Advocates representing the parties herein.
6. By his application before the court, the Defendant urges the Court to order that the Survey Report dated 4th April, 2022 as prepared by the Government Land Surveyor be expunged from the Court record. It is the Defendant's case that the Court had directed that the Report be prepared in the presence of both parties but the Government Surveyor had proceeded in the absence of the Defendant to put new beacons on the land and to prepare the Report.
7. From a perusal of the record herein, it is evident that on 10th February, 2022, this Court did direct the Government Surveyor to prepare a Report in regard to the disputed portion or the suit property in the presence of both parties. It is further evident that the Government Surveyor proceeded to the suit property and prepared the Report dated 4th April, 2022.
8. On 15th June, 2022 when the matter came before the court, Counsel for the Defendant confirmed to the court that they had been served with the Report. It was however their case that the Defendant had been ambushed and did not participate in the survey exercise. On that basis, the Defendant proceeded to urge the court to expunge the Report and to direct that the survey be done a fresh.
9. Having heard the parties on the said issue, the Honourable Justice L. Naikuni then seized of the matter did find that the Report had indeed been prepared in the absence of the Defendant and directed that the Defendant should engage their own private surveyor to survey the suit land in the presence of both parties. The Learned Judge did not however make an order to expunge the Report dated 4th April, 2022.
10. The Court having failed to grant the order to expunge the said Report, I did not think it was open for the Defendant to wait for another 16 months and then make another application for the same Report to be expunged from the record. That was a matter that had already been considered by the court and if the Defendant was dissatisfied with the decision not to expunge the Report, the only option was to appeal the decision and not to make another application for the same Report to be expunged from the Record.
11. At any rate, I note from the record that the Defendant has since in compliance with the directions of the court filed two (2) Survey Reports which he intends to rely on at the trial. A Survey Report is nothing but an opinion and in my considered view the same do not bind the court in any way but shall be considered as any other evidence presented before the court.
12. In the premises, I did not find any merit in the Motion dated October 31, 2023. The same is dismissed with costs to the Plaintiff.

RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT MOMBASA THIS 8TH DAY OF MAY, 2025

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J.O. OLOLA
JUDGE



In the presence of:

Ms. Firdaus Court Assistant.

Ms. Taka holding brief for Mutubia Advocate for the Plaintiff

Mr. Mkan Advocate for the Defendant

