



**Kamau v Kamau (Environment & Land Case 466 of 2017)
[2024] KEELC 4982 (KLR) (2 May 2024) (Ruling)**

Neutral citation: [2024] KEELC 4982 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 466 OF 2017**

A OMBWAYO, J

MAY 2, 2024

BETWEEN

ESTHER WANJIRU KAMAU PLAINTIFF

AND

GEORGE CHEGE KAMAU DEFENDANT

RULING

1. There are two application on record. The application dated 18th December 2023 seeks an order that this court sets aside the survey report dated 8th December 2023 and an order for a resurvey of the suit parcels Dundori/Miroreni/Block2290 (Ndimu) and 2/2289 (Ndimu) which are subdivision of Dundori/Miroreni Block2/56(Ndimu). The application is based on grounds that it has come to the attention of the Applicant that a survey report affecting her land parcel Dundori/Miroreni Block 2/671 (Ndimu) has been filed in court without her participation. The regional surveyor has trespassed into the Applicant's said land parcel while purporting to resurvey land parcels Dundori/Miroreni Block 2/2290 (Ndimu) And Dundori/Miroreni Block 2/2289 (Ndimu) which are subdivisions of Dundori/Miroreni Block 2/56 (Ndimu).
2. According to the applicant, it is imperative and in the interest of justice that the adopted report dated 8th November, 2023 be set aside and or stayed to allow the Applicant's involvement in a fresh re-survey process. In the interest of justice, the Applicant is a necessary party in this case as her constitutional right to own property and enjoy quiet enjoyment of her land shall be further breached in the event that the said survey report is adopted in court without her involvement
3. The defendant filed grounds of opposition whose gist is that if the applicant is aggrieved by the surveyors report he should file another suit. That the application is an abuse of court process.
4. I have considered the application and do find that it lacks merits as no independent surveyor's report has been annexed to demonstrate that the regional Surveyor encroached into the applicants land number



Ndundori Miroreni/Block 2/671 The copy of the map exhibited as “Exhibit 2” clearly shows three distinct parcels of land thus Ndundori Miroreni/Block 2/2289, Ndundori Miroreni/Block 2/2290 and Ndundori Miroreni/Block 2/671, and there is nothing to show that Ndundori Miroreni/Block 2/2290 has encroached into Ndundori Miroreni/Block 2/671. The application therefore lacks merits and is dismissed with costs.

5. The second application is dated 5th March 2024. The application seeks that this Honorable Court be pleased to set aside the survey report dated 8th November 2023.
6. That upon grant of (a) above, this Court be pleased to order a re-survey of the suit land by both the regional surveyor and licensed surveyors for both parties in the presence of the Deputy Registrar, That the costs of this application be in the main cause. The application is based on grounds that the regional surveyor has failed to meet the terms of the court directions herein of sub-dividing the suit land into 2 equal portions. The regional surveyor has trespassed into Dundori/Miroreni Block 2/671 (Ndimu) which does not form part of these proceedings.
7. The regional surveyor seeks to alter the existing boundaries on the suit land that were put in place after a joint survey was conducted and agreed upon by parties herein as directed by the court and that the adoption of the report dated 8th November 2023 is prejudicial to the applicant to the extent that there is a contrary joint surveyors’ opinion from the survey conducted on 20th April 2022. The defendant/respondent will not be prejudiced if the prayers sought herein are granted. It is in the interest of justice to all parties that the suit land Dundori/Miroreni Block 2/56 (Ndimu) is re-surveyed in the presence of their respective surveyors in conjunction with the Regional Surveyor as proposed.
8. I have considered the application and do find that the applicant has not annexed any surveyor’s report that is contrary to report of the regional surveyor. It is not clear whether EWK1 is a letter or a report. Moreover, the letter refers to strange parcels of land thus 3619 and 3622 that cannot be comprehended by the court. The applicant has not annexed titles of the same. This court concludes that this litigation must come to an end. The application is dismissed with costs. The report of the regional surveyor to be implemented and the file be closed.

DATED SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 2ND DAY OF MAY, 2024.

A. O. OMBWAYO

JUDGE

