



Kithoka Service Limited v Pari Pet Holding Limited (Environment & Land Case E008 of 2024) [2024] KEELC 6597 (KLR) (7 October 2024) (Ruling)

Neutral citation: [2024] KEELC 6597 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND CASE E008 OF 2024**

**CK NZILI, J
OCTOBER 7, 2024**

BETWEEN

KITHOKA SERVICE LIMITED PLAINTIFF

AND

PARI PET HOLDING LIMITED DEFENDANT

RULING

1. On 6.8.2024, the court gave directions regarding an application dated 30.7.2024 for a site visit by the land registrar surveyor and county surveyor to visit the two disputed plots to determine the boundaries, extent of the encroachment and any interference with the access road and to furnish a report before the court.
2. The officers eventually filed before the court a report attached to a letter dated 13.9.2024 by Attorney General, County Director of Physical Planning, and a joint report by the land registrar and county surveyor dated 13.9.2024.
3. When the matter came up for mention on 16.9.2024 parties sought to be supplied with copies of the reports for them to seek fresh instructions from their clients and find a way forward.
4. Subsequently, the court directed for the copies to be availed to the parties and came up for mention on 3.10.2024.
5. The respondent filed a replying affidavit dated 12.9.2024 to the said application. In contrast, the applicant filed a further affidavit sworn on 24.9.2024 in which it attached a report by the Director of Land and Physical Planning Meru sent vide a letter dated 27.9.2023 following its complaint letter dated 20.6.2023, that had confirmed that the defendant had blocked its backyard.



6. When the matter came up on 3.10.2023, counsel for the applicant told the court that after studying the reports, his client was of the view that the court visits the locus in quo for the reports appeared confounded, for the court to make its observations on the ground.
7. Learned counsel for the respondent submitted that the further affidavit should be struck out for being filed without leave. On the issue of a scene visit, learned counsel opposed it, since the court was not an expert on boundaries and that, looking at the plaint, the plaintiff applicant was seeking damages for encroachment. Similarly, learned counsel submitted that even if the court were to visit the site, it would be an act in futility.
8. Learned counsel submitted that since the court had already commissioned the relevant experts who, together with the parties, visited the scene, prepared and filed their reports, the court should rely on those reports which were comprehensive as to whether there was encroachment, trespass, and interference with the boundary.
9. Further, learned counsel submitted that if any party had an issue with the reports, they were at liberty to seek for summons for the experts to attend court for any clarifications.
10. Again, learned counsel submitted that the trend has been that the Deputy Registrar and not the court would make the site visit on behalf of the court, and in this instance, there were no exceptional circumstances to warrant the court to pay a visit. He further urged the court to decline the invitation and order the application to be prosecuted.
11. In a rejoinder, learned counsel for the applicant urged the court to find exceptional circumstances were calling for a scene visit before the application dated 30.7.2024 was heard, for the reports were giving varying evidence. He also submitted that expert reports are not the ultimate, for they are only persuasive evidence. He however wondered why a party would be afraid of a scene visit unless there was a sinister motive or was hiding something. Further, counsel urged the court to find cogent reasons for the scene visits.
12. Order 18 Rule 11 of the *Civil Procedure Rules* allows a court to have a site visit to have a broad mind on the matter in question before it and to examine the suit property in depth at any stage of the suit. It may also visit a scene with a view of gathering further evidence to assist it in a decision-making function.
13. In *S. Kangye v E. Bwana Kimpala HCCC NO. 38 of 1989* the court said the purpose of the practice of visiting the locus in quo was to check on the evidence of the witnesses and not to fill in the gap in their evidence, lest the court risks turning itself into a witness in the case.
14. A scene visit is an exception rather than a general rule. See *RNP v NET & 4 others v China Road and Bridge* (2016) eKLR.
15. Looking at the reports prepared and this being a planning matter and which is also touches on riparian reserve, I think it would be prudent if the expert reports are presented before the court at the scene by the experts for the court to have a clear picture of what the substratum of the case is.
16. The officers shall avail the survey maps to show the extent of the riparian land. Summons shall also be issued to the National Environment Management Authority (NEMA) and Water Resources Management Authority (WARMA) officers to attend the site visit.

DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 7TH DAY OF OCTOBER, 2024

In presence of



C.A Kananu

Mr. Muriuki for the plaintiff

Mbaabu for the defendant

HON. C K NZILI

JUDGE

