



**Bore v Catholic Diocese of Eldoret Trustees (Registered) also known as
Diocese of Eldoret Trustees (Registered) & 4 others (Environment & Land
Case 15 of 2019) [2023] KEELC 21353 (KLR) (9 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21353 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE 15 OF 2019
EO OBAGA, J
NOVEMBER 9, 2023**

BETWEEN

THOMAS K EGO BORE PLAINTIFF

AND

**THE CATHOLIC DIOCESE OF ELDORET TRUSTEES (REGISTERED)
ALSO KNOWN AS DIOCESE OF ELDORET TRUSTEES
(REGISTERED) 1ST DEFENDANT
VIPUL RATILAL DODHIA 2ND DEFENDANT
SERVILLE INTERNATIONAL LIMITED 3RD DEFENDANT
BANK OF BARODA 4TH DEFENDANT
LAND REGISTRAR, UASIN GISHU LAND REGISTRY 5TH DEFENDANT**

RULING

1. On 6.11.2023 PW3 Tumo Silas Kipkazi took to the witness stand and testified. As he was about to produce a report prepared by him, the production was objected to by Mr. Nyairo for 2nd, 3rd and 4th Defendants and Mr. Nyambegera who was holding brief for Mr. Kipkemboi for 1st Defendant on the ground that the witness was not a qualified surveyor who would produce a report. The objecting counsel cited Sections 23 and 36 of the Survey Act to buttress their objection.
2. In response to the objection, Mr. Eshikuri who was holding brief for Mr. Kipnywekwei submitted that the witness is an Approved Assistant who is duly authorized to prepare a report and present it in evidence before the court. He pointed at regulation 33 of the Survey Regulations, 1994 and Regulations 2 which defines who an Approved assistant is.



3. I have looked at the [Survey Act](#) and the Survey Regulations of 1994 which were promulgated pursuant to Legal Notices No. 166 of 1994, Legal Notice No. 96 and Legal Notice No. 133 of 2020. Regulations of the Survey Regulations of 1994 defines an approved assistant to mean any person other than a licenced surveyor who assists a licensed surveyor in the execution of field surveys. Regulation 33 (1) Provides that no licenced surveyor shall employ an approved assistant without the written approval of the Board. Under Regulation 33 (4), the work done by an approved assistant shall be under the direct personal control of the licensed surveyor, who shall himself carry out sufficient check to ensure that the work done by such assistant is correct. The licenced surveyor shall accept full personal responsibility for all the work performed by the personal assistant.
4. Under Regulation 33 (5), it is the duty of the approved assistant to certify all field notes and computations made by him and those field notes and computations shall be signed by the approved assistant and countersigned by the licensed surveyor.
5. The manner in which field notes are to be prepared is provided for under Regulations 69 to 77 of the survey Regulations of 1994. Under Regulation 3 of the Licenced Surveyors Code of professional Conduct, 1997, a licensed surveyor accepts full responsibility for work done by an approved assistant. This is why under Regulation 33(6) a licenced surveyor is under obligation to supply a certificate certifying that all the work performed in the field and in office by his approved assistant has been carried out under his personal directions and he takes full responsibility for all work so performed.
6. Regulation 12 of the Licensed Surveyors Code of Professional Conduct, 1997 states that a licensed surveyor shall not allow an approved assistant to give evidence except under the licensed surveyor's full supervision.
7. Section 23 of the [Survey Act](#) gives powers to the Director, Surveyors and any person authorized in writing by the Director to enter upon land and carry out survey work. Regulation 31 mandates the Director to give letter of authority to persons authorized to enter upon land and carry out any work under the [Survey Act](#).
8. In the instant case, the witness (PW3) before he started testifying provided evidence that he was an approved and registered assistant under the supervision of Joel Odhiambo Akumu trading under the name Primeline Surveyors. He had letter of authority from the Director. He had been duly registered by the Land Surveyors Board and the Institute of Surveyors, as at the time he carried out survey, he had full authority to do so. I therefore find that he is authorized to carry out survey under supervision of Joel Odhiambo Akumu and can give evidence and produce reports prepared by him. Consequently, I overrule the objection by counsel for the 1st to 4th Defendants. The witness can produce the report prepared by him.

RULING ON OBJECTION DATED, SIGNED AND DELIVERED VIRTUALLY AT ELDORET ON THIS 9TH DAY OF NOVEMBER, 2023.

E. O. OBAGA

JUDGE

In the virtual presence of;

Mr. Nyambegera for Mr. Kipkemboi for 1st Defendant.

Mr. Kipnyekwei for Mr. Esikuri for Plaintiff.

M/s Cheruiyot for 5th Defendant.

M/s Odwa for Mr. Nyairo for 2nd to 4th Defendants.



Court Assistant –Laban

E. O. OBAGA

JUDGE

9TH NOVEMBER, 2023

