



**Kitiyo & another v Mwoi & 2 others (Land Case 184 of 2016)
[2020] KEELC 2145 (KLR) (30 April 2020) (Ruling)**

Michael Francis Chemonges Kitiyo & another v Stephen Lowaskou Mwoi & 2 others [2020] eKLR

Neutral citation: [2020] KEELC 2145 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE**

LAND CASE 184 OF 2016

FM NJOROGE, J

APRIL 30, 2020

BETWEEN

MICHAEL FRANCIS CHEMONGES KITIYO 1ST PLAINTIFF

**THE REGISTERED TRUSTEES, BIBLE CHRISTIAN FAITH
CHURCH 2ND PLAINTIFF**

AND

STEPHEN LOWASKOU MWOI 1ST DEFENDANT

THE CHIEF LAND REGISTRAR 2ND DEFENDANT

THE HON. ATTORNEY GENERAL 3RD DEFENDANT

RULING

1. This is a ruling on the application dated 24/10/2019 and filed in court by the 1st plaintiff on 25/10/2019 seeking the principal orders that this court be pleased to make an order that a Government Surveyor do visit parcels of land Kitale Municipality Block 3/973 and Kitale Municipality Block 3/974 and file a report detailing the position on the ground and that the OCS Kitale Police Station do provide security for the surveyor's visit.
2. The application has been brought under Sections 1A, 3 and 3A, 63(e) of the *Civil Procedure Act*, Order 1 of the *Civil Procedure Rules*.
3. The grounds upon which the application is made are that it is vital for the County Surveyor to confirm the correct position on the ground which would assist the court reach a sound decision in determining this matter; that the 1st plaintiff's argument is that the two parcels of land Kitale Municipality Block 3/973 and Kitale Municipality Block 3/974, mutated from the mother title Kitale Municipality Block 3/474; that the 1st plaintiff built a school on Kitale Municipality Block 3/973 way back in 2006 which



is still running to date; that the 2nd plaintiff has built a church on plot Kitale Municipality Block 3/974 and that the 2nd and 3rd defendants argument is that Kitale Municipality Block 3/973 and Kitale Municipality Block 3/974 have no relation to title Kitale Municipality Block 3/474.

4. The application is supported by a sworn affidavit 1st plaintiff, dated 25/10/2019 and a further sworn affidavit dated 20/12/2019.
5. The replying affidavit of the 1st defendant was filed on 5/12/2019. He states that based on the conversion table the titles held by the plaintiffs are not genuine. He exhibits a copy of the conversion table. He maintains that this case is purely about the genuineness of the titles held by the plaintiffs and an order of survey will prejudice the parties.
6. The 3rd defendant filed its replying affidavit sworn by one Edward M. Wafula on 19/2/2020. He states that the dispute is not about boundaries but rather ownership which cannot be resolved by help of a surveyor; that only viva voce evidence and production of documents can help resolve the dispute and that from the contents of the Registry Index Map plot numbers 973 and 974 are located far away from the land occupied by the plaintiffs.
7. The 1st defendant filed his submissions on 6/2/2020 and the plaintiff on 12/2/2020. I have considered the application, the response and the submissions.
8. In this court's view the issues surrounding the suit land will begin crystalize once evidence is taken. It is not possible for now to state that the instant application has established good grounds for an order that the surveyor makes a visit to the site and the application is premature.
9. For now it is sufficient for the parties to call their evidence in support of their respective cases.
10. Subsequently the court will after hearing the parties determine, even upon an oral application, whether it is necessary for the surveyor to visit the site.
11. I hereby dismiss the application dated 24/10/2019 with no orders as to costs.

DATED, SIGNED AND DELIVERED VIA TELECONFERENCE AT NAIROBI ON THIS 30TH DAY OF APRIL, 2020.

MWANGI NJOROGE

JUDGE.

In the presence of :

Mr Nyamu for the 1st defendant;

Ms Mukulo holding brief for Mr Ambutsi for the plaintiff;

N/A for the 2nd and 3rd defendants.

Hon Mercyline Lubia, Deputy Registrar.

Further proceedings on 30/4/2020.

Mr Nyamu:I apply for leave for the 1st defendant to file further documents. The documents were in the possession of the Lands Department. They are necessary in this case. The conversion table mentioned in the ruling was obtained only later. It is mentioned in the ruling.

Ms Mukulo: No objection.

Court:Application is granted. The 1st defendant is granted leave to file and serve further documents and a list of documents in this suit, and if necessary, any further statements that may be needed,



within 21 days. Corresponding leave is granted to the plaintiff to respond within 14 days of service to those filings by the 1st defendant. Mention before the DR on 9/6/2020 for fixing a hearing date for the main suit.

