



REPUBLIC OF KENYA



KENYA LAW
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**Koyop v Lomukerang & another (Environment and Land Case
E008 of 2022) [2025] KEELC 6166 (KLR) (24 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6166 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT AND LAND CASE E008 OF 2022**

CK NZILI, J

SEPTEMBER 24, 2025

BETWEEN

SOLOMON KIPRUGUT KOYOP PLAINTIFF

AND

CHARLES LOMUKERANG 1ST DEFENDANT

**THE CHIEF OFFICER, LAND & PHYSICAL PLANNING WEST POKOT
COUNTY 2ND DEFENDANT**

RULING

1. The court is asked to allow filing of a surveyor's report out of time, and for the said report to be produced by the maker. The reasons as contained on the face of the application dated 8/7/2025, and a supporting affidavit of Solomon Kiprugut Koyop are that; following trespass to land, a report was made to the OCS Kaibos, a county surveyor was mandated to and did visit the locus in quo on 20/1/2022.
2. It was deposed that the said officer took out a sketch report and findings, but unfortunately retired before supplying the report. The applicant deposes that the report is dated 22/1/2022 and was filed before the court in handwritten form, but has since typed the same.
3. The applicant urges the court to allow the application; otherwise, there will be no prejudice to the defendants, after all, the report is similar to the one included in the original list of documents.
4. It is on record that after pleadings herein closed, pretrial directions were given, and the matter was listed for hearing. After PW1 testified on 10/3/2025, among the exhibits produced by PW1 was a survey sketch map as P. Exhibit. No. 1(a), (b), and (c) and an OB report as P. Exhibit. No. 6.
5. PW1 told the court that after the OB report, a county surveyor visited the land, confirming that there was trespass to the suit land, as per the report dated 20/1/2022 and 17/4/2024. After PW1, PW2, and PW3 took the witness stand and completed their testimony. It is at this juncture that learned counsel



- for the plaintiff made an application to call the maker of P. Exhibit No. 4(a), (b) and (c), to shed light on the report. The court reluctantly adjourned the matter and issued a witness summons to the maker for further hearing on 8/7/2025.
6. Come 8/7/2025, the court was told that the maker of the report had retired, and thus, there was a need to introduce a surveyor's report, hence the application dated 8/7/2025.
 7. Adduction of new evidence generally was discussed in *Mohamed Abdi Mohamed v Ahmed Mohamed & Others* [2018] eKLR. The parameters a court must consider include :
 - (a) Relevance of the evidence.
 - (b) Capability to influence or impact the result of the verdict.
 - (c) Inability to obtain it with reasonable diligence for use at the trial or it was not within the knowledge of the applicant.
 - (d) Credibility of the evidence.
 - (e) It is not voluminous.
 - (f) If the applicant knew about the evidence.
 - (g) It is not aimed at removing vagueness or to seal loopholes or weak points in the case.
 - (h) Proportionality and prejudice to the opposite party.
 8. In *Safe Cargo Ltd v Embakasi Properties Ltd & Others* [2019] eKLR, the court said that leave to produce additional evidence should be used sparingly and only where it is shown that the evidence is fresh and would significantly impact the case. In *Peter Kariuki Gitbaiga & Another v Betty Rashid* [2016] eKLR, the court held that it is not the duty of the court to assist parties in fishing for, gathering, and or retrieving evidence.
 9. In *Mansukhalal Jesang Maru v Frank Wafula* [2021] eKLR, the court observed that at a pretrial conference, parties weigh in their case and confirm to the court that they are ready for trial; hence, after this, the ship is ready to sail, unless there is a tsunami or hurricane.
 10. In *Johana Kipkemei Too v Hellen Tum* [2014] eKLR, the court observed that parties are supposed to furnish their pleadings and documents to each other as per Order 11 Rule 7 of the *Civil Procedure Rules*. The court also held that Orders 3 and 7 of the *Civil Procedure Rules* are aimed at full disclosure of evidence to avoid trial by ambush.
 11. In *Raila Amolo & another v Independent Electoral and Boundaries Commission* [2013] eKLR, the court said that parties are duty-bound to comply with timelines for a fair and level playing field; otherwise, such omissions which are foreseeable should be avoided. The court said that to admit documentary evidence outside timelines is discretionary, where a court must exercise caution and care in allowing for such evidence.
 12. Applying the foregoing principles to the instant case, the defendants do not dispute the relevance and the impact of the report. Whether or not to reopen an ongoing case is a discretion of the court to be exercised judiciously and in the interest of justice. The critical question herein is what would be the impact of leaving out the maker of the report to come and produce it, as opposed to the prejudice likely to be suffered by the defendants in the circumstances.
 13. The defendants have not expressed the prejudice that they will suffer, nor have they said that the report will fill in gaps to the plaintiff's case. The delay in applying has not been termed inordinate or



unreasonable. The applicant has explained the circumstances of not obtaining the typed copy due to the retirement of the witness.

14. In *Susan Wavinya Mutavi v Isaac Njoroge & Another* [2020] eKLR, the court held that the evidence must be credible, though it need not be incontrovertible. I am satisfied that it is in the interest of justice to grant the prayers sought. Costs to the defendant in any event.
15. Orders accordingly.

RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 24TH DAY OF SEPTEMBER 2025.

In the presence of:

Court Assistant – Dennis

Arunga for the 1st defendant present

Wanyonyi for plaintiff absent

Odeyo for the 2nd defendant present

HON. C.K. NZILI

JUDGE, ELC KITALE.

