



**Agalo v County Government of Trans Nzoia & 9 others (Environment and Land Case 35 of 2017) [2025] KEELC 6733 (KLR) (1 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 6733 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KITALE  
ENVIRONMENT AND LAND CASE 35 OF 2017  
CK NZILI, J  
OCTOBER 1, 2025**

**BETWEEN**

**PETER MIDIMO AGALO ..... PLAINTIFF**

**AND**

**COUNTY GOVERNMENT OF TRANS NZOIA ..... 1<sup>ST</sup> DEFENDANT**

**COUNTY LAND REGISTRAR TRANS NZOIA ..... 2<sup>ND</sup> DEFENDANT**

**ATTORNEY GENERAL ..... 3<sup>RD</sup> DEFENDANT**

**CABINET SECRETARY LANDS & PHYSICAL PLANNING .... 4<sup>TH</sup> DEFENDANT**

**CHIEF LAND REGISTRAR ..... 5<sup>TH</sup> DEFENDANT**

**DIRECTOR PHYSICAL PLANNING ..... 6<sup>TH</sup> DEFENDANT**

**COUNTY SURVEYOR TRANS NZOIA ..... 7<sup>TH</sup> DEFENDANT**

**DIRECTOR SURVEYOR ..... 8<sup>TH</sup> DEFENDANT**

**PHYSICAL PLANNER TRANS NZOIA ..... 9<sup>TH</sup> DEFENDANT**

**INSPECTOR GENERAL OF POLICE ..... 10<sup>TH</sup> DEFENDANT**

**RULING**

1. While there is a pending ruling in an application dated 25/6/2025 seeking to set aside the judgment delivered on 11/6/2025, the plaintiff has once again moved the court, requesting the court to make a site visit on Kitale Municipality Block 4/4, before delivery of the ruling scheduled for 8/10/2025.
2. The application is premised on Order 18 Rule 11 of the Civil Procedure Rules. The applicant prays that there be a site visit to inspect the locus in quo, to verify or clarify the physical location of the disputed land, due to the conflicting evidence in this file.



3. In the supporting affidavit sworn by Peter Midimo Agalo on 7/8/2025, the applicant deposes that the visit will be necessary for the just determination by this court. The applicant deposes that the court should schedule an appropriate date before the ruling, for the visit in the presence of all the parties and their advocates, for the court to record observations, to understand the context of the dispute, which may not have been clear from the documents presented before the court or in the witness testimonies.
4. Section 22 of the Civil Procedure Act gives the court power to order discovery, inspection, production, impounding, and other modes of obtaining material objects producible as evidence. Sections 52, 54, and 55 of the Civil Procedure Act refer to incidental proceedings, including commissions. In Beatrice Ngonyo Ndungu & Another -vs- S.K. Kanyoro & Others [2017] eKLR, the court held that a court's visit to the site can only serve the purpose of receiving evidence which will assist the court in making a just decision. The court further held that if a site visit is incapable of yielding any admissible evidence, then the court will be a mere tourist satisfying curiosity; otherwise, a court in session must perform judicial functions only and must restrict distractions. The court also held that a visit to the site by a judge who is not a survey expert, equipped with any survey equipment, would not yield anything.
5. In an application for a site visit, a party must therefore place before the court peculiar circumstances that will warrant such a visit. See Chira & Others -vs- Kenya Power & Lighting Company Limited, Nairobi, ELC No. 94 of 2019.
6. A court should be an independent decision-maker. It should not be perceived as descending into the arena of the trial; otherwise, it will become clouded by the dust of the conflict.
7. In Elly Okongo Ingang'a & Others -vs- James Finlay (K) Ltd SCOK Petition No 7 (E009) of 2021, the court held that locus inspection orders are part of the discovery process in litigation. The court said that discovery, at the very basic level, entails a pre-trial procedure to ascertain the facts to be presented at the trial and has its constitutional underpinning in the right to access information enshrined in Article 35 of the Constitution.
8. Based on the above law, the question is whether the applicant has met the test. It should not be lost that this is a post-judgment application.
9. Already, the court has pronounced itself on the merits and demerits of the plaintiff's suit, hence become functus officio. The applicant's pending ruling is on whether the said judgment should be set aside. The limited power to review a merit-based judgment is governed by Section 80 of the Civil Procedure Act and Order 45 of the Civil Procedure Rules.
10. The applicant now says that before delivering its ruling on the pending application, the court should make a site visit for the court to establish the context in which the dispute arose, in view of the conflicting documents and witness statements available before the court. The applicant is not seeking the site visit to be in the company of experts who will assist the court to capture, verify, or assess new and important facts necessary for the just determination of the impending application.
11. Even if the court were to make a site visit, the outcome would not in any way be relevant in the just determination of the pending application. The court should not simply attend a site visit to satisfy the curiosity of a party to a suit. In the circumstances obtaining, I find no basis to grant the prayer for a site visit. The application is dismissed with no order as to costs.
12. Orders accordingly.

**RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 1<sup>ST</sup> DAY OF OCTOBER 2025.**



In the presence of:

Court Assistant - Dennis

Peter Agalo in person present

Karani for the 1<sup>st</sup> defendant absent

Chilaka for the State absent

**HON. C.K. NZILI**

**JUDGE, ELC KITALE.**

