



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
MILIMANI ELC CASE NUMBER 410 OF 2018

DANIEL KAMITI	GICHUHI.....	1ST
PLAINTIFF/RESPONDENT		
MOHAMMED DAR.....		2ND
PLAINTIFF/RESPONDENT		
FRANCIS WAWERU	GAKUNJI.....	3RD
PLAINTIFF/RESPONDENT		
WANJIRU MUGUTHI.....		4TH
PLAINTIFF/RESPONDENT		
PAULINE WANJIRU	NGORU.....	5TH
PLAINTIFF/RESPONDENT		

=VERSUS=

ATHI WATER AND SERVICES.....	1ST
DEFENDANT/APPLICANT	
ZHONGMEI ENGINEERING GROUP LIMITED.....	2ND
DEFENDANT	

RULING

1. By a Notice of Motion dated 6th February 2025 brought under Articles 50 (1) and 159 of the Constitution, Sections 1A, 1B, 3A of the Civil Procedure Act, and Order 51 Rule 1 of the Civil Procedure Rules, the 1st Defendant/Applicant seeks the following orders:

a. Spent.

- b. THAT leave be granted to the 1st Defendant to file and serve a Regional Surveyor's Report dated 16th August 2024 and accompanying documents.***
- c. THAT the court be pleased to issue summons to the Nairobi Regional Surveyor to attend court and give an expert opinion on the documents prepared by his office.***
- d. THAT the cost of the application be in the cause.***
2. The application is premised on the grounds appearing on its face together with the supporting affidavit of Joyce. N Mukururi sworn on even date.

THE APPLICANT'S CASE

3. The deponent averred that attempts to settle this matter out of court were unsuccessful, necessitating the suit to proceed for hearing.
4. She further averred that the Applicant had obtained a report by the National Region Surveyor dated 16th August 2024 which is vital and would assist the court in making an informed decision.
5. The deponent argued that the application was made in good faith, as the document was obtained in August 2024 during negotiations. She asserted that the order sought would not prejudice the Plaintiffs case.

THE RESPONDENTS' CASE

6. The Respondents opposed the application through the replying affidavit of Daniel Kamita Gichuhi dated 14th March 2025. The deponent argued that the application is frivolous,

vexatious, and an attempt to delay the determination of this case.

7. According to him, the pleadings had been closed and it would therefore be unfair to attempt to introduce new evidence.
8. He asserted that the crucial document sought to be introduced was not available during the pre-trial or during the mediation proceedings.
9. He asserted that the document is incomplete as it lacks essential documents and would result in confusion.
10. He further asserted that if the Applicant knew they required a surveyor's report, they should have requested it before the trial.
11. He contended that in the event the application was allowed, the Respondent should be afforded the opportunity to engage their own surveyor to prepare an alternative report that will emphasize the discrepancies in the Applicant's report.
12. In conclusion, the Respondents urged the court to dismiss the application with costs.
13. The application was canvassed by way of written submissions. Both parties filed their submissions which I have duly considered.

ANALYSIS AND DETERMINATION

14. Having considered the application in light of the pleadings, the respective affidavits, and the rival submissions, the issue that arises for determination is whether the Applicant should be granted leave to file the Regional Surveyor's report.

15. The Applicant seeks leave to file the Regional Surveyor's Report out of time. Order 50 Rule 6 of the Civil Procedure Act provides as follows:-

“Where a limited time has been fixed for doing any act or taking any proceedings under these Rules or by summary notice or by order of court, the court shall have the power to enlarge such time upon such terms (if any) as the justice of the case may require and such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed provided that the costs of any application to extend such time and any order made thereon shall be borne by the parties making such application unless the court orders otherwise.”

16. The court's discretion to extend time is intended to facilitate a fair hearing.

17. In the matter at hand, the Applicant argued that the Regional Surveyor's report is crucial as it will assist the court in making an informed decision.

18. Both parties have extensively presented their arguments, which I have duly considered. In an application for enlargement, such as the one before me, the primary consideration for the court is to ensure that justice is served

for all parties and that they are allowed to present their case.

19. In the case of **P H Ogola Onyango t/a Pittsconsult consulting engineers v Daniel Githegi t/a Quantalysis (2005) eKLR** the court held that:

“Indeed, discovery, along with interrogatories and inspection, is a pre-trial procedure. They are all meant to facilitate a quick and expeditious trial of the action. Though the court no doubt has jurisdiction to allow a party to introduce a document or documents once the trial has begun.”

20. Based on the material before me, I find it is in the interest of justice to allow the Applicant to file the Regional Surveyor’s Report and accompanying documents. The Plaintiffs will not be prejudiced, as they will have an opportunity to cross-examine on the new document. Similarly, the Plaintiffs will be at liberty to file additional documents if need be. The primary goal is to ensure justice is served for both parties.

21. In the end, I find that the application dated 6th February 2025 is merited and the same is hereby allowed in the following terms:-

a) Leave is granted to the 1st Defendant to file and serve the Regional Surveyor’s Report dated 16th August 2024 and the accompanying documents within 14 days from the date hereof.
b) Summons to issue to the Nairobi Regional Surveyor to attend court and give an expert opinion on the documents prepared by his office.

c) The Plaintiffs are liberty to file and Serve a Survey Report within 14 days of service by the Applicant.

d) The Respondents are awarded the costs of the application.

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 24TH DAY OF NOVEMBER, 2025.

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**T. MURIGI
JUDGE**

IN THE PRESENCE OF
Thuo of the Plaintiffs
Ahmed - Court assistant