



Kiplimo v Settlement Fund Trustees & 7 others (Environment and Land Case 58 of 2019) [2025] KEELC 8432 (KLR) (3 December 2025) (Ruling)

Neutral citation: [2025] KEELC 8432 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT AND LAND CASE 58 OF 2019**

**CK NZILI, J
DECEMBER 3, 2025**

BETWEEN

PIUS KANDA KIPLIMO PLAINTIFF

AND

SETTLEMENT FUND TRUSTEES 1ST DEFENDANT

COUNTY REGISTRAR TRANS NZOIA COUNTY 2ND DEFENDANT

COUNTY SURVEYOR 3RD DEFENDANT

THE ATTORNEY GENERAL 4TH DEFENDANT

ERNEST KIPKEMBOI CHELIMO 5TH DEFENDANT

MUSA WAMBWA 6TH DEFENDANT

NATIONAL LAND COMMISSION 7TH DEFENDANT

SUZANNA CHEBOI 8TH DEFENDANT

RULING

1. Through an application dated 27/10/2025, the plaintiff asks the court to adopt, as part of the evidence, a surveyor’s report dated 30/11/2022, which was filed pursuant to a court order of 20/7/2022, regarding parcels No. Trans Nzoia/Milimani/1327, 1328, 1329, and 1395. The application is based on the reasons on the face and in a supporting affidavit sworn by Pius Kanda Kiplimo on 27/10/2025.
2. Briefly, the plaintiff deposes that on 20/7/2022, the court issued an order that the 3rd defendant carry out a survey exercise of the listed parcels of land and file a report in court. It is deposed that the 2nd defendant perfected that mandate on 16/11/2022, in the presence of the plot owners or their representatives, and subsequently filed the report before the court.



3. The plaintiff deposes that the said report recommended that the Director of Surveys authorize and facilitate a map revision of the entire Milimani Scheme. Further, the plaintiff deposes that the County Land Adjudication and Settlement Officer, Trans Nzoia, was summoned to court and she gave her recommendation, leading to a ruling read by the court on 22/1/2025, directing that the parties are at liberty to adopt the report at the hearing. A copy of the ruling is annexed as PKK-1(a).
4. The plaintiff deposes that the report has explained the ground position, and since the County Surveyor is the 3rd defendant, the plaintiff cannot summon him as his witness to produce the report; otherwise, it was in the best interest of justice to have the report adopted as part of the court record.
5. The application is opposed by the 5th, 6th, and 7th defendants through a replying affidavit sworn by Earnest Kemboi Chelimo on 30/10/2025. It is deposed that the adaptation of the surveyor's report without calling its maker for cross-examination will be prejudicial, more so as the County Surveyor has no mandate to carry out a full survey over plots without title deeds, such as the parcels in question.
6. The 5th, 6th, and 7th defendants depose that a report cannot be adopted without the consensus of all the parties, and more so where the owner of plot No. 327, likely to be affected by its adoption, is not a party to this suit.
7. Again, the 5th, 6th, and 7th defendants depose that there are other reports prepared and produced by the District Land and Settlement Officer and the District Land Registrar, whose findings differ materially from those contained in the current report as per annexure marked EKC-(1).
8. The 5th, 6th, and 7th defendants depose that the said reports, when read as a whole, are not clear, the application is not made in good faith, and adopting the reports before the parties are heard amounts to condemning them unheard, contrary to the rules of natural justice.
9. Equally, the 5th, 6th, and 7th defendants depose that the applicant has ulterior motives; he concealed material facts from the court, since there is a pending application before the Court of Appeal for review over plots No. 1328 and 1329, as per annexure marked EKC-(2).
10. The 5th, 6th, and 7th defendants depose that the applicant alleged land has remained fallow for the last 16 years, confirming that he is not acting in good faith, the report is partisan, an independent surveyor who is not a party to this suit would be preferably to undertake the survey, and it is not clear why the report should be adopted before the matter is heard and without the agreement of all the parties.
11. The 5th, 6th, and 7th defendants rely on written submissions dated 5/11/2025. It is submitted that the adoption of the report, which is incompetent, inconclusive, and fundamentally flawed both in substance and procedure, without the consent of and the participation of all affected parties, would occasion grave injustice and contravene Articles 47 and 50(11) of *the Constitution*.
12. For instance, it is submitted that the report only covered four plots and left out plot No. 1330, which forms part of the block, and which omission distorts the accuracy and reliability of the survey results. Further, it is submitted that the recommendation would affect the entire Milimani Settlement Scheme and touches on plot No. 1327, whose owner is not a party to the suit. Reliance is placed on *Musila -vs- Thengi & Others Civil Appeal No. 607 of 2019 [2025] KECA 750 [KLR]* and *Edward Nyongesa Ndeke -vs- Sila Ambatia Ayieko & Others [2022] KEELC 244 [KLR]*.
13. The 5th, 6th, and 7th defendants submit that the survey report was generated by a non-licensed surveyor contrary to the *Survey Act* Cap 299, hence lacks professional and statutory legitimacy, capable of being relied upon by the court.



14. Further, the 5th, 6th, and 7th defendants submit that the filing of the application on the last day of the hearing is an attempt to derail the court of justice and ambush them, showing bad faith, rendering the application not only oppressive but also an abuse of the court process, where the applicant seeks to gain an advantage through irregular means. Reliance is placed on *Mbogo & Another -vs- Shah* [1968] E.A. 93
15. On 23/1/2025, the court directed parties to comply with Order 11 of the Civil Procedure Rules and pronounced itself on the issues raised by all the parties with regard to the survey reports prepared at the preliminary stage of this suit.
16. Again, on 11/2/2025, parties told the court that they had complied with Order 11 of the Civil Procedure Rules; hence, a hearing date of 16/6/2025 was fixed.
17. On 16/6/2025, the matter adjourned at the instance of the plaintiff. A further hearing of 30/10/2025 was fixed by consent. Three days before the hearing, the current application was filed and certified to be heard on 30/10/2025.
18. The hearing was therefore interrupted to first determine this application. The report sought to be adopted was filed herein on 5/12/2022. Admission and denial of facts is governed by Order 2 Rule 11 of the Civil Procedure Rules. Order 3 Rule 2 and Order 7 Rule 5 of the Civil Procedure Rules relate to documents to be filed and used at the trial by either the plaintiff or the defendant.
19. Order 7 Rules 19 and 22 of the Civil Procedure Rules relate to a register of documents which shall be date-stamped when they are presented for filing and served as per Order 5 of the Civil Procedure Rules.
20. Order 11 of the Civil Procedure Rules relates to case management and conference. A case management checklist has to be filed as per Appendix B. The purpose of the case management conference is to promote the expeditious disposal of cases, encourage Alternative Dispute Resolution, determine any matters relating to hearing disposal or management of the case, deal with pretrial applications, formulate a timetable for the hearing, and identify issues for determination.
21. Order 13 relates to admission, while Order 14 of the Civil Procedure Rules relates to production, impounding, and return of documents as evidence.
22. Sections 35-42 of the *Evidence Act* relate to statements in documents produced in civil proceedings. Sections 48-54 of the *Evidence Act* relate to experts' opinions, while Sections 64-78A relate to documentary evidence. Public documents are covered by Sections 79-82 of the *Evidence Act*.
23. In this application, the plaintiff has not demonstrated that he has exhausted in vain the mechanisms which are set out in the referred Sections of the law, by issuing either a notice of admission, notices to rely upon, and or to produce the survey report by the maker under Section 69 of the *Evidence Act*.
24. The court in the ruling of 22/1/2025 was clear that it cannot impose a document on the parties or non-parties that may have profound implications.
25. As to the issues raised by the 5th, 6th, and 7th defendants on the credibility, reliability, and authenticity of the said documents, and other related ones, the court refrains from pronouncing itself on these issues at this stage.
26. The upshot is that I find the application premature and a delaying tactic. Time without number, courts have said that it is not their business to descend into the arena of trial, facts, or evidence. See *Mutwol -vs- Mutwol & Others* ELC Case No. 37 of 2020 [2024] KEELC and *Abidha Nicholus -vs- Attorney General & Others* Petition E007 of 2023.



27. The application is dismissed with costs.

28. Orders accordingly.

**RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT
KITALE ON THIS 3RD DAY OF DECEMBER 2025.**

In the presence of:

Court Assistant – Dennis

Chebii for Chebii for 5th, 6th, and 8th defendants/respondents present

Kiarie for plaintiff/applicant present

Chilaka for 1st, 2nd, 3rd, and 4th defendants absent

HON. C.K. NZILI

JUDGE, ELC KITALE.

