



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**  
**ELC CIVIL SUIT NO. 337 OF 2017**

**WELYAND                      MUEMA                      NZIOKA                      ...                      ....**  
.....**PLAINTIFF**

**VERSUS**

**COUNTY GOVERNMENT OF MACHAKOS..... 1<sup>ST</sup>**  
**DEFENDANT**  
**MAVOKO LAND DEVELOPMENT CO. LTD.....2<sup>ND</sup>**  
**DEFENDANT**  
**DIRECTOR OF SURVEY.....3<sup>RD</sup>**  
**DEFENDANT**

**RULING**

1. This is a ruling in respect of notice of motion dated 20/12/2023 filed by the plaintiff, where it seeks the following orders from this court: -

***a. Spent.***

***b. Spent.***

***c. THAT an order be issued to the Director of Survey to furnish the honourable court with the survey report resulting from the ground survey conducted on land parcels number Athi-river/Athi-river Block 9, 15 meters wide road, and L.R. NO. 11895/34.***

***d. THAT an order be issued to the Director of Survey to furnish the honourable court with a valid certified copy of the survey map for land parcels number Athi-river/Athi-river Block 9, 15 metres wide road, and L.R. NO. 11895/34.***

***e. THAT the costs of motion be in the cause.***

2. The motion is supported by the grounds set out in the body thereof and the plaintiff's affidavit sworn on the instant date. Substantially, he states that he and the 3rd defendant agreed to undertake a ground survey on **Athi River/Athi River Block 9, a 15-meter-wide road, and Athi River/Athi River Block 18 ("disputed parcels")**. Despite setting dates for the exercise and conducting and completing the survey, the 3rd defendant failed to provide the necessary documents despite numerous requests, thus necessitating court intervention. To him, these documents were essential to the case.

3. To support his position, he provided a copy of a letter from the 3rd defendant dated 2/11/2023, which referenced the disputed parcels and promised to conduct the exercise between 1/11/2023-8/11/2023. He also tendered a letter from his counsel on record requesting the report.
  
4. On service, the 2<sup>nd</sup> defendant vehemently opposed the motion through a replying affidavit sworn on 24/01/2024 by Jackson Makali Kalolwe, where, in summary, he states that: the motion is fundamentally flawed and lacks merit, as it disregards the judgment of this court in **Mavoko Land Development Co. Ltd v Kasina Housing Scheme Society & 4 others [2019] KEELC 3071 (KLR) (“former suit”)**, which declared that the leasehold title **L.R No. 11895/27** was null and void. The plaintiff conducted a secret survey in collaboration with the 3rd defendant, deliberately excluding the 1st and 2nd defendants from participating. This exclusion not only undermines the integrity of the survey process but also violates the principle of fair involvement of all relevant parties, particularly when the matter is *res judicata*.
  
5. It further avers that Kasina Housing Scheme Society (1<sup>st</sup> defendant in the former case), which is linked to the plaintiff, utilised this fraudulent title to intrude unlawfully upon the 2nd defendant's land, which is **L.R. No. 25062**. Additionally, he informs the court that even after the court's decisive judgment, Kasina Housing Scheme Society continued its illicit activities,

further subdividing the fraudulent title document to create several subdivisions, including the disputed parcels.

6. He maintains that the ground survey by the Director of Survey on properties connected to these invalid titles is not just an oversight-it represents a blatant disregard of court orders. A further replying affidavit by the 2<sup>nd</sup> defendant, sworn on 30/04/2025, is deemed improperly on record and struck out.
7. The 3<sup>rd</sup> defendant likewise opposed the motion through the replying affidavit of Wilfred Muchae Kabue, deposed on 11/11/2024, wherein he expresses sentiments identical to those of the second defendant regarding the connection between the disputed parcels and the fraudulent title of L.R. No. 11895/27, as previously addressed by the 2<sup>nd</sup> defendant. It is therefore unnecessary for this court to restate these averments.
8. Concerning why it failed to provide the plaintiff with the documents as sought by the plaintiff, it maintains that pursuant to the judgment in the former suit, surveys and subdivisions associated with L.R. No. 11895/27, including **Athi River/Athi River Block 9** were deemed invalid thus its intended survey exercise of between 1/11/2023-8/11/2023 could not proceed, as surveyors were informed about the judgment.
9. He informs the court that the only valid survey records held and maintained by the 3<sup>rd</sup> defendant in respect of LR. No.25062

(Original No. L.R. No. 11895/8) is Cadastral Plan Number F/R No. 213/82 & Survey Computations Number 25004, whose records were approved and authenticated by the director of surveys on 29th August 1990, and that all other alleged re-surveys conducted and creating overlaps onto this parcel of land are a nullity. This map, which was made available to the court, shows that **Athi River/Athi River Block 9** is non-existent.


10. In response, the plaintiff submitted two sets of supplementary affidavits, which is understandable given that the 3rd defendant submitted its documents belatedly. Nevertheless, in summary of the affidavits sworn on the respective dates of 21/03/2024 and 11/04/2025, the deponent disassociated his parcels of land, identified as **Athi River/Athi River Block 9/95 and Athi River/Athi River Block 9/97**, from **LR. NO 25062** or **L.R. No. 11895/27**, and from the former suit, and contended that the current suit is not *res judicata* as he was not a party to the earlier proceedings.

11. Upon the court's directions, parties, except the 1st and 3rd defendants, filed their respective submissions with **Messrs Fred K Musyimi & Associates** for the plaintiff, dated 12/07/2024 and **Wilfred K. Babu & Co. Advocates** for the 2nd defendant, dated 11/07/2024. The court has considered these rival submissions and the arguments contained therein, together with the provisions of the law relied upon and the judicial precedents cited, which shall be regarded in this court's

analysis and determination. Consequently, having carefully considered the motion, its grounds, affidavits, and submissions, the singular issue for determination is **whether the 3<sup>rd</sup> defendant can be compelled to produce documents.**

12. Having identified the issue for determination and considered the documents presented by the parties in support of or opposition to the motion, it is necessary to articulate the pertinent law and prevailing jurisprudence on the issue. Therefore, regarding the relevant legal provisions on this issue, **Section 22 (a)** of the **Civil Procedure Act**, grounded in **Article 35(1) (b)** of the **Constitution of Kenya**, confers upon this court the authority to order discovery, inspect documents, and require the production of documents, among other functions. These provisions are as follows:

**Article 35(1) (b)**



**(1) Every citizen has the right of access to—**  
**(a).....**  
**(b)information held by another person and required for the exercise or protection of any right or fundamental freedom.**

**Section 22 of the Civil Procedure Act: -**

***“Subject to such conditions and limitations as may be prescribed, the court may, at any time, either of its own motion or on the application of any party—***

***(a)make such orders as may be necessary or reasonable in all matters relating to the delivery and answering of interrogatories, the admission of documents and facts, and the discovery, inspection, production, impounding and return of documents or other material objects producible as evidence;***

***(b)issue summonses to persons whose attendance is required either to give evidence or to produce documents or such other objects as aforesaid;***

***(c)order any fact to be proved by affidavit.***

13. As read together, these provisions of the law grant this court broad discretionary powers in an application for discovery, which must be exercised judiciously. The core purpose of discovery is to ensure the availability of relevant documentary evidence to support a party's case and to facilitate access to justice and the fair resolution of the matter. In this context, this court concurs with the persuasive decision of **Oracle Productions Limited v Decapture Limited & 3 others [2014] KEHC 8658 (KLR)**, which held: -

***“The true purpose of discovery is to level the litigation field, to expedite hearing, reduce costs and allow parties to gauge the case they will face at the trial.”***

14. Further, **Halsbury’s Laws of England Vol 13**, paragraph **1** states as follows on the importance of the discovery of evidence: -

***“The function of the discovery of documents is to provide the parties with the relevant documentary material before the trial so as to assist them in appraising the strength or weakness of their relevant cases, and thus to provide the basis for the fair disposal of the proceedings before or at the trial. Each party is thereby enabled to see before the trial or to adduce in evidence at the trial relevant documentary material to support or rebut the case made by or against him, to eliminate surprise at or before the trial relating to the documentary evidence and to reduce the cost of litigation.”***

15. In these circumstances, the plaintiff has sought documents from the 3rd defendant and has distanced his alleged parcels of land or **Athi River/Athi River Block 9** from the parcels of

land that were the subject of the former suit. Nonetheless, his line of argument does not hold sway, as a ruling delivered by this court in the former suit on 4/11/2024, in **Mavoko Land Development Co Ltd v Kasina Housing Scheme Society & four others; Thuo (Director of Surveys) & three others (Contemnor) [2024] KEELC 7328 (KLR)**, established that **LR No. 25062** is now **Athi River/Athi River Block 18**, and **LR No. 11895/27** is now **Athi River/Athi River Block 9**. It appears that the plaintiff's parcels are subdivisions of **Athi River/Athi River Block 9**, which, pursuant to an order of this court in the former suit, has been cancelled. Consequently, he cannot evade this fact.

16. Furthermore, though the 3<sup>rd</sup> defendant contends that it never conducted a ground on ground survey exercise, on 1/11/2023-8/11/2023, it actually did, and it was found in contempt of the court by a ruling of this court in the former suit, which stated as follows: -

***“He contends that the alleged survey exercise which is subject of the contempt proceedings was conducted between the 1<sup>st</sup> to 8<sup>th</sup> November, 2023...In this instance, I note the title held by the 1<sup>st</sup> Defendant was declared fake, null and void. Further, despite the Judgement and consequential Decree of the Court, the representatives of the 1<sup>st</sup> Defendant proceeded to engage the Director of Surveys to purportedly***

***undertake a resurvey of its land, but in turn actually surveyed the Plaintiff's land. I note the Judgement delivered on 31<sup>st</sup> May, 2019 has never been appealed against nor reviewed, which in essence means the said judgement remains valid, hence the 1<sup>st</sup> Defendant's title nor resultant titles emanating therefrom are deemed non-existent... The 1<sup>st</sup> Contemnor, Mr. Patrick Thuo, Director of Surveys, 3<sup>rd</sup> and 4<sup>th</sup> Contemnors, Mr. Erickson Kimeu Mulwa and Francis Kiragu Ngotho, Secretary and Treasurer respectively of Kasina Housing Scheme Society be and are hereby cited for contempt of this Court's Judgement dated the 31<sup>st</sup> May, 2019 and consequential Decree issued on 18<sup>th</sup> October, 2019"***

17. After reviewing the former suit, it is obvious that the 3rd defendant is constrained from providing any documents related to **Athi River/Athi River Block 9** to the plaintiff, due to an order of cancellation of **LR No. 11895/27**, now known as **Athi River/Athi River Block 9**. In other words, the title documents are nonexistent. The records maintained by the 3rd defendant have reportedly been amended in accordance with the court's decision in the former suit, and therefore, the third defendant has no documentation to furnish to the plaintiff concerning **Athi River/Athi River Block 9**.

18. For these reasons, the court finds that the prayers cannot be granted. Additionally, it determines that the report referenced by the plaintiff cannot be proffered, as it was premised on an illegality. It further finds that this court cannot act contrary to its own orders as issued in the former suit. Therefore, he has to ponder how he intends to proceed with its case.
19. As this court concludes, it appears that the suit may as well be *res judicata* and an abuse of the court process, as alluded to by some of the parties; however, since the pleadings in the previous case have not been submitted to this court, it is constrained from making such a determination at this juncture. Ultimately, and based on the reasons and findings outlined above, this court disallows the motion, with costs being in the cause. The following final disposal orders are hereby issued: -

***a. The notice of motion dated 20/12/2023 is hereby dismissed with costs being in the cause.***

***b. Liberty applies to any of the defendants to move this court appropriately on the issue of res judicata.***

***c. This matter shall be mentioned for pretrial directions.***

It is so ordered.

**Delivered and Dated at Machakos this 16<sup>th</sup> day of  
December, 2025.**

**HON. A. Y. KOROSS  
JUDGE  
16.12.2025**

**Ruling delivered virtually through Microsoft Teams Video  
Conferencing Platform**

In the presence of;

Ms Kanja Court Assistant

Mr. Musyimi for applicant.

Miss Ndunda for 1<sup>st</sup> respondent.

Miss Mumo holding brief for Miss Momanyi for 3<sup>rd</sup> defendant.