



REPUBLIC OF KENYA



**Waiyaki v Kajiado County Government & 3 others (Environment and Land
Case E013 of 2023) [2025] KEELC 5567 (KLR) (24 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5567 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND CASE E013 OF 2023
LC KOMINGOI, J
JULY 24, 2025**

BETWEEN

ALLAN WAIYAKI PLAINTIFF

AND

KAJIADO COUNTY GOVERNMENT 1ST DEFENDANT

MARY SEKI 2ND DEFENDANT

ALFRED SEKI 3RD DEFENDANT

JECINTA NJOKI KARIUKI 4TH DEFENDANT

RULING

1. This Ruling is in respect to the Notice of Motion dated 14th December 2024 brought under Section 1A, 1B, and 3A of the [Civil Procedure Act](#); Order 18 Rule 11 of the [Civil Procedure Rules](#) and all other enabling provisions of the law. It seeks Orders that;
 - i. This Honourable court do conduct a site visit ("Locus in Quo") onto the suit properties during the hearing of this case.
 - ii. Costs of the application be in cause.
2. The grounds are on the face of the application. It is also supported by the Affidavit of Allan Waiyaki the Plaintiff/Applicant herein. He claims that the dispute is on who is the rightful owner of Plot numbers 48 and 49, Oloolua Trading Centre which the 3rd, 4th and 5th Defendants/Respondents claim are plot numbers 52 and 53. That according to Parsitau Boniface, the County surveyor's report dated 26th March 2024, the subject plot is number 53 but in the report dated 19th September 2023, by Lekatoe Samuel Joshua, the County Planner, the same plot is number 48 and is owned by the Plaintiff/Applicant.



3. Owing to these contradicting reports in reports from the same office, it would be necessary for the court to visit the site in the presence of the experts so as to make an informed determination. It is his case that the Court is empowered by law at any stage of the suit to inspect any property or thing concerning which any question may arise.
4. The 3rd and 4th Respondents in their Replying Affidavit opposed the application on grounds that Plot No. 53 Business, Oloolua Trading Centre, was allocated to their late father Joseph Seki on 4th March 1997 by the defunct Olkejuado County Council and he was issued with a letter of allotment. They have since enjoyed quiet possession and occupation of the property and have been paying land rates. They were therefore strangers to the Plaintiff's/Applicant's Plot No. 48 and 49 Oloolua Trading Center and that these were two distinct properties as confirmed by the report dated 26th March 2024.
5. They contested the site visit on grounds that the onus of proving trespass was on the Plaintiff/Applicant and there could be no better report than the reports already on record. They urged that the application be therefore be dismissed with costs.
6. The 5th Respondent in her Replying Affidavit also contested the application stating that she was the registered owner of parcel 54A which was a subdivision of her late husband's parcel 54 and she had nothing to do with the disputed parcels 48, 49, 52 or 53. She also argued that if Planning of the Oloolua Trading Centre had not been done, then there was no legitimate map that could be used to identify the ground location of the specific allocated plots. She also argued that if the Plaintiff/Applicant was allocated the land in 1996 with a condition to develop it within two (2) years but only resurfaced Seventeen (17) years later. It is her case that the application was an abuse of the Court process and ought to be dismissed with costs.
7. This application was canvassed by oral submissions.

Analysis and determination

8. I have considered the Notice of Motion, the Affidavit in support, the responses thereto, the rival submissions, and the authorities cited. I find that the issue for determination are:
 - i. Whether the Plaintiff/Applicant is entitled to the orders sought;
 - ii. Who should bear the costs of this application?
9. The Plaintiff/Applicant seeks that the Court orders a site visit to be conducted on the disputed plots being plot number 48, 49, 52 and 53 on grounds, that there are two conflicting reports dated 19th September 2023 and 23rd February 2024. The essence of the reports was to identify the plots and ascertain their locations on the ground. Both reports confirm existence of the plots on the ground. However, the dispute is on trespass and construction of structures on the Plaintiff's/Applicant's parcel.
10. It is noted than save for confirming the presence of the plots on ground, the reports did not address whether any of the parties had encroached on the other's plots. While the Defendants/ Respondents oppose the site visit, I find that this Court is empowered by Order 18 rule 11 of the Civil procedure Rules to conduct or order a site visit.

Order 18 Rule 11 Civil Procedure Rules provides that; "The court may at any stage of a suit inspect any property or thing concerning which any question may arise."
11. Section 3A of the *Civil Procedure Act* also grants the Court inherent power to make orders necessary for the ends of justice or to prevent abuse of the court process.



12. If evidence before the Court is unsatisfactory or cannot aid the Court in fairly determining a matter, nothing stops the court from ordering a site visit. The Court has the authority to order a site visit in land disputes where physical verification is necessary to resolve issues of boundaries, extent of the land, occupation, or physical developments. This discretion is exercised judiciously to complement, not replace, documentary and oral evidence, ensuring that the court is fully informed before rendering judgment. Yano J. in *Juma Juma Kanga & 299 others v Abdulkadir Ahmed Rabmkhan & 9 others* [2021] KEELC 3093 (KLR) held:

While I agree that in a case of this nature, there is need of an expert such as a surveyor to visit such site and file a report, I also believe that since the court is not an expert in the matter, the court's lay observation of the site would help the court to better understand the dispute.... in my view the site visit will enable the court to see for itself the status on the ground. I do not think that the site visit is a waste or imprudent use of judicial time. To grant this application would narrow down the issues and allow the expeditious determination of the matter.

13. I find merit in the application and I grant the Orders sought, namely;
- i. That this matter be mentioned before the Hon. Deputy Registrar of this Court on the 6th August 2025 to schedule a site visit to ascertain locations of parcels 48, 49, 52 and 53.
 - ii. That the Land Registrar, County Surveyor, and the parties in this suit be notified of the site visit.
 - iii. That thereafter the Deputy Registrar and the Land Surveyor do file independent reports to the Court.
 - iv. That costs of the Land Registrar and the County Surveyor's site visit to be catered by the Plaintiff/Applicant, the 3rd and 4th Respondents.
 - v. That costs of this application shall abide the outcome of the main suit.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 24TH DAY OF JULY 2025.

L.KOMINGOI

JUDGE

In The Presence Of:

Mrs Kariuki for the Plaintiff/Applicant.

Ms. Mwangi for the 3rd, 4th Defendants.

N/A for the 2nd Defendant.

Court Assistant – Mutisya.

