



**Yator v Uasin Gishu County & another (Environment & Land Case 349 of 2016) [2024] KEELC 364 (KLR) (25 January 2024) (Ruling)**

Neutral citation: [2024] KEELC 364 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT & LAND CASE 349 OF 2016**

**JM ONYANGO, J  
JANUARY 25, 2024**

**BETWEEN**

**PRISCA YATOR ..... PLAINTIFF**

**AND**

**UASIN GISHU COUNTY ..... 1<sup>ST</sup> DEFENDANT**

**ATTORNEY GENERAL ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. The Plaintiff moved the court by way of a Notice of Motion dated January 25, 2023 seeking the following orders:
  - a. Spent.
  - b. That there be an order of this honourable court stopping the implementation of a mutation dated and approved by Uasin Gishu County Surveyor on July 6, 2021 and the same be quashed and a new mutation be drawn touching on land parcel number Eldoret Municipality Block 25/Luliet/3 involving all legitimate occupants.
  - c. The costs of this application be provided for.
2. The Application is supported by the applicant’s affidavit sworn on January 25, 2023 in which she avers that the mutation was done/drawn by a person not known to the applicant and it is an attempt to dispossess her and other legitimate members who are legal purchasers of their portions of land. She claims that she was not invited for public participation before the mutation was drawn and that a road reserve has been created over her parcel of land in an attempt to dispossess her of her legally acquired portion of the suit property.
3. It is her further deposition that there are on-going succession proceedings touching on the suit property and that she has placed a caution over the suit property.



4. The Application was opposed by the defendants through the Replying affidavits of Daniel Koech, the acting chief officer physical planning and urban development of the 1<sup>st</sup> defendant sworn on February 6, 2023 and M. W Odongo, Senior State Counsel in the Office of the Attorney & department of Justice.
5. In his Affidavit Mr. Koech deposes that the Application has been made in extreme bad faith and the Applicant is undeserving of the orders sought in the application. He further deposes that the court lacks jurisdiction as the parties to the suit entered into a consent whereby they agreed that a survey be conducted by the County Surveyor. The County Surveyor duly conducted the survey and filed this report in court. He was subsequently summoned to court to explain his report which he did on 5<sup>th</sup> December 2019. The court then delivered its ruling and adopted the County Surveyor's report.
6. Being aggrieved by the said ruling, he applicant filed an application seeking the recusal of the judge and the applicant is now seeking to stop the implementation of the said orders without any good reasons. He is of the view that the Application has been made in bad faith and that it is an abuse of the court process.
7. In his replying affidavit Mr. Odongo deposes that the court is functus officio as the Plaintiff's suit was compromised by a consent Order which led to the adoption of the report by the County Surveyor, Uasin Gishu county and that the Plaintiff is merely trying to revive a dead suit. He adds that the Applicant was granted leave to engage a private surveyor who filed a separate survey report but when both surveyors were summoned to attend court, only the County Surveyor attended court.
8. It is his deposition that the Application is made in bad faith as it merely seeks to derail the implementation of the lawful survey process which was conducted with the knowledge of the parties.
9. Mr. Odongo avers that the Applicant has not sought to set aside the consent order and even if she did, she would not succeed as the reasons advanced would not meet the threshold for setting aside of a consent Order. He further avers that the Applicant has introduced new matters touching on succession without seeking leave to amend her pleadings.
10. The Application was canvassed by way of written submissions and all the parties filed their submissions which I have keenly considered.
11. The only issue for determination is whether the Application ought to be granted.

### **Analysis and Determination**

12. The applicant seeks to stop the implementation of the mutation approved by the County surveyor touching on the suit property. It is not in dispute that the said mutation was arrived at as a result of a consent order between the parties. It is also not in dispute that the applicant was allowed to involve her own private surveyor which she did, and the said surveyor (Mr. Wanyama) filed his survey report. However, when the court summoned the County Surveyor and the Plaintiff's surveyor to attend court and shed light on their reports, only the County Surveyor attended court.
13. The Applicant never applied to set aside the consent order and it remains a valid court Order. The reasons now being advanced that the mutation is illegal, fraudulent and intended to dispossess the applicant were never raised when the report was filed in court in 2019.
14. As correctly submitted by Mr. Odongo, Senior State Counsel, the court order must be obeyed unless it is set aside. In the case of *MN v TAN 7 another* (2015) eKLR the court held that;

“A valid court order has to be obeyed or complied with regardless of how aggrieved a party is about it. The order has the force of law. It is not a mere wish or proposition. Disobedience



or non-compliance with it attracts severe consequences. It would appear to me that the appellant believes that the orders of July 30, 2013 are not valid and has explained why he has chosen to disregard or disobey them. Yet he is bound to obey the orders for as long as they are still in force. He has no choice, he cannot decide when and how to obey or comply with them”

15. Similarly, the Applicant has not applied to have the orders issued herein set aside and the same are still valid and must be obeyed. It cannot be true that the Applicant has just discovered that the said Orders were obtained un-procedurally, as she alleges.

16. The allegations of fraud being raised by the applicant are very serious and ought to have been raised at the earliest opportunity and proved to the required standard which is higher than on a balance of probabilities. See the case of *Kinyanjui Kamau v George Kamau* ( 2015)eKLR where the court observed as follows:

“It is trite that allegation of fraud must be pleaded and strictly proved. See *Ndolo v Ndolo* ( 2008) eKLR where the court stated that :we start by saying that it was the Respondent who was alleging that the will was a forgery and the burden to prove that allegation lay squarely on him. Since the Respondent was making a serious charge of forgery or fraud, the standard of proof required of him was obviously higher than that required in ordinary civil cases, namely proof upon a balance or probabilities, but the burden of proof on the Respondent was certainly not one beyond reasonable doubt as in criminal cases.”

17. I am not at all persuaded that the mutation drawn by the County Surveyor was done fraudulently as alleged by the applicant. Further, the allegation that the matter is pending before the succession court is being raised rather late in the day after the consent order was adopted more than 4 years ago.

18. In view of the foregoing, I find no merit in the application and I dismiss it with costs to the respondents.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT ELDORET THIS 25<sup>TH</sup> DAY OF JANUARY 2024.**

.....

**J.M ONYANGO**

**JUDGE**

**In the virtual presence of;**

**1. Miss Chirchir for the Defendant**

**2. Mrs. Prisca Yator (Plaintiff) present in person**

**Court Assistant: H. Akidor**

