



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

CIVIL SUIT NO. 25 OF 2013

FATUMA MOHAMMED ALIPLAINTIFF

VS

BORU DIKA1ST DEFENDANT

HENRY KIMATHI.....2ND DEFENDANT

FESTUS NYAGA KAMBERIA3RD DEFENDANT

RULING

Pursuant to a scene visit undertaken via a court order, this court now proceeds to give regarding reports from the scene visit.

On 24/4/2017, the court gave directions for the Isiolo County Surveyor to file a Surveyor's Report in respect of the suit land. Further directions were given on 24/7/2017 for there to be a scene visit whereby the Isiolo County Surveyor was to point out the beacons in respect of the disputed parcels of land.

On 24/10/2017, plaintiff's counsel informed the court that the scene visit was not properly done as Mr Wachira County Surveyor was objected by defence counsel from pointing out the beacons.

On the other hand defence counsel had stated that the County Surveyor was not available and hence it is as if there was no scene visit.

I find that the County Surveyor Report is prepared by one Peter K. Wachira

“for the County Surveyor”. The person who prepared the report did so on behalf of that office. I therefore, find that the Report is admissible in court pursuant to the court order of 24/4/2017.

The other Report that was to be prepared is the one by the Deputy Executive Officer of this court pursuant to direction No. 5 in the order of 24/7/2017. The report is in the court file. It is also admitted as part of the record.

The directions with regard to these reports were made in furtherance of the requests made by the parties (their advocates). In particular, I note that it is the defence counsel who had applied to have a scene visit and to cross examine the County Surveyor on his report. No request was made to have a private surveyor and hence no order was made to have a report from such private surveyor.

I therefore proceed to give directions as follows:

1)The report filed on 21/10/2017 by Kabiru & Co. Advocates is filed without the authority or order of this court. The said Report is hereby expunged from the records.

2) Mr. Wachira, the author of the report filed on 27/6/2017 (for County Surveyor) is to be cross examined on this report.

3)There will be no further scene visit as the County Surveyor's report captures the purpose of the scene visit.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 6TH DAY OF DECEMBER, 2017 IN THE PRESENCE OF:-

CA: Janet

Ondieki for Plaintiff Present

Mutegi for Defendant (1st & 3rd)

Gitonga H/B for Rimita for 2nd Defendant Present

L. N. MBUGUA

ELC JUDGE