



REPUBLIC OF KENYA



**Nyakangi v Attorney General & 5 others (Environment & Land  
Case 1 of 2021) [2024] KEELC 5675 (KLR) (25 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5675 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA  
ENVIRONMENT & LAND CASE 1 OF 2021**

**JM KAMAU, J**

**JULY 25, 2024**

**BETWEEN**

**CHARLES OKEMWA NYAKANGI ..... PLAINTIFF**

**AND**

**ATTORNEY GENERAL ..... 1<sup>ST</sup> DEFENDANT**

**CABINET SECRETARY, MINISTRY OF PUBLIC HEALTH AND  
SANITATION ..... 2<sup>ND</sup> DEFENDANT**

**CONSTITUENCY DEVELOPMENT FUND (WEST MUGIRANGO) .... 3<sup>RD</sup>  
DEFENDANT**

**CHIEF LAND REGISTRAR ..... 4<sup>TH</sup> DEFENDANT**

**NYAMOKENYE HEALTH CENTER ..... 5<sup>TH</sup> DEFENDANT**

**COUNTY SURVEYOR, NYAMIRA COUNTY ..... 6<sup>TH</sup> DEFENDANT**

**RULING**

1. Before me is a Report by the Regional Surveyor dated 16<sup>th</sup> November 2023 pursuant to the order issued by this court on 27/7/2023. It needs to go on record that the order to have the Regional Surveyor carry out this exercise was necessitated by persistent and deliberate failure to carry out the same by the County Surveyor, Mr. Abuga. The Terms of Reference were to visit the suit land and determine the existence of encroachment and if so, the size of the same.
2. The Regional Surveyor said that the pointed out parcel of land has a Health Center built thereon. He concluded his Report by saying that there is no encroachment to Parcel No. Kisii/West Mugirango/Bomabacho/481 and that Kisii/West Mugirango/Bomabacho/478 is a public land reserved for the Gusii County Council, the precursor to Nyamira County Government, for public use. As expected, the 5<sup>th</sup> Respondent agrees with this Report.



3. On the other hand, the Petitioner disagrees with the Report. This Report tallies with that of the Land Registrar, Mr. George K. Maina dated 31/5/2023.
4. In the circumstances, the Court finds that the Reports did not resolve all the issues raised in the pleadings and could therefore not be the basis of a Judgment. But the Reports affirmed the status of occupation and utilization of the disputed parcels of land. They could also be used and admitted as part of the record by either party and any of the authors of the Reports could be called as witnesses to produce the Reports. I would allow the Authors of the above Reports together with the Petitioner's Surveyor's Report to defend their Reports in court.

**RULING DATED, SIGNED AND DELIVERED AT NYAMIRA THIS 25<sup>TH</sup> DAY OF JULY 2024.**

**MUGO KAMAU**

**JUDGE**

