



Olepere & another v Pama Estate Limited & another (Environment & Land Case 180 of 2018) [2024] KEELC 6963 (KLR) (17 October 2024) (Ruling)

Neutral citation: [2024] KEELC 6963 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 180 OF 2018
LC KOMINGOI, J
OCTOBER 17, 2024**

BETWEEN

MARY THERESA OLEPERE 1ST PLAINTIFF

ANTHONY PARPAE OLEPERE 2ND PLAINTIFF

AND

PAMA ESTATE LIMITED 1ST DEFENDANT

CHARLES SIMON KIMANI NJAU 2ND DEFENDANT

RULING

1. This is the Notice of Motion dated 19th February 2024 brought under; (Section 3 and 13 of the Land and Environment Act, Article 159 (2) of [the Constitution](#) and All other Enabling Provisions of Law).
2. It seeks orders;
 1. That the Survey Report dated 3rd August 2023 by George N. Nyambane – Incharge Ngong Survey Office be set aside or expunged from the Court record.
 2. That this Honourable Court makes an Order that an independent survey be carried out for the suit properties namely Ngong/Ngong/36813, 36814 and 16205 by District Land Surveyor Registrar other than the said George N. Nyambane – Incharge Ngong Survey Office in the presence of Land Registrar, the parties in this suit with their Independent Surveyors of choice and a Report be submitted to this Court.
 3. That the OCS – Rongai Station to ensure maintenance of law and order during the survey of the suit properties.
 4. That the cost of this application be in cause.
3. The grounds are on the face of the application and are set out in paragraphs i to ix.



4. The application is supported by affidavit of Paul Kamau Mani, a director of the 1st Defendant, sworn on the 19th February 2024.

5. The Application is opposed.

There is a Replying Affidavit sworn by Mary Theresa Olepere the 1st Plaintiff/Respondent herein sworn on the 21st March 2024.

6. On the 26th February 2024 the Court with the consent of the parties directed that the Notice of Motion be canvassed by way of written submissions.

The Plaintiff's Submissions.

7. They are dated 17th May 2024.

They raise four issues for determination. Counsel submitted that the survey was conducted with adherence to due process ensuring transparency, fairness and compliance with Section 21 of the Survey Act.

8. Further that the District Surveyor, as a Government appointed official possessed the requisite expertise and integrity to conduct the survey objectively.

9. It is also submitted that Section 21 of the Survey Act establishes stringent requirements for surveyors to adhere to while conducting surveys ensuring accuracy and completeness.

10. Counsel further submitted that procedural regularity was observed throughout the survey process, from the collection of field data to the preparation and submission of the surveyor's report. He has put forward the case of Hamisi Mohammed Bakari & 5 Others Vs. Thomas Sadiki & 3 Others (2020) eKLR where the court expressed itself that the Defendants' ought to have produced a contradicting report and went ahead to authenticate the report.

11. It is further submitted that the Defendant has failed to substantiate the claims regarding accuracy or partiality of the report with concrete evidence and legal arguments.

He urges the court to find that the Defendants' are not entitled to the prayers sought. He prays that the Application be dismissed with costs.

The Defendants Submissions.

12. They are dated 17th April 2024.

They raise three issues for determination.

Counsel submitted that the Survey Report by George N. Nyambane was influenced by the Plaintiff's Surveyor, Eric Gitau who came up with his records which influenced the District Surveyor's work and Report. He put forward the case of Stephen Kinini Wang'ondy Vs. The Ark Limited (2016) eKLR

13. It is further submitted that the District Surveyor did not afford the Defendants' equal opportunity as the Plaintiff to present their documents and or an independent surveyor during the said exercise hence the report is biased and influenced by the Plaintiffs.

He has put forward the case of Kagina Vs Kagina & 2 Others (2021) KECA 242 KLR

14. It is further submitted that the District Surveyor did not come with official maps and records but opted to wholly rely on the Plaintiffs evidence hence the report was biased.



15. Counsel urges the court to order that an independent survey be conducted on the suit properties Ngong/Ngong/36813, 36814 and 16205 by a District Surveyor other than George N. Nyambane, Incharge Ngong Survey Office.
16. He prays that the Application be allowed.

Analysis and Determination.

17. I have considered the Notice of Motion, the affidavit in support, the response thereto, the rival submissions and the authorities cited. The issue for determination is whether this application is merited.
18. On the 18th July 2023 this Court ordered the Land Registrar to ascertain the boundaries of the suit properties.

The same was conducted and a report submitted to this Court.

19. The Defendants however were dissatisfied with the manner in which the survey was conducted citing bias from the Incharge Ngong survey Office, Mr. George N. Nyambane.
20. This matter has proceeded substantially and is at the tail end. There is need to expedite its conclusion.
21. I find that the Defendants raise pertinent issues on the credibility of the Report and the same cannot be relied upon by this Court.
22. I find merit in this application and the same is allowed as no prejudice will be occasioned to the Plaintiffs if the exercise is repeated. They will be present to raise any concerns.
23. Accordingly I allow the Application on the following terms;
 - a. That the Survey Report dated 3rd August 2023 by George N. Nyambane – Incharge Ngong Survey Office is hereby set aside.
 - b. That an independent survey be carried out in respect of the suit properties namely Ngong/Ngong/36813, 36814 and 16205 a by District Land Surveyor Registrar other than the said George N. Nyambane – Incharge Ngong Survey Office in the presence of Land Registrar, the parties in this suit with their Independent Surveyors of choice and a Report be submitted to this Court within 30 days from the date of this Ruing.
 - c. That the OCS – Rongai Station to ensure maintenance of law and order during the survey of the suit properties.
 - d. That the Defendants shall cater for the costs of the exercise.
 - e. That costs of this Application be borne by the Defendants.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 17TH DAY OF OCTOBER 2024.

L. KOMINGOI

JUDGE.

In the Presence of

Ms. Chepkoech for the Plaintiffs.

Mr. Kinyanjui for Mr. Litoro for the Defendants.



Ms. Nabande for Ms. T. J Michael for the Interested Party.

Court Assistant – Mutisya.

