



REPUBLIC OF KENYA



**Abdi v Kimemia & 3 others (Environment & Land Case E168 of 2022)
[2024] KEELC 13600 (KLR) (5 December 2024) (Ruling)**

Neutral citation: [2024] KEELC 13600 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E168 OF 2022
LN MBUGUA, J
DECEMBER 5, 2024**

BETWEEN

MUSTAFA ABDI PLAINTIFF

AND

ANTONY KIMEMIA 1ST DEFENDANT

JOSEPH KARIUKI 2ND DEFENDANT

NAIROBI CITY COUNTY 3RD DEFENDANT

CHIEF LAND REGISTRAR 4TH DEFENDANT

RULING

1. Before me is the Plaintiff's Notice of Motion dated 18.6.2024 seeking orders that the Director of survey to demarcate the boundary of L.R. No. 29663 I.R.168596, that a report of the survey be filed in court and that the County Commander of Nairobi county be directed to provide security during the exercise.
2. The application is premised on the grounds on the face of the application and the supporting affidavit of the plaintiff. He contends that he is the lawful registered proprietor of the suit property, but the same was trespassed upon by the 1st defendant with the support of the 2nd defendant. He avers that it is only prudent that boundaries of the suit property be demarcated to ensure that the issue of the suit property is once and for all settled.
3. The 1st defendant opposes the application vide Grounds of Opposition dated 13.9.2024, where he contends that the applicant can engage a private surveyor to demarcate the boundary, averring that the director of survey is not a party and cannot be ordered around. He also avers that plaintiff should apply for judicial review proceedings to compel the Director of survey to undertake the exercise.
4. The 2nd defendant opposes the application via Grounds of Opposition dated 17.10.2024 where it is argued that the application is not tenable as the Director of survey is not a party to these proceedings.



5. The 3rd defendant opposes the application vide Grounds of Opposition dated 19.9.2024 where it is contended that it is the ownership of the suit property which is in dispute and not the boundary and that there is no evidence tabled before the court indicating that demarcation is necessary.
6. The 4th defendant had indicated that they would not oppose the application, their concern was only on costs of the exercise.
7. I have considered all the arguments raised herein. The applicant has raised the issue of encroachment upon his property, whereby he avers that the defendants removed his gate and blocked access to his property. He desires that the director of survey be the one to demarcate the boundaries to ensure that there are no future encroachments. The 1st to 3rd defendants have not given any plausible account as to why they would oppose the move to have the input of an expert in resolving the dispute. After all, the Director of survey is the institution which has the expertise on matters of survey. And in the end, any report so filed would still be put to the test of admissibility during the main trial. Further, the 1st – 3rd respondents have not demonstrated that they will suffer any prejudice if the proposed exercise is undertaken.
8. As at now, I find that the application dated 18.6.2024 is merited.

The same is hereby allowed with a rider that the applicant shall meet the costs of the survey. The cost of the application shall however abide the outcome of the suit.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 5th DAY OF DECEMBER 2024 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:

M/s Mbithe holding brief for Ali for Plaintiff

Gikonyo holding brief for Thuita for 1st Defendant

Siagi for 2nd Defendant

Lerianka holding brief for Dr. Kamotho for 3rd Defendant

Allan Kamau for 4th Defendant

Court Assistant: Vena

