



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KITALE

LAND CASE NO. 139 OF 2013

CHARLES MERISIA.....1ST PLAINTIFF

ABRAHAM M. LIMAKWANY.....2ND PLAINTIFF

(Suing as the Administrators of the Estate of **KOCHULEM AMOYWAL**)

DANIEL ROTICH NGURIAPUS.....3RD PLAINTIFF

(Suing as the Administrator of the Estate of **KABELI MOLER KORINYANG**)

VERSUS

PETRO KALUNGOKOR.....DEFENDANT

RULING

1. This is a ruling on two applications, one filed by the plaintiff on **11/12/2020** and dated **8/12/2020** and another one filed by the defendant on **5/5/2021**, and dated **6/12/2020**.
2. The application dated **8/12/2020** seeks that this court be pleased to review its judgment dated **27/2/2020** and an order that the County Surveyor, West Pokot do carve out **5.90 Ha** from **LR No. West Pokot/Chepkono/170**.
3. The application dated **8/12/2020** is premised on the following grounds: that the judgment of the court has been partially implemented and that it is necessary to review the judgment for the implementation to be completed.
4. The application is supported by the plaintiff's affidavit sworn on **8/12/2020**.
5. In the application dated **6/12/2020** the defendant seeks that this court be pleased to issue an order of establishing and fix the boundaries of the parcels of land parcel No. **West Pokot/Chepkono/169, 170** and **171** by a private surveyor or by the Chief Surveyor in accordance to the judgment of this court. I gather that the Chief Surveyor here is an oblique reference to the Director of Surveys. He also prays for costs of this application be provided for.
6. The application is premised on the grounds at its foot. It is averred that the county surveyor was biased and that he failed to implement the judgment of the court. The application is supported by the defendant affidavit sworn on **6/12/2020**.
7. A replying affidavit of the 1st plaintiff on his own behalf and on behalf of 2nd plaintiff was filed on **27/5/2021** in response to that application dated **6/12/2020**.
8. The defendant filed a replying affidavit on **30/6/2021** in response to the application dated **8/12/2020**. His response is that the application is a disguised appeal against this court's judgment.
9. The plaintiffs filed written submissions dated **1/3/2021** in the application dated **8/12/2020**. The defendant filed written submissions in respect of the application dated **8/12/2020** and the one dated **6/12/2020**. I have considered the applications, the response and the filed submissions.

Determination.

10. Before me are dissatisfied litigants. On either side of the divide, there appears to be considerable dissatisfaction.

11. Parties in this case came before court not knowing the exact acreage or proper location of their land boundaries and the County Surveyor had to be relied on for his expertise in resolving the issue. Relying on the County Surveyor's report I am bound to observe that plot no **170** appears to have the least discrepancy in terms of acreage between the ground acreage and the registered acreage. It is for the County Surveyor to determine where the proper boundary lies in accordance with the formal records his office holds. The application dated **8/12/2020** therefore lacks merit.

12. The application dated **6/12/2020** by the defendant on the other hand seeks that the boundaries to the three parcels subject matter of the suit be fixed by a private surveyor, an approach that the plaintiff is averse to. This court is of the view that the county surveyor was tasked with a full resolution of the dispute by implementing the decree in the suit and not just some part implementation thereof. Consequently the application by the defendant to call in a private surveyor lacks merit; similarly, his call for the "Chief Surveyor" to be directed to deal with the matter is misplaced as the Director of Surveys operates through the County Surveyors on the ground. It is this court's belief that after the exercise ordered in the judgment is effected, any aggrieved party may report any misconduct or bias, or any other source of dissatisfaction to the Director of Surveys for action.

13. I think the judgment of the court was very clear on what to be done and I need not repeat the same thing herein. The County Surveyor is the competent officer to trace the proper documentation or records regarding land adjudication and adjust the boundaries on the ground in accordance with those records, that is, if they require any adjustment, or fix beacons on the existing boundaries on the ground if they reflect what is on the official map. I note that the letter by the County Land Registrar West Pokot states that the surveyor's report dated **27/11/2020** shall be used to rectify the register as per the court decree.

14. In this court's opinion, its decree should have been implemented right away and there was no need to resort to court yet once more. However in order to bring this dispute to closure this court must issue positive orders.

15. Both the applications dated **6/12/2020** and **8/12/2020** respectively are dismissed with costs.

16. I hereby grant leave and order that the County Surveyor and the County Land Registrar to implement the report dated **27/11/2020** on the ground and therefore fix the boundaries in accordance therewith.

It is so ordered.

Dated, signed and delivered at Kitale via electronic mail on this 6th day of August, 2021.

MWANGI NJOROGE

JUDGE, ELC, KITALE.