



REPUBLIC OF KENYA



KENYA LAW
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**Ngaruhia v Mwangi & 2 others (Environment & Land Case
329 of 2013) [2023] KEELC 21113 (KLR) (30 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 21113 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE 329 OF 2013
JM ONYANGO, J
OCTOBER 30, 2023**

BETWEEN

JANE WANJIRU NGARUHIA PLAINTIFF

AND

JOSEPH IRUNGU MWANGI 1ST DEFENDANT

THE UASIN GISHU LAND REGISTRAR 2ND DEFENDANT

YAMUMBI UASIN GISHU COOPERATIVE SOCIETY 3RD DEFENDANT

RULING

1. Ngaruhia Kamau (now deceased) who was the original Plaintiff herein filed suit against the Defendants alleging that the 1st and 2nd defendants had conspired to unlawfully sub-divide his land parcel no. Kapsaret/Kapsaret Block 1 (Yamumbi/227 and created another parcel known as Kapsaret/Kapsaret Block 1 (Yamumbi/228 which was registered in the name of the 1st defendant. He therefore sought the following reliefs:
 - a. A permanent injunction restraining the defendant from excavating gravel, soil and rocks, cutting down trees, encroaching, trespassing, developing, cultivating, selling or dealing in any manner with that parcel of land known as Kapsaret/Kapsaret Block 1 (Yamumbi/227.
 - b. An eviction order against the 1st defendant from the parcel of land known as Kapsaret/Kapsaret Block 1 (Yamumbi/227.
 - c. A declaration that the issuance of title no. Kapsaret/Kapsaret Block 1 (Yamumbi/228 by the 2nd defendant was null and void ab initio.
 - d. Mesne profits.
 - e. Costs



- f. Interest.
2. The defendants filed their respective defences denying the Plaintiff's claim. In particular, the 1st Defendant denied that land parcel No 288 was curved out of land parcel no. 227.
 3. On July 8, 2013 before the case was set down for hearing and with the consent of the parties, the court directed the County Surveyor to visit land parcels no. Kapsaret/Kapsaret Block 1 (Yamumbi/227 and 288 to ascertain the boundary of the two parcels of land, their acreage and to find out if any of the parcels had encroached on the other and if so, to what extent.
 4. The County Surveyor visited the two parcels and filed a report in court dated August 22, 2013.
 5. According to said report, the ground findings were as follows;
 - “-Parcel No. Kapsaret/Kapsaret Block 1 (Yamumbi/227 had a ground acreage of 2.996Ha but the acreage indicated on the title is 3.237ha. The ground acreage is less than that of the title deed by 0.241Ha.
 - Parcel No. Kapsaret/Kapsaret Block 1 (Yamumbi/228 had a ground acreage of 0.7498 but the acreage indicated on the title deed is 0.809Ha The ground acreage is less than that on the title deed by 0.0596 Ha.

Since the ground acreage of both parcels is less than the registered acreage we therefore recommend that the existing ground boundaries be maintained.”
 6. In the meantime, Ngaruhia Kamau passed away on September 30, 2013 and he was substituted by his widow Jane Wanjiru Ngaruhia who was subsequently registered as the owner of parcel number 288. The suit was set down for on hearing on 26th July, 2016 and the plaintiff (Jane Wanjiru Ngaruhia) testified before Justice Ombwayo. After several adjournments, the case was fixed for hearing on July 12, 2023 when the parties agreed that the Surveyor who prepared the report dated 22nd August, 2013 be summoned to attend court and shed light on the report.
 7. On October 4, 2023, Mr. Jacob Shadiva, the retired surveyor who visited the suit property testified virtually. He stated that pursuant to the court order served upon him, he visited the suit property and conducted the survey after which he filed his report in court. He explained that before visiting any parcel of land, they normally notify the owners of the land to be present because the parties must be present in order to point out the boundaries and this case was no exception. He told the court that since he had retired he did not have the file with him but he had confirmed with the Survey offices, Uasin Gishu that the report was in their file. He confirmed the findings in the report and stated that even if another survey was conducted, the same would not change anything because land is static. He refuted the claim that he did not conduct the survey as they were chased away by the defendants' agents.
 8. It is against this background that I am called upon to determine whether the survey report determines the issues in dispute and whether it should be adopted as the judgment of the court.
 9. Having considered the pleadings and the survey report as well as the evidence of Mr. Shadiva, the retired Surveyor who prepared the report dated August 22, 2013, I am of the view that the report does not settle the issues in dispute as it does not answer the question as to whether parcel no. 288 was unlawfully curved out of parcel no. 227. Another survey would still not answer that question as it would simply confirm the acreage of the two parcels on the ground and as correctly stated by the Surveyor, this is not likely to change.



10. That being the position, I direct that the matter proceeds from where it had reached so that the parties call all their witnesses. The survey report will be considered together with the evidence on record before the court makes its final determination.

DATED, SIGNED AND DELIVERED THIS 30TH DAY OF OCTOBER 2023.

J.M ONYANGO

JUDGE

In the presence of:

Mr. Mathai for the Plaintiff

Ms. Isiaho for the 1st Defendant

