



Republic v Land Surveyor, Uasin Gishu County & another; Songok & 7 others (Exparte) (Judicial Review Application 4 of 2020) [2023] KEELC 21078 (KLR) (26 October 2023) (Ruling)

Neutral citation: [2023] KEELC 21078 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
JUDICIAL REVIEW APPLICATION 4 OF 2020
JM ONYANGO, J
OCTOBER 26, 2023**

BETWEEN

REPUBLIC APPLICANT

AND

LAND SURVEYOR, UASIN GISHU COUNTY 1ST RESPONDENT

LAND REGISTRAR UASIN GISHU COUNTY 2ND RESPONDENT

AND

NATHAN SONGOK EXPARTE

PHILIP K KIPTAI EXPARTE

KIPKIRONG TIONY EXPARTE

MARY J KEINO EXPARTE

AARON K CHEPKWONY EXPARTE

GIDEON K NDEGE EXPARTE

JONAH K RUGUT EXPARTE

DAVID K TUNDURA EXPARTE

RULING

1. The Applicants commenced this suit by way of Judicial Review seeking orders of certiorari to quash the decision of the 1st Respondent to refuse to conduct a survey on the Applicants’ parcel of land known as Uasin Gishu/jabali/97 and an order of mandamus to compel the 1st and 2nd Respondents to visit and conduct a survey on the said parcel of land.



2. In their response, the Respondents contended that the orders of Judicial Review were untenable as there was no published decision as required by order 53 Rule 7 of the Civil Procedure Rules and that the *order of mandamus* could not be granted as the acts complained of were not proved.
3. The court directed that the matter be disposed of by way of written submissions and the parties filed their submissions. The court thereafter rendered its judgment dated 23.8.21 granting the order of mandamus compelling the Respondents to give reasons why they had not acted on the Applicants' request for the survey of the suit property within 14 days failing which the Respondents were directed to carry out the survey within 30 days.
4. After being served with a Notice to Show Cause, the County Surveyor visited the suit property on 16th February 2023 for purposes of conducting the survey and filed their report dated 27.2.23 in which they made the following observations:
 - i. That the parcel of land known as Uasin Gishu/jabali/97 has existing boundaries on some parts and is divided into 2 sections by a 12m wide road.
 - ii. It was realized that towards the river there is an encroachment of a strip of eucalyptus trees on 0.44 acres by the owner of parce no. 98
 - iii. The Registry index Map does not fully conform to the ground where the land borders parcels number 96 and 220 and the road on the river section
 - iv. Also it was noted that land parcels Uasin Gishu Scheme/jabali/233,234,235 And 210 are non-existent on the ground. Hence parcel No. 97 borders land parcels 460,461,462,463 and 464 as shown on the attached diagram.
 - v. The comparison of areas is as follows:
 - Registered area- 33.90 Ha
 - Map area-36.43 Ha
 - Ground area-31.94 Ha
5. Based on the above observations, it was recommended that the Registry Index Map be amended to conform to the ground status. After the parties were served with the report, it was agreed that the County Surveyor be summoned to attend court to shed more light on the report as the Ex-parte Applicant was of the view that the report had not addressed the issue of the boundary.
6. The County Surveyor subsequently attended court and explained that the suit property has a seasonal river on one side marking the boundary with parcel no. 98. He further stated that on the upper part of the land is a boundary made of stones which marks the boundary with parcels No. 460, 461, 462 , 463 and 464.
7. He explained that this was contrary to the RIM which shows that there are 4 other parcels bordering parcel 97. These are parcels 233,234,235 and 210. He stated that these four (4) parcels do not exist on the ground. He further explained that the shape of the boundary separating parcel 95 on the lower side and parcel 96 where thy border parcel 97 is not in harmony with the map.
8. The surveyor informed the court that the perimeter survey of parcel 97 revealed that the existing area was 31.94 Ha (approximately 78.92 acres) compared to the map area which is 36.43Ha (approximately 90.0 acres) while the registered area is 33.9 Ha (approximately 83.8 acres) thus the map has a bigger area than what exists on the ground and what is in the register.



9. He further explained that when they tried to establish the boundary for parcel 97 it overshoot into other parcels. He stated that parcel 98 encroaches into parcel 97 by 0.44 acres. He explained that the registered area is as a result of the adjudication work and that is what goes into the RIM. He concluded that there was an error at the time of adjudication. He stated that there was no need to establish the boundaries of parcel 97 as it already had boundaries.
10. In light of the Surveyor's report and the explanation provided by the County surveyor I am of the view that the surveyor has discharged his obligations in accordance with the judgment of the court and what remains is for the RIM to be amended in accordance with the recommendation made in the Land Registrar and Surveyor's report. This being a Judicial Review, the court cannot delve into issues relating to encroachment.

DATED, SIGNED AND DELIVERED VIRTUALLY AT ELDORET THIS 26TH DAY OF OCTOBER 2023.

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J.M ONYANGO

JUDGE

In the presence of :

1. Mr. Lagat for the Applicant
2. No appearance for the Respondents

Court Assistant: Oniala

