



Somongi & 3 others v Cheptiony & 8 others (Environment and Land Miscellaneous Application E015 of 2023) [2023] KEELC 21556 (KLR) (16 November 2023) (Ruling)

Neutral citation: [2023] KEELC 21556 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E015 OF 2023
EO OBAGA, J
NOVEMBER 16, 2023**

BETWEEN

**STANLEY KIPTUM SOMONGI 1ST PLAINTIFF
OLIVER KIPCHUMBA SOMONGI (BEING LEGAL REPRESENTATIVES
OF THE ESTATE OF KIMOI SOMONGI CHEPTUGEN
(DECEASED) 2ND PLAINTIFF
GIDEON KIMUTAI SOMONGI 3RD PLAINTIFF
WESLEY CHIRCHIR SOMONGI (BEING LEGAL REPRESENTATIVES OF THE
ESTATE OF TEREKI JELIKO SOMONGI (DECEASED) 4TH PLAINTIFF**

AND

**CLETUS CHEPTIONY 1ST DEFENDANT
BARNABAS SOGOTIO 2ND DEFENDANT
FRANCIS KIPLAL SOGOTIO 3RD DEFENDANT
JOEL CHESIRE 4TH DEFENDANT
GILBERT CHESIRE 5TH DEFENDANT
VICTOR CHESIRE 6TH DEFENDANT
MARTIN KORAT 7TH DEFENDANT
BENJAMIN KIPKOECH 8TH DEFENDANT
ERNEST KIPLAGAT 9TH DEFENDANT**



RULING

1. This is a ruling in respect of a notice of motion dated March 10, 2023 in which the plaintiffs/applicants are seeking the following orders:-
 1. Spent
 2. That this honourable court be pleased to grant an order mandating the Surveyor Uasin Gishu County and the Land Registrar Uasin Gishu County to carry out fixed boundary dispute between LR No 8568/3 and land parcel LR No 8568/1 and file a Report in court within 60 days from the date of this order or such other time as shall be directed by Honourable court.
 3. That the O.C.S Moiben Police station be served with this order and be mandated to provide adequate security during the hearing of the boundary dispute and re-establishment of the boundaries between the aforementioned parcels of land.
 4. That the honorable court be pleased to make an order as to apportion payment of the costs of Kshs 300,000.00 for the survey exercises between all the parties.
 5. That the costs of this Application be provided for.
2. The applicants are the administrators of the estate of the Late Teriki Jeliko Somongi who was the registered owner of LR No 2568/1 measuring 331.0 hectares. The defendants/respondents and others have interest in LR No 8568/3 measuring 600 acres.
3. There has been a boundary dispute between the owners of the two aforementioned parcels which are adjoining each other. There have been attempts of settling the boundary by the Land Registrar but these attempts have not succeeded in the past as the parcels are occupied by many people. On March 3, 2023 the County Surveyor wrote to the counsel for the plaintiffs/applicants requesting him to get a court order for provision of security to enable the surveyor and land registrar to establish the boundary between the two parcels. This is what informed the filing of this application.
4. The applicants contend that there have been previous attempts to establish the boundary but this has been unsuccessful as the respondents have been uncooperative.
5. The applicants' application is opposed by the respondents based on a Replying Affidavit sworn on May 17, 2023 and a further affidavit sworn on 22.5.2023. The respondents contend that the applicants moved prematurely to court and that this court has no jurisdiction to deal with boundary disputes. The respondents argue that the applicants' land does not exist and that the applicants want the respondents to shoulder survey fees on their behalf as they are seeking their land surveyed.
6. The respondents accused the applicants of not attending the 5 occasions when a surveyor attempted to establish the boundary dispute.
7. I have gone through the applicants' application as well as the opposition thereto by the respondents. I have also considered the submissions by the parties. The only issue for determination is whether the orders sought should be granted and if so which order should be made on costs.
8. There is no contention that there is a boundary dispute between the two parcels. There is also no dispute that the jurisdiction to entertain boundary disputes lies with the land registrar. The parties herein seem to be blaming each other but what is not in dispute is that there is a boundary dispute and that can only be fixed by the land registrar in conjunction with the surveyor.



9. In principle, the County Land Surveyor is not averse to determining the boundary dispute. His only concern is on security and the apportionment of survey fees. In a letter dated March 3, 2023, the County Surveyor wrote to the Area chief of Karuna location advising the chief of what it will cost the parties to implement the survey exercise. He stated that the owners of LR. No 8568/3/will have to pay 174,500/= and the owners of LR. No. 8568/1 to pay Kshs 125,000/= making a total of 300,000/=
10. This being the case, I find that the applicants' application is well founded. I allow the same in terms of prayer 2 and 3. I direct that survey fee be shared with the owners of LR. No. 8568/3 paying Kshs 174,500/= and the owners of LR. No. 8568/1 paying Kshs 125,000/=. Each party shall bear their own costs of this application.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 16TH DAY OF NOVEMBER, 2023.

E. O. OBAGA

JUDGE

