

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NYAMIRA

ELC NO. 35 OF 2021

{Formerly at Environment and Land Court at Kisii Case No. 6 of 2016}

JOHN NYANG'AU MONYENCHE.....PLAINTIFF

-VERSUS-

NYAMUSI NYAMBOGA.....1ST DEFENDANT

NACKSON ONYANCHA MOMANYI.....2ND DEFENDANT

PERIS KEMUNTO MONYENYE.....3RD DEFENDANT

RULING

The Application before court is dated 9/12/21 by the 2nd Defendant seeking a stay of the Ruling of 21/10/21, setting aside of the same in its entirety and that the court directs that the matter do proceed to full hearing with parties calling witnesses to tender evidence. The same is grounded on the facts that the matter was preliminarily determined by way of adoption of the Reports of the Land Registrar and County Surveyor, Nyamira both dated 2/1/19 after which the court ordered that the Plaintiff proves his case for Special Damages. In both the grounds in support of the Application and the Affidavit in support of the same sworn on 9/12/21 the Applicant argues that the court had no jurisdiction to entertain a boundary dispute since “....*the same is in the territory of the Land Registrar and the Surveyor....*” And further that the court should not have issued an eviction order and that both officers should have been subjected to cross-examination before the same was adopted to ensure the rules of natural justice were observed.

The Application was opposed vide two (2) Replying Affidavits; one by the 1st Defendant and the second one by the 2nd Defendant. Both claim that the Application is untenable since the court has already pronounced itself on the same and that there is nothing to determine after the boundaries have been determined by the Land Registrar and County Surveyor. It is true that the Land Registrar's/County Surveyor's Reports were produced in court on 3/1/19. Parties were invited to submit their observations and they did so on diverse dates with the plaintiff's observation dated 18/08/21 filed on 01/09/2021 while the 1st and 2nd Defendants filed theirs on 18/03/21 the same being dated 16/03/21 and another one dated 19/07/21 were filed in court on 26/07/21.

The court then went ahead to adopt the same on 21/10/21. The Applicant's observations were jointly authored with those of the 1st Defendant and the latter is opposed to the current Application. In the said observations, just as the 1st Defendant said that she doesn't own the land in the neighbourhood of the suit land and that she doesn't own the Parcel No. **WEST MUGIRANGO/BOMANONO/1137**, the Applicant also said he does not own any land but dwells on land Parcel No. **WEST MUGIRANGO/BOMANONO/1134** which belongs to the late Perris Kemunto Monyenye. They said they were therefore disputing the aforesaid Reports. Nowhere did they request that they be allowed to cross-examine the authors of the two (2) Reports nor did they say that the same should be expunged. It is therefore too late in the day to ask the court to call the authors of the Reports for purposes of cross-examination. In their comments on the Reports the dissatisfied Defendant did not raise any issue pertaining to the rules of natural justice. Nothing can even be implied from their comments to amount to matters to do with natural justice. All they have said is that they do not own any land adjacent to the suit property. Now that the Applicant claims that he doesn't own any land, can he then claim that he is not ready to be evicted from the suit property. The Applicant can therefore not cross-examine the Land Registrar and/or the County Surveyor on the issue of ownership on which eviction is lodged because he does not claim ownership of the land in dispute.

The Application is accordingly dismissed with costs.

JUDGMENT DATED, SIGNED AND DELIVERED AT NYAMIRA THIS 31ST DAY OF JANUARY, 2022

MUGO KAMAU

JUDGE

In the Presence of: -

Court Assistant: Sibota

Plaintiff: N/A for the Plaintiff

Defendants: Mr. Nyagwencha for the Defendants/ Applicants