



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NYAMIRA

ELC NO.10 OF 2021

{Formerly at Environment and Land Court at Kisii Case No. 124 of 2009}

MOSE OMENDA.....PLAINTIFF

=VRS=

JANE MATARA.....1ST DEFENDANT

DUKE MOGAKA.....2ND DEFENDANT

WILLIAM ONGAGA.....3RD DEFENDANT

NYAUNCHO NYAKUNDI.....4TH DEFENDANT

SEVENTH DAY ADVENTIST CHURCH (E.A) UNION LTD.....5TH DEFENDANT

HON. ATTORNEY GENERAL.....6TH DEFENDANT

RULING:

Upon the evidence in chief of the Land Registrar being tendered on 25/01/2022 the Plaintiff's Advocate Mr. Kipngetch asked the court that as had been agreed by the parties before the hearing of the case commenced, the Land Registrar should testify first if need be and go back to the suit land and determine the boundaries since the Reports of the Land Registrar and County Surveyor were inclusive and incapable of producing a clear picture on the matter on the ground. The Land Registrar Mr. Charles Mwendwa Mutua testified that the Environment and Court in Kisii did order his office to visit the *locus in quo* and establish the boundaries between the 2 parties. When they visited the suit lands they established that each of the parties had encroached onto the other's land. The 2 officers i.e. the Land Registrar and the County Surveyor, Nyamira were unable to fix the boundary and they did refer the matter back to court and advised the parties to confine themselves to where they each occupied at the time of the visit. He also said that someone must have interfered with the boundary between 2003 when the first Report was made and 2015 when the second Report was made. He also said that the boundary was not fixed and that it would be helpful for the Surveyor to present his Report in Court and it would also assist him to come to court with the R.I.M. In view of the uncertainty in these Reports which the court would not be able to arrive at any determination. It is necessary for the Land Registrar and the County Surveyor, Nyamira to be given fresh mandate to visit the suit premises and carry out the following:

- (a) Determine who between the Plaintiff and the 5th Defendant has encroached onto the other's land and to what extent.
- (b) Fix the boundaries between the parcel of land known as **L.R. NO. EAST KITUTU/BONYAMONDO 1/524** and **L.R. NO. EAST KITUTU/BONYAMONDO 1/821**.
- (c) Prepare a Report of their findings and file the same in court within the next 45 days from the date hereof.
- (d) The OCS Sengera Manga to provide security for the exercise.
- (e) Parties are allowed to be present during the exercise but not to interfere with the exercise.
- (f) Both parties are at liberty to come with their private Surveyors if need be.

(g) Both parties to share the costs of the exercise.

(h) Costs of this Application to be in the course.

(i) Next mention on 15/03/22.

RULING DATED, SIGNED AND DELIVERED AT NYAMIRA THIS 27TH DAY OF JANUARY, 2022.

MUGO KAMAU

JUDGE

In the Presence of: -

Court Assistant: Sibota

Plaintiff: N/A

Defendants: Mr. Soire for 3rd, 4th and 5th Defendants