



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
LAND CASE NO.54 OF 2014

**JANICE ACHIENG OSAWA (Suing as the administratrix of the estate of
SERFINE OWITI WANDU
AKA SERFINE OWITI OSAWA.....PLAINTIFF/APPLICANT**

VERSUS

NURA RAMADHAN..... DEFENDANT/RESPONDENT

RULING

1. Janice Achieng Osawa, the Applicant filed the notice of motion dated 21st July 2015 seeking for five prayers summarized as follows:

- a) Order to the District Land Registrar and Surveyor to visit land parcel **Kisumu/Wathorego/1212** and confirm whether the storey building of **Nura Ramadhan**, the Respondent, is built on that plot.
- b) The court be present during the exercise in (a) above.
- c) Reject surveyor's report dated 6th May 2015 for being in conflict with that dated 20th June 2013.
- d) Costs
- e) Any other relief.

The notice of motion is based on the five grounds on its face and supported by the affidavit of **Janice Achieng Osawa** sworn on the 21st July 2015.

2. The application is opposed by the Respondent, **Nura Ramadhan**, through the grounds of opposition dated 24th July 2015.

3. The Parties counsel opted to have the application dealt with through written submission. The counsel for the Applicant filed their written submissions dated 1st February 2016 while Respondent's counsel filed theirs dated 15th March 2016.

4. The issue for determination is whether or not the Applicant has established a reasonable ground to impugn the surveyor's report dated 6th May 2015 and if so whether an order for the Land Registrar and

Surveyor to visit the the two parcels of land for purposes of establishing whether there is any encroachment should be issued. Secondly which party pays the costs.

5. The court has carefully considered the grounds on the notice of motion, the grounds of opposition, the affidavit evidence by the Applicant, the submissions by both counsel and come to the following conclusions;

a) That by consent entered into on 18th March 2014, the parties counsel agreed that the Surveyor do visit land parcels **Kisumu/Wathorego/1211** and **1212** to confirm their boundaries and the location of the storey building put up by the Respondent. The surveyor was to file their report in court within 30 days but none has so far been filed. That what the Applicant has annexed to her supporting affidavit and marked **JA0-2** cannot be the expected report as it is not duly signed or formally forwarded and filed with the court.

b) That in view of the finding in (a) above the court concludes that the exercise ordered on 18th march 2014 has not been carried out as no formal report has been filed. That the fears of the Applicant are therefore misplaced, as there is no report capable of being adopted.

c) That what the Applicant is praying for, that was not covered in the court order of 18th March 2014, is the involvement of the Land Registrar and the option of both parties to have their private surveyors watch the exercise. The court finds the request reasonable as it will help parties have a comprehensive report that will help the court decide on the issues before it.

d) That there is no need for the court to be present during the exercise to be carried out by the Land Registrar and Surveyor, as either party will be at liberty to call them as witnesses and be cross-examined by the other party in court.

6. That having come to the conclusions set out above, the court finds the application dated 21st July 2015 has merits and is allowed in the following terms:

a) That further to the consent orders made on 18th March 2014, it is hereby ordered that the Land Registrar and Surveyor do visit the land parcels **Kisumu/Wathorego/1211** and **1212** and confirm the following;

i) The boundaries between the two parcels of land.

ii) Whether any of the two parcels has encroached onto the other parcel, and if so, by what acreage.

iii) Whether the storey building constructed by the Respondent, **Nura Ramadhan**, is situated on **Kisumu/Wathorego/1211** or **1212** or both.

b) That each of the parties are at liberty to engage a private surveyor at their own costs to witness the exercise in (a) above equally.

c) That the parties share the costs in (a) above equally.

d) That the report be filed in court within the next sixty (60) days.

e) The costs of this application be in the cause.

It is so ordered.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

DATED AND DELIVERED THIS 25TH DAY OF MAY 2016

In presence of;

Applicant Absent

Respondent Absent

Counsel Mr Omondi for Nyanga for Plaintiff/Applicant and
Mr Maube for Odeny for Defendant/Respondent

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

25/5/2016

25/5/2016

S.M. Kibunja J

Oyugi court assistant

Parties absent

Mr Maube for Odeny for Defendant/Respondent

Mr Omondi for Nyanga for Plaintiff/Applicant

Court: Ruling delivered in open court in presence of Mr Omondi for Nyanga for Plaintiff/Applicant and Mr Maube for Odeny for Defendant/Respondent.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

25/5/2016