

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

ELC CASE NO. 215 OF 2014

JAMES CHUMA LUGO.....PLAINTIFF

-VERSUS-

FUAAD MOHAMED..... 1ST DEFENDANT

ZAINAB ALI.....2ND DEFENDANT

RULING

The application is dated 7th October 2021 and is brought under Section 1A, 1B, 3, 3A of the Civil Procedure Act and Order 51 Rule 1 of the Civil Procedure Rules 2010 seeking the following orders;

- a) That the application herein be certified as urgent and service be dispensed with in the first instance.
- b) That the honourable court be pleased to order that the County Surveyor, Kilifi, to survey and establish the extent of encroachment on the parcel of land known as Kilifi/Mtwapa/2147, by the defendants.
- c) That costs of the application be provided for.

It is based on the grounds that the plaintiff/applicant is the registered owner of a parcel of land a parcel of land known as Kilifi/Mtwapa/2147. That the 1st defendant did encroach into the suit parcel of land and fenced off a considerable chunk; approximately 2 acres, on allegations that the same forms part of his land Kilifi/Mtwapa/3391. That the plaintiff's effort to have the suit parcel of land surveyed by a private surveyor have not been successful in view of the fact the 1st defendant fenced off the portion of the suit parcel of land he alleges to be his. That a surveyor's report is the only way to establish the extent of the encroachment on the suit parcel of land. That this matter is scheduled to come up for hearing on 18th November, 2021 that unless the orders sought herein are granted the matter shall proceed for hearing on the aforementioned date without the benefit of a surveyor's report. That a surveyor's report is vital in the circumstances of this suit as it shall bring out the real issue in dispute between the parties herein and assist the honourable court to arrive at a just determination of the suit. That whereas no prejudice shall be occasioned on the defendants if the orders sought herein are granted, the plaintiff shall stand prejudiced if the orders sought herein are not granted. That it is the interest of justice that the application herein is allowed as prayed.

This court has considered the application and submissions therein. The defendants were served but failed to attend court or file any response. The Application is based on the grounds that the plaintiff/applicant is the registered owner of a parcel of land a parcel of land known as Kilifi/Mtwapa/2147. That the 1st defendant did encroach into the suit parcel of land and fenced off a considerable chunk; approximately 2 acres, on allegations that the same forms part of his land Kilifi/Mtwapa/3391. The application remains unopposed. I therefore grant prayer two of the application dated 27th October 2021. Costs to be in the cause.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MOMBASA THIS 20TH JANUARY 2022.

N.A. MATHEKA

JUDGE