



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

JUDICIAL REVIEW NO 9 OF 2015

REPUBLICAPPLICANT

VERSUS

DIRECTOR OF SURVEYS1ST RESPONDENT

COUNTY SURVEYORS.....2ND RESPONDENT

DISTRICT LAND REGISTRAR3RD RESPONDENT

DAVID N CHEGE

WILSON NGANGA

ANTHONY KANYARIINTERESTED PARTIES

EX-PARTE NDEFFO COMPANY LIMITED

RULING

(Judicial review motion for an order of mandamus to compel District Surveyor to survey land and place beacons; public has a legitimate expectation that public officers will perform their duties; order of mandamus is issued against District Land Registrar)

1. This is a judicial review motion seeking an order of mandamus to compel the respondents, that is the Director of Surveys, the County Surveyor of Nakuru County, and the District Land Registrar, to visit the land parcels of land known as L.R No. 445/1 (also known as L.R No. 9970) and establish the original beacons between the said land and the land parcels L.R No. 445/3 and L.R No. 5286.

2. The applicant is the owner of the land parcel L.R No. 445/1. In the year 2000 a boundary dispute arose relating to the said land and the applicant reported it to the District Land Registrar, Nakuru. They also wrote to the District Surveyor requesting him to resolve the boundary dispute. A payment of Kshs. 83,400/= was made to facilitate the officers and a receipt was duly issued. A further payment of Kshs. 2,500/= was also made. Despite these and various correspondences, the ex-parte applicant has averred that the respondents have declined to resolve the boundary.

3. It is stated by the ex-parte applicant that an effort was made by the respondents to visit the site on 20 January 2010 but the necessary equipment was not carried by the respondents. Another visit was made on

22 March 2011 and a promise to return was made but this never materialized. It is clearly out of frustration that the ex-parte applicant has now sought for orders to compel the officers to sort out the boundary.

4. Only the 2nd respondent filed a replying affidavit sworn by Mr. Robert Ontiti, the County Surveyor Nakuru County. He has deposed that no correspondences touching on the subject matter have ever been written to him. He has averred that the County Surveyor ought not to be a party to the case as it is an office created after the year 2013. It is his view that the offices of the Director of Surveys and District Land Surveyor are the persons to deal with the matter and the said offices are still in existence.

5. I have considered the matter. All that the ex-parte applicant wants is to have a determination of boundaries to land that it owns. It is a legitimate expectation of all persons that officers entrusted with a public duty will perform their said duties when called upon to do so. It is of course the duty of the Director of Surveys and his subordinates to mark and point out boundaries to persons who own land. I really do not see how the Director of Surveys and District Land Registrar, Nakuru, can justify not performing their public duties. It is the very reason why the public pays them.

6. That said, I think the ex-parte applicant was wrong in enjoining the County Surveyor of Nakuru County. Probably the correct party ought to have been the District Surveyor, Nakuru County, who is an employee of the Ministry of Lands. The County Surveyor is an employee of the County Government and since the land, from what I can see, is not a County Government lease, the correct party ought to have been the District Surveyor, Nakuru District. I am therefore unable to compel the 2nd respondent to undertake a task which is not within its mandate. The case against the 2nd respondent is dismissed but I make no orders as to costs.

7. I do not see how this suit cannot succeed as against the 1st and 3rd respondents. As I have mentioned earlier, it is their duty to establish and/or re-establish boundaries. I therefore issue an order of mandamus compelling the Director of Surveys, and District Land Registrar, Nakuru District, to proceed to the land parcel LR No. 445/1 also known as LR No. 9970 and establish and/or re-establish its boundaries by affixing beacons or other appropriate boundary marks. They should do so within 30 days of service of this order. The applicant shall have costs of this suit as against the 1st and 3rd respondents.

8. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 21st day of September 2016.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU

In presence of: -

Ms. Wangari for applicant

No appearance for the respondents

C/Assistant: Janet

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU