



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MOMBASA

ELC CASE NO. 181 OF 2021

SAGALLA RANCHER LIMITED.....PLAINTIFF/APPLICANT

VERSUS

SAUMU MWANGANJONI.....1st DEFENDANT/RESPONDENT

SAMUEL CHIONDO.....2nd DEFENDANT/RESPONDENT

LUVUNO MWAJOTO.....4TH DEFENDANT/RESPONDENT

DZANENGALA BENCHI & 96 OTHERS.....5th DEFENDANT/RESPONDENTS

RULING

The defendants have filed a preliminary objection dated 15th October 2021 seeking the entire suit to be dismissed for want of jurisdiction in that it is a boundary dispute and is contrary to section 18 and 19 of the Land Registration Act No. 3 of 2012

The plaintiffs submitted that the suit property was surveyed and demarcated in 1972 and a certificate of title was issued to the plaintiff hence it is not a boundary dispute. It is the defendants who have encroached on the plaintiff's land and they ought to be evicted.

Section 18 of the Land Registrar Act No. 3 of 2012 provides as follows:-

18. (1) Except where, in accordance with section 20, it is noted in the register that the boundaries of a parcel have been fixed, the cadastral map and any filed plan shall be deemed to indicate the approximate boundaries and the approximate situation only of the parcel.

(2) The court shall not entertain any action or other proceedings relating to a dispute as to the boundaries of registered land unless the boundaries have been determined in accordance with this section.

(3) Except where, it is noted in the register that the boundaries of a parcel have been fixed, the Registrar may in any proceedings concerning the parcel, receive such evidence as to its boundaries and situation as may be necessary;

Provided that where all the boundaries are defined under section 19(3), the determination of the position of any uncertain boundary shall be done as stipulated in the Survey Act.

Further Section 19 of the same Act provides as follows:-

19.(1) if the Registrar considers it desirable to indicate on a field plan approved by the office or authority responsible for the survey of land, or otherwise to define in the register, the precise position of the boundaries of a parcel or any parts thereof, or if an interested person has made an application to the Registrar, the Registrar shall give notice to the owners and occupiers of the land adjoining the boundaries in question of the intention to ascertain and fix the boundaries.

(2) The Registrar shall, after giving all persons appearing in the register an opportunity of being heard, cause to be defined by survey, the precise position of the boundaries in question, file a plan containing the necessary particulars and make a note in the register that the boundaries have been fixed, and the plan shall be deemed to accurately define the boundaries of the parcel.

(3) Where the dimensions and boundaries of a parcel are defined by reference to a plan verified by the office or authority responsible for the survey of land, a note shall be made in the register, and the parcel shall be deemed to have had its boundaries fixed under this section.

Whereas the Plaintiffs/Applicants have pleaded that this is not a boundary dispute between themselves and the Defendants/Respondents, it is clear to the court that they ought to have given the Land Registrar the chance to address the encroachment issue herein in line with Section 18 and 19 of the aforementioned Land Registration Act. No evidence has been adduced that the parties followed this channel. The Plaintiffs/Applicants jumped the gun and rushed to court instead of following the above mentioned provisions of the law. In the circumstances, I hold that the preliminary objection has merits and I uphold the same. I therefore, proceed to strike out the Plaintiffs'/Applicants' suit and the application with costs to the Defendants/Respondents.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MOMBASA THIS 18TH JANUARY 2022.

N.A. MATHEKA

JUDGE