



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NYAMIRA

ELC NO. 45 OF 2021

{Formerly at Environment and Land Court at Kisii Case No. 697 of 2016}

NELSON ANYOKA NYAEMA.....PLAINTIFF

-VERSUS-

THE COUNTY GOVERNMENT OF NYAMIRA.....1ST DEFENDANT

THE HON. ATTORNEY GENERAL.....2ND DEFENDANT

RULING

This suit was commenced by way of a Plaint dated 13/12/12 for orders of: -

- a. An order of eviction and/or vacant possession from parcel No. NORTH MUGIRANGO/BOKEIRA II/432.
- b. A permanent injunction restraining the Defendant either by herself, servants or agents from re-entering, moving in or in any other manner whatsoever interfering with the Plaintiff's parcel No. NORTH MUGIRANGO/BOKEIRA II/432.
- c. Costs and interests.

The Plaintiff's claim is based on the averment that in June 2007, the 1st Defendant unlawfully entered into the Plaintiff's parcel of Land No. **NORTH MUGIRANGO/BOKEIRA II/432** and converted the same into its own use as an open market. He therefore seeks for the court's intervention that he be given vacant possession of the same. The Defendant vide Defence dated 11/01/2013 denied the claim and pointed out that there exists a case in Kisii HCCC NO. 107 of 203 over the subject matter between the same parties. The Defendant further avers that the livestock market at Nyamira market is situate within the Defendant's land parcel No. **NORTH MUGIRANGO/MAGWAGWA II/405** which has been in existence since the 1970s serving a large community of livestock traders from Kisii and Luo land.

On 26/09/2016, this court ordered that: -

1. The Land Registrar, Nyamira County and the county Surveyor, Nyamira do visit Land parcels **NORTH MUGIRANGO/BOKEIRA II/432** and **NORTH MUGIRANGO/MAGWAGWA 11/405** and establish the dimensions and boundaries of the 2 parcels of land.
2. The Land Registrar to furnish the court with a certified current Registry Index Maps (RIM) showing the position and delineation of the 2 parcels of land.
3. The Land Registrar to compile and file a Report together with the annexures within the next 90 days.

This visit kept being extended. On 03/04/18 a Report was filed by the County Surveyor, Nyamira and another one by the Land Registrar, Nyamira on even date. The Reports concluded that the claimed land did not form part of **NORTH MUGIRANGO/BOKEIRA II/432** and that the Plaintiff had actually encroached a public road at the front of his parcel. The sketch map was also filed in court. The Plaintiff thereafter asked the court to expunge both records and set them aside. This Application dated 28/5/2018 was filed on 4/6/2018.

On 25/2/2021, this court made another order that: -

In the company of the Land Registrar and County Surveyor, Nyamira the court would visit NORTH

MUGIRANGO/BOKEIRA II/432 on 30/4/2021. This did not happen because of the Corvid – 19 epidemic and on 28/7/2021 the court extended the date of the visit to 1/10/2021. The same finally took place on 27/10/21. Parties were thereafter directed to make comments on the Reports dated 24/11/21 from the outcome of the visit to the locus in Quo and the observations made by the County Surveyor and Land Registrar. The same tallies with the earlier Reports of 18/3/2018. Area maps were also attached to the Report.

On his part, the Plaintiff asked the court to ignore the Report and rely on the Report by the private Surveyor dated 20/5/2019 whose findings and observations are as follows: -

FINDINGS AND OBSERVATIONS:

i. Ground measurement of a-b-c = 174m

Map measurement a-b-c = 170m Discrepancy of 4m.

Note: The discrepancy of 4m is within the acceptable standard.

ii. Parcel No. 432 does not neighbour parcel 431 on the ground as it appears in the amended map of survey of Kenya (see photocopy map marked 'x').

iii. The position of parcel No. 432 and 431 as plotted looks very different from ground position (see dotted drawing and where parcel No. 431 is sketched and the position of 432 marked 'x').

iv. The existing road of 10m from the time of adjusfication period of 1973 separating Magwagwa Sub-location is still intact apart from its current expansion and murramed. The road therefore marks the boundary of BOKEIRA NORTH MUGIRANGO/BOKEIRA II and NORTH MUGIRANGO/MAGWAGWA location.

The Court was able to visit the locus in Quo. The Land Registrar, Mr. Samuel Mwendwa Mutua asked the Court to allow him procure the cadastral map which would enable the Court to have the matter settled. The same was filed in Court on 8/12/2021. I would have expected the Plaintiff's private Surveyor in his Report to get a copy of the Map from the Survey of Kenya at least to compare with the one produced by the County Surveyor. His Report is therefore wanting. I asked the parties to file their comments on the Land Registrar's Report but the only thing the Plaintiff said was that the same ignored the original Title Deed, inconsistent with an earlier one by the same Surveyor and that it is also inconsistent with his private Surveyor's Report.

I therefore order that the makers of the different Reports, both the Land Registrar and the County Surveyor do appear in Court on 22/03/2022 for cross-examination on their respective Reports. Thereafter, the Parties will give their Evidence on the same day and the Plaintiff will be at liberty to call his Surveyor during the Hearing.

RULING DATED, SIGNED AND DELIVERED AT NYAMIRA THIS 28TH DAY OF FEBRUARY, 2022

MUGO KAMAU

JUDGE

In the Presence of: -

Court Assistant: Sibota

Plaintiff: Present in person

Defendants: Mr. Ndege holding brief for Mr. Nyachiro