



No.59/2015

REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT MACHAKOS  
ELC CASE NO.168 OF 2011

DANIEL WAGACHA GICHURA ..... 1<sup>ST</sup> APPLICANT

EVANS THIGA GITAU ..... 2<sup>ND</sup> APPLICANT

JOHNSON KURIA MWANGI ..... 3<sup>RD</sup> APPLICANT

VERSUS

WILSON XAVIER BWONKONYO ..... 1<sup>ST</sup> RESPONDENT

DORCAS MBULWA MBITHI ..... 2<sup>ND</sup> RESPONDENT

NAOMI MITA MUIA ..... 3<sup>RD</sup> RESPONDENT

COSMOAS NJOROGE MURIITHI ..... 4<sup>TH</sup> RESPONDENT

CYRUS GACHANJA MACHARIA ..... 5<sup>TH</sup> RESPONDENT

BENJAMIN KIRUGU MWANGI ..... 6<sup>TH</sup> RESPONDENT

MARTIN NJENGA KINYANJUI ..... 7<sup>TH</sup> RESPONDENT

RULING

1. The Claimant herein commenced instant suit via an Originating Summons (OS) dated 19.7.2011 on the 20.7.2011. The OS sought the following reliefs:-
  1. That a declaration do issue that the District Land Registrar report and order of 20<sup>th</sup> April, 2011 be adopted as a judgment.
  2. That the Respondents, their agents and/or servants be restrained from interfering, trespassing and or encroaching on the suit property known as the Title Number **Donyo Sabuk/Komarock Block 1/319**.
  3. That this honourable court do issue any further or such other order as it may deem just and

expedient to meet the end of justice.

**4. That the cost be provided.**

On the face of the OS are the following grounds to support it namely;

- a. That the Petitioner/Applicant are the registered owner of the parcel of land known as title number Donyo Sabuk/Komarock Block 1/319 situated in Mavoko Machakos County which parcel was purchased and transferred in favour of the Petitioners/Applicants who hold the same as trustees of Synod Diocesan.
  - b. That the Petitioners/Applicants did commission a surveyor to demarcate the said Donyo Sabuk Komarock Block 1/319 for purposes of sub-division and upon completing the exercise the surveyor noted that part of the parcel of land had been encroached upon by the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Respondents.
  - c. That the Petitioners lodged a complaint with District Land Registrar to ascertain the actual boundary of the parcel of land they had purchased and a meeting was held in light of the complainant and the District Surveyor undertook the demarcation exercise and a conclusion was arrived at an order issued determining the actual position of the boundary.
  - d. That the order of the District Land Surveyor is yet to be enforced.
2. The OS was further supported by the Affidavit of Daniel Wagacha Gichura sworn on 19.7.2011 and 5 annexures attached. The OS was served upon the Respondents but non of them filed replying affidavit. The second Respondent/Defendant filed a notice of appointment via the firm of M. Mutinda & Associates Advocates dated 4.11.2013 on 17.1.2014 but never filed any reply to oppose the OS.
  3. On 4<sup>th</sup> December, 2014 the mater proceeded by way of the affidavit as non of the Respondents and/or advocates attended despite service. The Applicant case is that they are the registered owners of suit property. That they did commission surveyors to demarcate the suit land for purposes of sub-division and upon the task being undertaken of demarcation it was established that the 1<sup>st</sup> to 7<sup>th</sup> Respondents had encroached the suit land owned by the Applicants.
  4. The above finding prompted the Applicants to petition the District Land Registrar to ascertain the actual boundary of the suit land. The District Land Registrar undertook the task and made a report and ordered the position of the boundary to be as he marked on the ground and attached a sketch to indicate the correct situation of the boundary of the suit land on the ground. The Applicants seek the court to adopt the said order of the District Land Registrar as the judgment of the court.
  5. The Defendants/Respondents have not opposed the OS in the instant suit which court takes to be an admission of the claim in the instant matter. The court thus makes the following orders:
    1. The District Surveyor Machakos order in report dated 20.4.2011 be and is hereby adopted as the judgment of the court.
    2. The Respondents are restrained from interfering and or encroaching on Donyo Sabuk/Komarock Block 1/319 as established on the ground by the District Surveyor Machakos vide report dated 20.4.2011.
    3. Parties bear their own costs.

**Signed and Delivered at Machakos this 23<sup>rd</sup> January, 2015.**

**CHARLES KARIUKI**

**JUDGE**