

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

ENVIRONMENT AND LAND DIVISION

ELC. NO. 636 OF 2013

MARGARET WANJIRU KARANJA.....PLAINTIFF

VERSUS

ANTONY MOTARI..... DEFENDANT

RULING

Coming up before me for determination is the Notice of Motion dated 16th July 2013 in which the Plaintiff/Applicant is seeking for the following orders:

1. That the Government District Surveyor for Thika District do visit Land Title Number Ruiru/Kiu Block 6/139 and Land Title Number Ruiru/Kiu Block 6/680 for purposes of identifying the geographical location of the two parcels.
2. That the surveyor do ascertain the rightful owner of Ruiru/Kiu Block 6/139 and file a report within Thirty (30) days of the visit
3. That the cost of the survey be borne by both parties in equal portions
4. That cost of this application be in the suit.

This application is based on the grounds appearing on the face of it together with the Supporting Affidavit of the Plaintiff, Margaret Wanjiru Karanja, sworn on 16th July 2013 in which she averred that she is the registered owner of Ruiru/Kiu Block 6/139 measuring approximately 0.100 hectares in Githurai, Nairobi (hereinafter referred to as the "Suit Property"). She produced a copy of the Certificate of Lease thereof. She further stated that the Defendant has encroached onto the Suit Property and has unlawfully put up permanent structures thereon, claiming the same is Ruiru/Kiu Block 6/680. She further averred that she contracted the services of Geosurv Systems Limited whose findings dated 30th April 2013 revealed that the Defendant is in current occupation of the Suit Property though he was alleging that he is currently in occupation of Ruiru/Kiu Block 6/680. She further stated that it is only just and fair that the said survey be conducted to finally and conclusively determine the boundaries of the Suit Property as well as Ruiru/Kiu Block 6/680.

The Application is not contested. Despite being duly served with the same, the Defendant did not file any response.

After a careful perusal of the Application and the documents annexed thereto, it is clear that the dispute in this suit is simply determining the physical location of the Suit Property. The Plaintiff/Applicant holds the view that the parcel of land occupied by the Defendant is the Suit Property. However, from his Defence, the Defendant's contention is that the parcel of land which he occupies is not the Suit Property but is Ruiru/Kiu Block 6/680. With this background, it appears to me that the best way to determine this issue is to allow the Government Surveyor to conduct his survey and to file a report in court. To that extent therefore, I consider the Plaintiff/Applicant's request as merited and see no reason why it should not be allowed. I therefore allow the Application. Costs shall be in the cause.

SIGNED AND DELIVERED AT NAIROBI THIS 28th DAY OF February 2014

MARY M. GITUMBI

JUDGE