



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

ENVIRONMENT & LAND COURT MISC APPL. NO 15 OF 2014

SCHOOL MANAGEMENT COMMITTEE CHEMATICH

PRIMARY SCHOOL.....APPLICANT

VERSUS

1. EZEKIEL MARITIM

2. JEREMIAH OMASIRE

3. DAVID KIPKORIR NGETICH.....RESPONDENTS

RULING

1. Before the hearing of the applicant's notice of motion dated 29/1/2014, a preliminary objection was taken on behalf of the respondents based on the following grounds;-

(a) That the application is incompetent.

(b) That the application is not based on any pleadings and contravenes Order 3 Rule (1).

(c) That the prayers sought are substantive and cannot be granted on a mere application.

(d) That the District Land Registrar Trans-Nzoia is not a party hence no orders can be against or in his favour.

(e) That the applicant is not properly represented.

2. The applicant is the school Management Committee of Chematich Primary School.

3. The respondents are individual who own land which neighbours that owned by Chematich Primary School.

4. There arose a dispute as to the boundaries of the school land vis-a-vis that owned by the three respondents. The District Land Registrar invoked his powers and invited the respondents wherein the boundary dispute was addressed. A problem arose when the District Surveyor attempted to fix the boundaries as per the findings of the Land Registrar. The respondents resisted the surveyors attempt to fix the boundaries prompting the applicant to move to court for an order that the surveyors report of 6/9/2012 be implemented.

5. Mr Barongo for the respondents argued that the application is incompetent as it contravenes the provisions of order 3 Rules 1 (1) in that the applicant is seeking substantive orders without filing a suit and that the headmaster of Chematich Primary School was not made a party to the suit. Mr Barongo further contends that the District Land Registrar was not made a party to this suit and as such no order can be given either for or against him.

6. Mr Wabwire for the applicants opposed the preliminary objection arguing that what was before court was an application seeking to enforce a report of the District Surveyor. He therefore argued that there was no need for bringing a substantive suit to this effect. He argued that the respondents were involved in the process leading to the surveyor's report.

7. As to Mr Barongo's submission that the Land Registrar was not made a party to the motion, Mr Wabwire argued that the Land Registrar is empowered under section 18 and 19 of the Land Registration Act to fix boundaries and that the Land Registrar had done that only that implementation was a problem as the respondents were resisting implementation of his decision. On the submission that the school headmaster ought to have been made a party, Mr Wabwire submitted that any school management committee is the body mandated to sue or be sued under the Education Act. There was therefore no need to enjoin the school head in the notice of motion.

8. I have considered the submission by counsel for the parties herein. I have now to decide whether the preliminary objection has any merits or not. I will begin with the point that the school headmaster was not made a party. The Education Act mandates school committee to sue or be sued. There was no need to bring on board the school headmaster.

9. On the submission that the Land Registrar was not made a party, it is important to point out from the beginning that this is a matter which involved a boundary dispute. The Land Registrar went to the ground and made a report regarding the same. The District Surveyor was to implement the decision arrived by the Land Registrar. There was therefore no need to bring on board the Land Registrar as a party. The respondents were present when the issue of boundary was resolved. The surveyor was only to implement the findings of the Land Registrar who is mandated to fix boundaries. There was therefore no need to enjoin the Land Registrar and there was no need for bringing a substantive suit for purposes of adopting the surveyor's report.

10. The applicant is not seeking any substantive prayers to warrant filing of a suit. The applicant is merely asking the court to order implementation of the District Surveyor's report dated 6/9/2012. The respondents were represented during the visit by the Land Registrar. I therefore find that the Preliminary Objection lacks merit. The same is hereby dismissed with costs to the applicant.

It is so ordered.

Dated, signed and delivered at Kitale on this 8th day of April, 2014.

E. OBAGA,

JUDGE

In the presence of Mr Barongo for the respondent and Mr Odongo for applicant. Court Clerk – Kassachoon.

E. OBAGA,

JUDGE

8/4/2014