



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JR. MISCELLANEOUS APPLICATION NO. 239 OF 2014

IN THE MATTER OF AN APPLICATION FOR ORDERS OF MANDAMUS

AND

IN THE MATTER OF THE LAND REGISTRATION ACT (CAP 300) LAWS OF KENYA

AND

IN THE MATTER OF PARCEL OF LAND TITLE NUMBER GITHUNGURI/GIATHIEKO/412

AND

IN THE MATTER OF THE LAW REFORM ACT, CHAPTER 26 OF THE LAWS OF KENYA

BETWEEN

REPUBLIC APPLICANT

AND

KIAMBU COUNTY REGISTRAR 1ST RESPONDENT

KIAMBU COUNTY SURVEYOR 2ND RESPONDENT

EX PARTE - STEPHEN WANYOIKE KINUTHIA

JUDGEMENT

1. By a Notice of Motion dated 23rd June, 2014, the *ex parte* applicant herein, **Stephen Wanyoike Kinuthia**, seeks the following orders:
1. **THAT this Honourable Court be pleased to grant an order of Mandamus to compel the Respondents to determine, ascertain and/or fix the boundaries of parcel of land Title Number Githunguri/Giathieko/412 in accordance with the Land Registration Act (Cap 300) Laws of Kenya and in particular Sections 18 and 19 thereof as well as the Survey Act (Cap 299) Laws of Kenya with the assistance of the OCS Githunguri and the Chief, Ngewa Location within such duration and subject to such conditions this Honourable Court may deem just.**

2. **THAT the costs of this Application be provided for.**

2. According to the applicant, he is the holder of limited grant of letters ad litem of all the Estate of the late **John Kinuthia Marega** (the deceased) who was his father and is the registered proprietor of all that parcel of land known as Title Number Githunguri/Giathieko/412 (hereinafter referred to as the suit land) but whose boundaries are yet to be ascertained, determined and/or fixed by the Respondents in accordance with the law though its dimensions are delineated in the survey map from the survey of Kenya.
3. Despite the applicant's Application to the Respondents to fix and/or ascertain the said boundaries and despite making the requisite payment to that end, the Respondents have failed, delayed and/or neglected to do so as a result of which the beneficiaries of the estate of the deceased including the applicant continue to suffer immense prejudice, detriment and anxiety yet the Respondents have a statutory as well as a public duty to determine, ascertain and/or fix the boundaries of any parcel of land pursuant to the **Survey Act** (Cap 299) and the **Land Registration Act** (Cap 300) and in particular sections 18, 19 and 20 thereof.
4. The applicant affirmed that he was ready, able and willing to facilitate the effectuation of the orders sought herein financially or otherwise and to maintain the boundaries that shall be fixed by the Respondents as well as adhere to such conditions as shall be given by this Honourable Court hence it is only fair and in the interests of justice that the orders sought herein be granted.
5. This application was not opposed by the Respondents despite being duly served.
6. I have considered the foregoing.
7. Section 19(1) of the **Land Registration Act**, No 3 of 2012 provides:

If the Registrar considers it desirable to indicate on a filed 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.

8. From the foregoing it is clear that where an interested party applies to the Registrar to ascertain the boundary, the Registrar is enjoined to ascertain and fix the boundaries. There is no discretion in this matter and the section does not impose other conditions apart from the ones contained therein. The above section clearly places the duty of ascertaining the boundary on the Registrar and no-one else. How he goes about it is another matter.
9. Accordingly, I am satisfied that there has been failure by the Respondents to carry out their statutory obligation under section 19 of the said Act. An order of *mandamus*, as was stated in **Republic vs. Kenya National Examinations Council ex parte Gathenji & Others Civil Appeal No. 266 of 1996**, compels the performance of a public duty which is imposed on a person or body of persons by a statute and where that person or body of persons has failed to perform the duty to the detriment of a party who has a legal right to expect the duty to be performed. It compels the performance of a duty imposed by statute where the person or body on whom the duty is imposed fails or refuses to perform the same. As the Respondents, on whom a duty to determine and indicate the position of the boundary has been imposed by the law, have failed or refused to perform the same, an order of *mandamus* will issue to compel them to do so.
10. Accordingly, an order of *mandamus* is hereby issued compelling the Respondents to determine, ascertain and/or fix the boundaries of parcel of land Title Number Githunguri/Giathieko/412 as provided in the said **Land Registration Act** as read with the **Survey Act** (Cap 299) Laws of Kenya.
11. I do not see any reason why the said undertaking should be done with the assistance of the OCS Githunguri and the Chief, Ngewa Location. The duty of maintaining peace at all times rests with the police hence the police do not need special orders to carry out their mandate unless the Court is satisfied that such an order is necessary. In normal execution of court orders of the nature sought herein, the police assistance is ordinarily unnecessary.
12. The said determination will be made within 30 days from the date upon which the applicant complies with the necessary requirements for the said exercise to be conducted.
13. As counsel informed the Court that the Respondent were not keen in opposing the application

there will be no order as to costs.

Dated at Nairobi this 23rd day of July, 2014

G V ODUNGA

JUDGE

Delivered in the presence of:

Miss Chege for Mr Kago for the Applicant

Cc Kevin