



**Kanorero River Farm Limited v National Government Constituencies
Development Fund Board & 2 others (Environment & Land Case
460 of 2018) [2022] KEELC 2241 (KLR) (27 April 2022) (Ruling)**

Neutral citation: [2022] KEELC 2241 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 460 OF 2018**

LN MBUGUA, J

APRIL 27, 2022

BETWEEN

KANORERO RIVER FARM LIMITED PLAINTIFF

AND

**NATIONAL GOVERNMENT CONSTITUENCIES DEVELOPMENT FUND
BOARD 1ST DEFENDANT**

DAGORETTI NORTH NG-CDF- COMMITTEE 2ND DEFENDANT

EMCOPEK LIMITED 3RD DEFENDANT

RULING

1. Coming up for determination are two applications dated 26th February 2021 and March 16, 2021 by the 1st Defendant and the Plaintiff respectively. The Notice of Motion application dated February 26, 2021 seeks the following orders:
 - i. THAT the suit against the 1st Defendant be dismissed for want of known cause of action against it.
 - ii. THAT in the alternative the suit against the 1st Defendant be struck out for want of cause of action.
 - iii. THAT the costs of the application be borne by the Plaintiff.
2. This application supported by the sworn affidavit of Simon Ndweka the Corporation Secretary of the 1st Defendant is premised on the grounds that the suit is frivolous and should be dismissed for want of cause of action because they neither had a contractual obligation with the Plaintiff to carry out any construction works nor was the allocation, disbursement of funds and implementation of any projects vested on them. Therefore they had no control over the projects undertaken by the



- constituency development committees. They added that the suit was premature because the issues had not been exhausted through the dispute resolution mechanisms set under the [National Government Constituencies Development Fund Board Act](#).
3. The Plaintiff has opposed the above application through its Managing Director, Maina Chege who contends that the application was an abuse of the Court process and should be dismissed with costs because the 1st Defendant had participated in the suit all along and even executed a consent order. He added that the 1st Defendant's defence was also clear that they were involved in the matter and as such they were a correct party in the suit.
 4. The application dated March 16, 2021 seeks orders that:
 - i. The Honourable Court be pleased to adopt the survey report dated the March 3, 2020 on the boundary dispute between LR No. 209/14310 Nairobi and LR No 6863/47 Nairobi as a judgement of this court.
 - ii. THAT the Defendants be ordered to remove the illegal boundary fence they've erected upon the Plaintiffs land LR No. 209/14310 Nairobi and place the same on the right boundary points between LR No. 209/14310 Nairobi and LR No. 6863/47 Nairobi with immediate effect.
 - iii. THAT the Defendants be ordered to pay costs of this suit.
 5. The plaintiff contends that the report prepared by the department of survey on the boundary dispute between LR No 6863/47 and LR No 209/14310 was filed in court and it shows that the Defendants in fencing off LR No 6863/47 also fenced off LR No 209/14310 thus denying the Plaintiff access to its suit. Therefore, the said report had cleared the boundary dispute and there was nothing left to litigate and should be adopted as the Court's judgement with orders for implementation.
 6. The 1st Defendant has opposed the aforementioned application averring that the same is an abuse of the court process, that the 1st Defendant had not encroached on LR No 209/14310 and had never instructed the 2nd and 3rd Defendants to carry out any developments on LR No 209/14310 adding that they had no control over projects by the Constituency's development committees. They re-stated that the court lacked the jurisdiction to determine the suit since the Plaintiff had not exhausted the dispute resolution mechanisms set out under Section 56 of the [National Government Constituencies Development Fund Act](#).
 7. These applications were canvassed by way of written submissions which I have duly considered.
 8. This court finds that the issues for determination are:
 - i. Whether this court has jurisdiction to determine the dispute at hand.
 - ii. Whether the 1st Defendant is properly joined in the suit.
 - iii. Whether the Report by the Director of Survey dated 3rd March 2020 should be adopted as the Court's judgement.
 9. On the question of jurisdiction and whether the 1st Defendant is properly joined in these proceedings, I find that in paragraph 8 of the plaint, the plaintiff has laid the grounds as to why they sued 1st defendant. And in response thereof, the 1st defendant filed its statement of amended defence where in paragraph 4, it is stated as follows; " The 1st defendant denies and shall specifically challenge and put the plaintiff to strict proof on allegations and averments of paragraph 8 of the plaint and in response thereof states that it has no implied and or express contractual relationship with 3rd defendant .."



10. Whether the 1st Defendant is the one who gave the go ahead to the other defendants to carry out the alleged works of trespass is a matter which ought to be proofed in a trial. To this end, the Ist Defendant has clearly stated that it is ready to challenge the averments made by the Plaintiff. What better platform to make such challenges other than in a trial?
11. On whether, the matter ought to be subjected to the dispute resolution mechanisms available under section 56 of the *NG-Constituencies development fund Act*, I find that this court has already made a pronouncement vide the orders given on October 25, 2018 to the effect that this is a boundary dispute which ought to be dealt with under Section 18 of the *Land Registration Act*. No appeal was ever lodged against that order of October 25, 2018. In that regard, this court will not belabor or revisit that point any more.
12. The final issue for determination is whether the report by the Director of Survey dated March 3, 2020 should be adopted as the Court's judgement. The said report reads in part:

“RE: NAIROBI ELC NO 460 OF 2018

The above refers to a Court Order dated September 25, 2019 and a subsequent letter by the Chief Land Registrar requesting the Director of Survey to provide a report on the property boundaries of land reference 209/14310 and 6863/47.

...

The two sites were visited on 19/2/2020 for the assessment and determination of the boundaries but the actual ground survey was not done since the OCS commanding Muthangari Police Station and the Ministry of Interior was not adequately informed of the intended visit and work.

FINDINGS

That the two properties are neighbouring each other and share a common boundary along beacon line P8 and P9 with a river boundary passing through both properties. See Appendix 3.

That the two properties have distinct boundaries as contained in survey plans 93/77 for LR 6863/47 and survey plan 386/19 for LR 209/14310 and a boundary re-establishment should be done to define their boundaries.

That the land references No. 209/14310 has been fenced of using a stone perimeter fence on two sides while being used currently by the Muthangari police station.”

13. Firstly, it is crystal clear that the report is not a determination of the boundary dispute as envisaged under Section 18 of the *Land registration Act*. Secondly, I find that the report only confirms that the Plaintiff and Muthangari Police station share a common boundary but does not provide information on whether the perimeter wall is on the correct boundary of the two parcels of land. Thirdly, the report is not conclusive as it proposes that “a further exercise of boundary re-establishment be under taken.” Fourthly, it is apparent that a further clarification needs to be made since the report indicates that the actual ground survey was not done. Finally, I find that the annexures to the report are not only illegible, but are technical documents which need the interpretation by their authors.
14. To this end, I find that the report has not settled the dispute at hand. Having established that the report is inconclusive, and noting that the Director of survey has given the way forward in regard to the dispute, I find that the best cause of action to take is to have a boundary re-establishment exercise.



15. Disposal Orders:

- i. Both applications dated February 26, 2021 and 16th March 2021 are dismissed with no orders as to cost.
- ii. An order is hereby issued to the Director of Survey to carry out a boundary re-establishment on the suit lands and to file a conclusive report thereof.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 27TH DAY OF APRIL, 2022 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Okeyo for the Plaintiff

Jackson Omwenga for 1st Defendant

