



**Obaga & 2 others v Moriasi (Environment & Land Case
15 of 2021) [2022] KEELC 2994 (KLR) (20 June 2022) (Ruling)**

Neutral citation: [2022] KEELC 2994 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA
ENVIRONMENT & LAND CASE 15 OF 2021**

**JM KAMAU, J
JUNE 20, 2022**

BETWEEN

**JOSEPH KENGA OBAGA 1ST PLAINTIFF
CHARLES KENGA OBAGA 2ND PLAINTIFF
GEORGE OMBOGO OBAGA 3RD PLAINTIFF**

AND

SIMION NYOKAYO MORIASI DEFENDANT

RULING

1. The Plaintiffs herein are the registered proprietors of LR No. West Mugirango/nyamaiya/1279 and their claim is founded on trespass allegedly committed against them by the Defendant since 7/5/2013. The latter is said to have trespassed on the suit land and started plucking tea and also have been involved in cutting trees therefrom. The Defendant denies all these allegations and states that he has always confined himself and his activities on his registered land LR No. West Mugirango/nyamaiya/3364 which borders that of the Plaintiffs and that that is where he has plucked tea and cut down trees. Later on 8th August 2016 the Defendant filed an Amended Defence and Counter-claim praying that the map be rectified to conform with the state and occupation on the ground. He alleges that the map is misleading and the boundary ought to be rectified on the map to suit the occupation on the group(sic).

2. On 17th September 2017 Justice Mutungi recorded the following consent order: -

.....The Land Registrar Nyamira and the County Surveyor do visit Land Parcel Numbers West Mugirango/nyamaiya/1279 and 3364 and to establish and fix the respective boundaries. Each party to be at liberty to be represented during the exercise by their respective Surveyors. The Land Registrar’s and the Surveyor’s Reports to be filed on or before 31/10/2017.”



3. which order was reiterated on 19th November 2018 with penal consequences on the Land Registrar, Nyamira. On 20th September 2021 this court issued an order that the Land Registrar, Nyamira files his report within 45 days as ordered earlier. Finally, it was filed on 23rd March 2022. The same is dated 10th March 2022. Attached to the report is County Surveyor's Report dated 2nd March 2022 and filed in court on 23rd March 2022. The report reads as follows: -

"Upon close scrutiny it was established that Simion Nyakaye was in occupation of lower part of the road as shown in the Surveyor's sketch, this has been the case since adjudication and the Obaga family has never used or occupied the lower part as opposed to map showing the same. It was also noted that there were no buildings on the disputed area but only tea leaf bushes and trees all belonging to Simion Nyakaye. Upon getting the above facts and talking to the parties around, we took measurements conclusively of the disputed area and fixed the boundary marks on the road and the parties were shown their marks and witnessed by the area Chief. However, we advised them to maintain (the) status quo as the issues raised involved destruction of property and relocation of a party from occupation of an area where they had occupied for over forty years while placing another there when they have never set foot on the said area."

4. Coming to the Surveyor's Report dated 2nd March 2022 which the Land Registrar relied upon, the County Surveyor, Mr. Richard Bosire Ongeru concluded the same as follows: -

"After ground observations and checking on the Registry Index Map (RIM), we found out that the owner of parcel Nos. West Mugirango/nyamaiya/1284 and West Mugirango/1279 on the upper side the boundaries are intact but on the lower side of the road, the entire of Parcel No. West Mugirango/nyamaiya/1279 is occupied by the owner of parcel No. West Mugirango/nyamaiya/1284 marked A on the sketch, also the owner of parcel No. West Mugirango/nyamaiya/1285 is occupying the position marked B."

5. As this court has severally observed, following various precedents, the Land Registrar has the technical expertise that this court lacks in determining boundary disputes unless it is shown that there are other factors that influenced his report, the Land Registrar's Report ought to be adopted by the court. In this particular case the County Surveyor has said in his Report mentioned above that the parcel number West Mugirango/nyamaiya/1284 has been sub-divided into West Mugirango/nyamaiya/3364 – 3366 which the Plaintiffs describe as "fraudulent and the same does not exist in the map as well as physically on site." I would have expected the Plaintiffs to do an official search to show the exact official position. I would have equally expected them to provide the court with Green Cards and Official Searches of: -West Mugirango/nyamaiya/1279West Mugirango/nyamaiya/3364West Mugirango/nyamaiya/1284West Mugirango/nyamaiya/1285
6. These would have helped the court to ascertain the sub-divisions and their origin.
7. It is worth noting that the Plaintiffs in their Plaint never mentioned the Defendant's Parcel Number and only termed him a trespasser. They didn't indicate what the Defendant owns or from what direction he has trespassed their parcel of land. This is a matter that has been in court since 2013 and various orders of visiting the *locus in quo* have not been taken seriously. The exercise is now complete and I have no hesitation in adopting the Land Registrar's Report dated 10th March 2022 incorporating the County Surveyor's Report dated 2nd March 2022 and order that the parties do observe the boundaries that were conclusively fixed which the Land Registrar showed them on the ground.



RULING DATED, SIGNED AND DELIVERED AT NYAMIRA THIS 20TH DAY OF JUNE 2022.

MUGO KAMAU

JUDGE

In the Presence of: -

Court Assistant: Sibota

Plaintiffs: N/A

Respondents: Mr. Ondari

