



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Kipkuriat Farm Ltd v Nabaala & 2 others (Environment & Land Case  
E016 of 2021) [2022] KEELC 151 (KLR) (16 June 2022) (Ruling)**

Neutral citation: [2022] KEELC 151 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAROK  
ENVIRONMENT & LAND CASE E016 OF 2021**

**CG MBOGO, J  
JUNE 16, 2022**

**BETWEEN**

**KIPKURIAT FARM LTD ..... APPLICANT**

**AND**

**MOKONA OLE NABAALA ..... 1<sup>ST</sup> RESPONDENT**

**THE DISTRICT LAND REGISTRAR-NAROK ..... 2<sup>ND</sup> RESPONDENT**

**THE DISTRICT LAND SURVEYOR-NAROK ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. What is coming up for ruling is the plaintiff's/applicant's Notice of Motion application dated 10<sup>th</sup> August, 2021 and filed in court on 12<sup>th</sup> August, 2021 for orders: -
  1. Spent
  2. Spent
  3. That pending the hearing and determination of this suit, this Honourable court be pleased to issue a temporary order of injunction to restrain the Defendants/Respondents by themselves, their agents, servants, or any person or persons acting on their instructions from selling, leasing, entering upon or taking possession of the 150 Acres land curved out of the plaintiff land as per the amendments made on the Registry Index Map made on the 22<sup>nd</sup> October, 2012 between the boundaries of Plot No. Cis Mara-Olchorro Oirowua/12 and 98.
  4. That the costs of this suit be borne by the defendants/respondents.
2. The application is expressed to be brought under Order 40 Rules 1 (a) and 2 of the [Civil Procedure Rules](#) and Section 3A of the [Civil Procedure Act](#) and it is predicated on the grounds on its face. It is



- also supported by the supporting and further affidavits of Francis Kering, the plaintiff's/applicant's acting secretary.
3. The application was opposed by the 1<sup>st</sup> respondent vide his replying affidavit sworn at Narok on 25<sup>th</sup> October, 2021 and filed in court on even date.
  4. On the 15<sup>th</sup> February, 2022 the counsel for the 2<sup>nd</sup> and 3<sup>rd</sup> defendants/respondents informed the court that they were not opposed to the application subject to the 1<sup>st</sup> defendant/respondent not objecting to the same. The application was canvassed by way of written submissions.
  5. By the time of writing this ruling, it is only the plaintiff/applicant who had filed his submissions. In his supporting affidavit, Francis Kering, on behalf of the plaintiff/applicant, deposed inter alia that the plaintiff /applicant was registered as proprietor of land Narok/Olchorro Oirowua/12 and was issued with a title deed a copy of which was annexed as KFL 5, that on 6<sup>th</sup> February, 1990 the plaintiff/applicant obtained consent to sub divide (sic) when the dispute started, that when they took the surveyor to the ground to carry out the sub division, the 1<sup>st</sup> defendant/respondent objected on the grounds that the plaintiff/applicant had trespassed into his parcel of land, that they applied for ascertainment of boundary to the District Land Registrar who kept on promising to visit the ground but never did so, that on 31<sup>st</sup> October, 2013, Land Registrar PM Mengi together with the Deputy County Commissioner Lulunga and the District Surveyor visited the ground but they did not ascertain the boundary , that in the year 2015, he read in the newspaper that big lands should be sub divided and when he went to Nakuru to look for a map, he learnt that the boundary between the two plots was amended on or around the 22<sup>nd</sup> October, 2022 after the 2<sup>nd</sup> and 3<sup>rd</sup> defendants/respondents visited the ground, purporting to change the boundary, and consequently amended the map indicating that it was done to implement a court order in the year 2012 (See KFL 15 and 16), that out of the said amendments, a large portion of approximately 150 acres was illegally curved out of the plaintiff's/applicant's land by the 1<sup>st</sup> defendant/respondent who has forcefully taken over the portion which he is illegally leasing out, that the Land Registrar had all along been playing trickery knowing very well that he had amended the Index Map along time ago in the year 2012, and that the plaintiff/applicant has never at any given time filed any suit or proceedings against the 1<sup>st</sup> defendant/respondent with regard to the suit land and only Judicial Review proceedings vide Nakuru Judicial Review No.120 of 2012,where the 1<sup>st</sup> defendant/respondent was not a party.
  6. In his replying affidavit the 1<sup>st</sup> defendant/respondent deposed that he is the registered proprietor of parcel No. Narok/Olchoro Oirowua/27 having been allocated the land as a bona fide member of Olchoro Oirowua Group Ranch, that the plaintiff/applicant bought land from Barclays Bank of Kenya in the year 1984 but the same belonged to Metakai Ole Koros who was allocated the land as a bona fide member like the defendant/respondent, that since they were allocated land by the Group Ranch, they have never had any boundary dispute with the late Metekai Ole Koros family and each parcel had a well-defined and demarcated boundaries, that the boundary dispute arose after the plaintiff/applicant bought the land and was purely caused by their greed to extend their boundary and acquire more land by disputing and changing beacons/coordinates of the parcel of land, that in the year 2000, the defendant/respondent realized by an official search that the acreage of his parcel of land Cis Mara/Olchoro/Oirowua/27 was illegally procedurally altered to read 853.41Ha whereas his title deed which was issued on 27<sup>th</sup> May, 1991 shows that it is 879Ha, that he did sell 30 acres of his land to Free the Children a non-profit organization whose objective was to give back to the community and after the sub division, his acreage reduced from 841.27Ha and parcel number changed to Cis Mara/Olchoro Oirowua/98, that the Land Registrar did determine after checking the record, the register for parcel number Olchoro Oirowua 198 was illegally altered by reducing the defendant's/respondent's acreage and the said officer rectified the same by reinstating the acreage to 866.86Ha, that the Land



Registrar after several visits to the disputed parcel's and in a way of setting aside for a middle ground being points R50x at Mara River and R49x and R47x being the middle point of the existing points being R48 and R47 for the parties as that were variations in the RIM, adjudication top sheet map, and the ground, that he was in agreement with the decision of the Land Registrar, that in response to paragraph 8 of the Plaintiff's/applicant's affidavit, the latter being dissatisfied with the Land Registrar's decision filed Judicial Review case No. 120 of 2016 in Nakuru High Court which was later dismissed on 2<sup>nd</sup> March, 2021, that the applicant has come to court with unclean hands and he is underserving of the orders sought and that he is advised by his advocates on record and whose advice he verily believes to be true that the application is devoid of merit and ought to be dismissed.

7. In his further affidavit, Francis Kering, in response to paragraph 6 of the replying affidavit, has deposed that there was a clear boundary and beacons when they bought the 1<sup>st</sup> defendant's/respondent's parcel of land, that he is a stranger to the contents of paragraphs 7,8,9 and 10 of the replying affidavit, that in response to paragraph 12 of the replying affidavit the District Land Registrar only indicated points R43, R44, R45, R46 and R47 but did not show the parties where R48,R49 and R56 points were, that in response to paragraph 13 of the replying affidavit, the District Land Registrar cooked up the figures purporting that the applicant's parcel of land had increased from 375Ha to 400Ha, that in response to paragraph 14 of the replying affidavit, they filed the Judicial Review application for purposes of compelling the Land Registrar Narok and the Chief Land Registrar to indicate the position of the boundaries of the applicant's parcel of land to enable them to sub divide it and issue it to their members.
8. In her submissions the counsel for the plaintiff/applicant framed the following issues for determination: -
  1. Whether the plaintiff has established a prima facie case to be granted with injunctive orders
  2. Whether the plaintiff has suffered irreparable loss and damage
  3. Balance of convenience
  4. Whether the Land Registrar has powers to amend a registry index map without consent of proprietors affected by the alteration.
9. The counsel however made submissions on the first three issues. In answer to the first issue, the counsel submitted that the plaintiff/applicant has established a prima facie case with great chances of success in that the applicant is the bona fide registered proprietor of Cis Mara/Olchorro/Oirowua/12 from the year 1984. The counsel added that the applicant was registered on 24<sup>th</sup> May, 1984 and was issued with a title deed showing that his land was 375Ha. It was also submitted that the 2<sup>nd</sup> and 3<sup>rd</sup> defendants/respondents have not questioned the registration of the applicant's land and correctly submitted that it is the boundary issue which has not conclusively been dealt with.
10. In answer to the second issue, the counsel submitted that the plaintiff's/applicant's have established that they will suffer and are continuing to suffer irreparable loss and damage as they have never been able to sub divide their land and have individual members issued with title deeds since 1984. On the issue of, if the court is in doubt, it will decide the application on a balance of convenience, the counsel submitted that the same tilts in favour of the plaintiff's/applicant's as they have been in continuous occupation and possession of their land for more than 30 years. It was also the counsel's submissions that the 1<sup>st</sup> defendant/respondent will not be prejudiced if the orders sought are granted as he continues to utilize his parcel of land as he pleases.
11. Having read the application, the supporting affidavit and further affidavit as well as the replying affidavit and the submissions filed by the counsel for the plaintiff's/applicant's, it seems to me that the



issue in contention herein is the boundary between land parcels number Narok/Olchorro Oirowua/12 and Narok/Olchorro Oirowua/98. There could also be an element of land claim since the plaintiff's/applicant's contend that the defendants/respondents have hived off 150 acres from their land. On the other hand, the defendants/respondents contend that the boundary dispute has been resolved by the 2<sup>nd</sup> defendant/respondent. Section 18 (1) of the [Land Registration Act](#) No. 3 of 2012 provides as follows:-

1.

Except where, in accordance with Section 20, it is noted in the register that the boundaries of a parcel have been fixed, the cadastral map and any filed plan shall be deemed to indicate the approximate boundaries and approximate situation only of the parcel.”

Sub Section 2 of the said Section 18 provides as follows:-

2.

“the court shall not entertain any action or other proceedings relating to a dispute as to the boundaries registered land unless the boundaries have been determined in accordance with this section”.

12. The above being the case and having found that the issue herein is boundary dispute, it is clear to me that the application herein lacks merit. I say so because the plaintiffs/applicants have admitted in their supporting affidavit that this issue remains unresolved. Under Section 18 (2) of the [Land Registration Act](#), this court is barred from entertaining these proceedings unless the boundaries are determined as provided for under the said section. In the circumstances, I hereby proceed to dismiss the application with no orders as to costs.

**DATED, SIGNED AND DELIVERED AT NAROK VIA EMAIL ON THIS 16<sup>TH</sup> DAY OF JUNE, 2022.**

**Mbogo C.G**

**Judge**

**16/6/2022**

In the presence of:

CA:Chuma

