



REPUBLIC OF KENYA

High Court at Mombasa

Civil Suit 188 of 2011

UNIQUE SUNSHINE ENVIRONMENTAL SERVICES LTD PLAINTIFF

VERSUS

VOROMONO LTD..... DEFENDANT

RULING

(1) By a Chamber Summons dated 30th June 2011, the Plaintiff seeks an order of injunction pending the hearing of the suit to restrain **“the Defendant by itself and or agents or any person claiming under it from claiming, interfering, moving into, making and in any manner trespassing into the parcel of land known as Plot No. Mgumopatsa/Mazeras/167 but which the Defendant refers to and insists is known as Plot No. 1167 Mazeras Mgumopatsa.”** The application is supported by an affidavit of the Plaintiff's director, Tom Obae of 30th June 2011.

(2) The Defendant has filed a replying affidavit by one of its directors Silas Kibet Sumatwo of 12th July 2011. The parties subsequently filed written submissions without any supplementary oral argument, and ruling was reserved.

(3) It is not disputed that the parties are the registered proprietors of parcels of land Mgumopatsa/Mazeras/167 and Mgumopatsa/Mazeras/1167, respectively, and that a dispute has arisen as to the boundary of the two parcels of land. The plaintiff seeks the preservation of the status quo by submitting that:

“As of now the Plaintiff's land is well secured by a perimeter wall. That is what has existed on the ground since year 2008. The Defendant would like a change in that state. The change would involve damage and destruction. Even without going into the merits, an order of injunction would be the only way to sustain the status quo. If the threats by the Defendant were to be carried out the Plaintiff would suffer loss. There would also be a change in status quo and this may not be compensated by an award of damages. The Defendant has not commissioned a Survey Report yet its claim is based on some survey.”

(4) For the Defendant, it is submitted, principally, that **“the court lacks jurisdiction at this stage to adjudicate over this matter, section 21 (4) of the Registered Land Act provides that the court's jurisdiction arises only when the boundaries are fixed, there is no evidence to that effect”**, and the High Court decisions in **Mombasa HCCC 49 of 2002 Gasper Walele Mwaguwa v. Maria Mango Danvid and Another**, per Khaminwa, J. and **Nairobi HCCC No. 3921 of 1990 Wainaina Githaturi and Another v. Watenga Waweru**, per Bosire, J. (as he then was) were cited.

(5) Section 21 (4) of the Registered Land Act, now repealed by the Land Registration Act No. 3 of 2012

is in pari materia with section 18 (2) of the latter Act as follows:

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

The Applicant has not adduced any evidence that the boundaries have been determined in accordance with the section and it is not upon the Respondent, as suggested by the Plaintiff's submissions, to commission a Survey Report. I agree with authorities cited by the Respondent that the court lacks jurisdiction to entertain the boundary dispute, in view of section 18 (2) of the Land Registration Act (previously section 21 (4) of the Registered Land Act).

(6) Accordingly, for the reasons set out above, the Applicant's Chamber Summons dated 30th June 2011 fails and is dismissed with costs to the Respondent.

(7) In view of the court's lack of jurisdiction, the court is unable to accept the invitation by the Respondent to refer the matter to the Kilifi Land Registrar for the boundary dispute resolution. The parties are however at liberty to refer the dispute to the Land Registrar for determination in terms of section 18 of the Land Registration Act No. 3 of 2012, and thereafter move the court as necessary and appropriate.

Dated and delivered this 11th day of December 2012.

EDWARD M. MURIITHI

JUDGE

In the presence of:

No appearance for the Plaintiff/Applicant

No appearance for the Defendant/Respondent

Mr. Buoro - Court Clerk