



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
CIVIL CASE 6 OF 2000

HEZRON GATHOGO MUTAHI.....PLAINTIFF

Versus

DANIEL WANDAHI RINGOYA.....DEFENDANT

RULING

Pursuant to the provisions of order XLV rule 15 of the Civil Procedure rules, Daniel Wandahi Ringoya, the defendant herein took out the motion dated 24th July 2009, in which he applied for inter alia:

That the Nyeri Land Registrar's decision dated 26th February 2009 be set aside and the court do proceed with the suit for hearing and final determination.

The defendant swore an affidavit in support of the motion. Hezron Gathoga Mutahi, the plaintiff herein filed a replying affidavit to oppose the motion.

The defendant has alleged that the decision of the Land Registrar is resjudicata in view of two previous decisions dated 23rd April 1987 and 15th December 1998. It is averred by the defendant that he never participated in the proceedings when the Land Registrar visited the land in dispute. It is also argued that the Land Registrar misconducted himself when he went against the terms of reference.

The plaintiff was of the view that the Land Registrar acted within the terms of reference hence his decision should not be disturbed. The plaintiff was of the view that the Land Registrar settled all the issues in dispute.

I have considered the material placed before me and the oral submission made by the defendant/applicant and those of Mr. Kiminda learned advocate for the plaintiff. The main issue raised by the defendant is that the District Land Registrar did not hear the defendant when he visited the land in dispute. It is also argued that the boundary dispute had previously been heard and determined. To begin with, I have perused the proceedings of the Land Registrar's of 17/2/2009. It is obvious that Daniel Wandahi Ringoya was heard. The Land Registrar, did not therefore breach the rules of natural

justice.

On the second issue as to whether or not the decision was resjudicata, the Respodnent did not deem it fit to respond to it. I have perused the affidavit of Daniel Wandahi Ringoya. Annexed to that affidavit are two previous decisions of the District Land Registrar over the boundary involving the parcels of land known as Githi/Kiharo/647 and Githi/Kiharo/646. One was made on 23rd April 1987 by Joseph Mudimba, District Land Registrar, Nyeri and the other was made on 15th December 1998 by S.M. Muturi, District Land Registrar Nyeri. I am convinced that the Land Registrar was aware of those decisions. He should have declined to make a decision on matters already decided by his predecessors. His decision therefore is res-judicata. His conduct of making a decision over the same boundary dispute amounts to a misconduct hence his decision must be set aside.

Consequently, I find the motion dated 24th July 2009 to be well founded. It is allowed as prayed.

Dated and delivered this 12th day of February 2010.

J.K. SERGON

JUDGE

In open court in the presence of the plaintiff and the defendant.

J.K. SERGON

JUDGE