



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
OF KISII
Civil Case 51 of 1992

EZEKIEL NYAMWENO.....PLAINTIFF

-VERSUS-

JAMES BUNDI GITAMO

LAND REGISTRAR NYAMIRA.....DEFENDANTS

RULING

When the parties were in court on 7/4/2008 they agreed that the dispute would be resolved by the determination of “*the position of the boundary between parcels Nos West Mugirango/Bosamaro East/598 and 597*”.

They agreed to have the District Land Registrar Kisii and District Land Surveyor Kisii to “*Visit the disputed parcels to determine the common boundary*” and to file respective reports. The plaintiff is owner of *West Mugirango/Bosamaro East/598* and the 1 st defendant is owner of *West Mugirango/Bosamaro East/597*. The report shows the extent of either parcel, and the boundary between them has been indicated. They show that the 1 st defendant has annexed part of plaintiff’s land and is using it.

The application was brought by the 1 st defendant to have the report set aside on basis that it is incapable of implementation. The other reason is that the District surveyor did not file any report and therefore that the court order has not been complied with. It is alleged that the District Land Registrar’s report did not solve the boundary dispute. Mr. Masese presented the application which was opposed by Mr. Soire for the plaintiff.

The report filed is signed by the District Land Registrar Kisii/Gucha, but clearly shows the determination of the boundary was done by him and the surveyor. The surveyor is mentioned severally in the report as having undertaken the survey work that, together with the evidence of the parties, led to the conclusions. It would be a purely technical, and unhelpful, issue for the 1st defendant to insist that the District Surveyor should have filed a separate report. Indeed, in the supporting affidavit that he swore he did not allege that the exercise was conducted without the surveyor.

I find the report has determined the boundary between the parties and is capable of implementation. The application is therefore dismissed with costs.

Dated, signed and delivered at Kisii this 11th day of November,2009

A.O.MUCHELULE

JUDGE

11/11/2009

11/11/2009

Before A.O.Muchelule-J

Court clerk-Mongare

Mr. Soire-present

Mr. Masese –present

Parties-present

COURT: Ruling in open court.

A.O.MUCHELULE

JUDGE

11/11/2009