



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Civil Suit 925 of 2007

GEORGE KIMATA MWAIPLAINTIFF

VERSUS

PETER GATHII MWAI 1ST DEFENDANT

GEOFFREY NJOROGE MWAI 2ND DEFENDANT

RULING

I: Background

1. The plaintiff herein George Kimata Mwai acts in person. He filed this present suit against Peter Gathii Mwai and Geoffrey Njonge Mwai the 1st and 2nd defendants, who are his two brothers on a land issue.

2. He prayed in his plaint that the new boundaries set between his land LR Githunguri/Githiga/1783 and those of his brothers had the boundaries tampered with. He wishes the new boundaries to be removed and taken to their former state.

3. The plaintiff filed an application on 27 August 2007 seeking an injunction against the two defendants from interfering with his land parcel.

4. The two defendants appeared through an advocate and made reply to the application for an injunction namely that there had been noted an anomaly that had occurred to the boundary. That the said defendants informed the chief who referred them to the Land Surveyor. The District Land Surveyor demarcated the said land which in effect gave a new boundary. They had no control of that process.

II: Opinion

5. Should an injunction issue?

6. The land held by the parties was originally Githunguri/Githiga/119 that was in the name of the late Njoro Kongo – now deceased. The land was sub-divided according to the wishes of the deceased. The plaintiff/applicant confirms this through mentioning of a Succession Cause No.117/1991.

7. The plaintiff states he has been living at peace for about 10 years when this boundary issue arose.

8. I wish to state that the title the parties bold is under the Registered Lands Act Cap.300 Law of Kenya. Under section 21(4) it states that.

“No court shall entertain any action or other proceeding relating to a dispute as to the boundary of registered land unless the boundaries have been determined as provided in this sector.”

9. I dealt with a similar issue on jurisdiction of this court in the case law of:-

9. John Chege Kahara & Others V James Michael Mwangi Kibugi & Others Hccc962/03 Ang’awa J (unreported)

That the High Court has no jurisdiction to deal with the issue of the boundary.

10. The respondents have stated that it is the Lands disputes Tribunal under section 3 who have the jurisdiction to deal with the boundary. There is nonetheless legislation under section 21 (4) that the Registrar is to deal with the issue of the boundary and no other court.

11. The Land Disputes Tribunal in dealing with boundary disputes are to take into account customary law and must be subject to the Registrar of Lands decision.

12. In this case herein I would hold that there is no prima facie case made out to warrant there being injunction to issue against the two defendants. The plaintiff has come to the wrong court. I hereby dismiss the application for injunction.

13. The suit before court is incompetent and it is accordingly struck out.

14. I award costs to defendant 1 and 2 for application and main suit.

DATED THIS 30TH DAY OF APRIL 2008 AT NAIROBI.

M.A. ANG’AWA

JUDGE

George Kimata Mwai - plaintiff in person - present

G.K. Gatere instructed by G.K. Gatere & Co. Advocates for the 1and 2nd defendants - present