



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KERICHO**

Civil Suit 55 of 2006

SARAH CHEBOO LANGAT PLAINTIFF

VERSUS

THE BOARD OF GOVERNERS

CHEPSEON COMPLEX SCHOOLS THROUGH

MOSES YEGON (CHAIRMAN).....DEFENDANTS

RULING

Application to set aside the Land Registrar Report of 1st March, 2007

1. The parties are associated with each other as they are neighbours and share a common boundary to their respective land parcel.
2. Land parcel Kericho/Kipkelion Block 4(Chepseon) 96, measuring 30 acres is owned by the Plaintiff one Sarah Cheboo Langat. Her husband had bought the land and registered it in her name.
3. Land parcel kericho/Kipkelion Block 4(Chepseon) 97 belongs to the respondent, one Moses Yegon, the Chairman of the Board of Governors Chepseon Complex School. The Chepseon farmers association are also involved.
4. A dispute arose between the parties, whereby the plaintiff alleged that there was encroachment onto her parcel of land by almost two acres. She filed this present suit on the 29th June, 2006 seeking a declaration that the defendants were trespassers onto her land.
5. On the 26th July, 2006 she filed an application for mandatory injunction to compel the defendants to vacate the said property. This of course was irregular as mandatory injunction for eviction from a property is not available to litigants except in the clearest terms and specific circumstances.
6. The parties appeared before this High Court (*Koome J (7.11.06)*) and agreed to go to the Land Registrar and the Land Surveyor to determine the issue of the boundary.
7. A report was filed by the District Land Registrar who found that the boundary remain as it is.
8. The Plaintiff being dissatisfied with this filed the present application dated the 20th November, 2008, seeking for the setting aside of the Lands Registrar decision. This application was opposed.

II: The Decision of the Lands Registrar

9. The orders by Koome J was

“1. That the District Land Registrar Kericho together with the District Surveyor Kericho do visit the suit lands being LR No. Kericho/Kipkelion Block 4(Chepseon) 946 and LR. Kericho/Kipkelion Block 4(Chepseon) 947(read 97) upon giving notice to the parties herein.

2. That the said officers to hear the parties and to resurvey the disputed property and file their report in Court within 90 (ninety) days from the date hereof”

Dated 7th November, 2006

10. Parties were given up to the 19th February, 2007.

11. The District Land Registrar one G.K. Korir (Mrs) served the parties on 19th July, 2007 to attend to her on 1st March, 2007 at 9.00a.m for a site visit (*The matter had been mentioned to Court on 19th February, 2007 and Court made further orders that parties visit the site after the District Surveyor has surveyed the property*)

12. The District Surveyor one J.K. Kibuba filed a report on 18th May, 2007. His conclusion was that the ***“owner of the school had encroached into parcel No. Kericho/Kipkelion/Block 4 (Chepseon 946) by erecting permanent and semi permanent structure in the portion marked X. {That} the area of encroachment {was} approximately 1.20acres”*** a Sketch Plan was attached disclosing the encroachment.

13. On 1st March, 2007 the Land Registrar for Kericho/Buret District G.C. Korir (Mrs) held her meeting by which she filed a report dated 23rd October, 2007. The issue she was to determined is ***“whether the defendants has encroached into the boundary of the Plaintiffs”***

14. She recorded the proceedings of the day and heard all the parties. She then concluded in what she described as observations:

14.1. “Any filed plans or maps are not authorities on boundaries since they only show approximate situation and approximate boundaries of any parcel. To use the same to determine the boundaries will therefore be erroneous.

14.2. Parts of the hedges forming the boundary of the school and plot No. 946 have been in existence for more than 12 years. Such boundary marks can therefore not be disturbed. (Section 7 of the Limitation of Actions Act Cap 22 Laws of Kenya)

14.3. The roads of access claimed as being for public use are part of the school land. They are therefore not open to the public

Dated this 1st March, 2007”

15. Section 7 of the Limitation of Actions Cap 22 Laws of Kenya reads;

“an action may not be brought by any person to recover land after the end of 12 years from the date on which the right of action occurred to him or, if it first occurred to some person through whom he claims to that person”

16. The decision of the Land Registrar was in fact identical to a decision held in the year 2005.

17. Apparently, according to the respondent, an issue arose with the neighbours about the defendant’s

property that the said defendants had closed an access road. This dispute was heard and on 21st July, 2005 it was duly determined. It was as a result of the dispute being determined on that day, by D.K Nyantika that the parties were advised to plant permanent fence to form a common boundary between them which must be maintained in good order.

18. C.K Korir held likewise, being aware of the said decision made in the year 2005. This formed the grounds, by the defendant, to the reply to the mandatory injunction.

19. The effect of the 2005 decision was to legalize the encroachment by the defendants.

20. The Plaintiff's husband who was then the registered owner transferred the suit to his wife then permitted the said wife to file this second suit on the very same point.

21. The Plaintiff/wife was of the opinion that the earlier survey would be redone. Instead the District Registrar declined to deviate from the 2005 decision. What the District Lands officer should have done is to declare the matter *res judicata* and decline to determine the dispute.

22. Nonetheless, no resurvey was done. Because this was not done the applicant/plaintiffs sought that be set aside.

23. The respondent/defendants advocate in reply dwelt onto legality of the application and added nothing useful to this matter.

III: Opinion

24. When the 1st boundary dispute arose with the District Land Registrar, there ought to have been an appeal. This was never resolved but instead the husband to the plaintiff transferred the land to his wife so that she may declare, in the body of the plaint that, "***no dispute existed between the parties.***"

25. In fact a dispute did exist and hiding behind the cloak of a different person does not in anyway assist nor show the truth and integrity of the matter.

26. The Hon. Judge (*Koome J*) was misled to believe that this was entirely a new matter. The application for a mandatory injunction (*not yet heard*) was mischievous.

27. The extract of the boundary was made by the 1st Surveyor who in effect changed his survey to accommodate the first District Land Registrar's decision. This explains why there is no re survey.

28. I hold that the report of the District Lands Registrar is a nullity on the grounds that the said District Lands Registrar should have informed the court that the matter had already been adjudicated in the year 2005 by another District Lands officer Registrar.

29. Secondly, the mandate of the court, if there had been no previous adjudication, would have been to survey the correct boundary. This was not done and should never have been done by G.C. Korir due to the previous adjudication.

30. I would note that after the first decision in 2005 an appeal should have been preferred. It was not and the neighbours and parties require to begin their case from that point.

31. I accordingly hold that the District Lands Registrar report be and is hereby set aside with no orders as to costs.

DATED this 16th day of December, 2008 at **KERICHO**.

M.A. ANG'AWA

JUDGE

Advocate

C.K. Korir advocate instructed by M/S C.K. Korir & Co. advocates
for the Plaintiff/Applicant

A.C. Bett advocates for M/S Bett & Co. advocates
for the Defendant/Respondent