



Central Trust Co. Ltd v Username Investment Ltd & 7 others (Environment & Land Case 3 of 2021) [2022] KEELC 15607 (KLR) (6 October 2022) (Ruling)

Neutral citation: [2022] KEELC 15607 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 3 OF 2021
MN GICHERU, J
OCTOBER 6, 2022**

BETWEEN

CENTRAL TRUST CO. LTD APPLICANT

AND

USERNAME INVESTMENT LTD 1ST RESPONDENT

OLIVE LIMITED 2ND RESPONDENT

TITUS LEMARON MURKUKU 3RD RESPONDENT

WILLIAM SANTAMO SENTER KURRARU 4TH RESPONDENT

LAND REGISTRAR, NGONG 5TH RESPONDENT

KAJIADO COUNTY GOVERNMENT 6TH RESPONDENT

CHIEF LAND REGISTRAR 7TH RESPONDENT

ATTORNEY GENERAL 8TH RESPONDENT

RULING

1. This ruling is on the two pending applications both of which are by the Plaintiff. The first application is dated December 2, 2020 and seeks the following orders.
 - a. A resurvey to determine the proper acreage of land parcels Kajiado/Ntashart/3534 and 3535 and replacement of any missing beacons by the Land Registrar, Ngong and the District Surveyor Kajiado County.
 - b. That the offending presence of the Defendants' officers, servants and wrongfully placed and/or otherwise missing on the Plaintiff's parcels of land be removed and/or properly replaced forthwith.



- c. Pending the hearing of the suit, a permanent injunction do issue to restrain the Defendants herein either by themselves, their servants and/or agents from transferring, charging, subdividing, selling, alienating, entering into, constructing upon, farming and/or in any other manner interfering with the Plaintiffs quiet use and possession of the suit property known as Kajiado/Ntashart/3534 and 3535 (formerly known as Kajiado Ntashart 3509), Ntashart Kajiado County registered in the names of Dr Thagara Gatheru.
 - d. Costs be paid by the Defendants.
2. The application which is brought under Sections 1A, 1B, 3A and 63 of the *Civil Procedure Act*, Orders 51, 40 Rules 1, 2, 3, 8 and 10 of the *Civil Procedure Rules* and Sections 152A, 152B, and 152E of the *Land Act* and any other enabling provisions of law is supported by the ten grounds and a 29 paragraph affidavit with ten (10) annexures.

The gist of the above grounds and affidavit is that the Plaintiff is the registered owner of the suit parcels which he bought from the late Haron Olkiki Tira in the year 2000. In total the two parcels measure 44.11 hectares.

A recent survey commissioned by the Plaintiff has revealed an encroachment by the first and second Defendants' land onto the Plaintiff's land by 24.3 hectares leaving the Plaintiff with only 19.73 hectares. It is for the above reasons that he seeks a resurvey.

3. The second application is dated September 9, 2021 and it is brought under Rule 3 of the Vacation Rules and Section 10 of the *Judicature Act*. It sought leave to have the matter heard during the court vacation.
4. The two applications are opposed by the first and third Respondents. The third Respondent has sworn a 12 paragraph affidavit dated July 6, 2021 which has six annexures. In the reply, he says that he was the registered owner of LR Kajiado/Ntashart/5119 which he subdivided into eight parcels which are Kajiado/Ntashart/19916, 19917, 19918, 19919, 19920, 19921, 19922, and 19923.

He concludes by saying that he has a constitutional right to own the land as can be seen from the title deed for LR 5119, the transfer instrument dated August 14, 2012, the mutation form dated 1/10/2020 and the subsequent copies of title deeds for the eight (8) parcels.

5. Reuben Kimani has sworn an affidavit dated November 2, 2021 on behalf of the first Defendant. He is the Chief Executive Officer of the first Defendant.

The gist of the deposition by the deponent is that the first Defendant is a real estate company which engages in purchase, development and sale of value added plots to members of the public.

The first Defendant purchased five parcels namely Kajiado/Ntashart/5033, 5034, 5035, 1701, and 1702 from Gilbert Maina and five others, Joshat Kabaki Njoroge and James Kang'ethe Kimani respectively. The parcels were further subdivided and sold to third parties who are not parties to this suit.

The deponent adds that none of the parcels that he bought is alleged to have encroached onto the Plaintiff's land. He opposes the admission of the report by John D Obel, a surveyor, on the ground that it is not sanctioned by the District Land Registrar who is the authority on boundaries.

6. Counsel for the parties filed written submissions on 28/1/2022, March 17, 2022, and August, 2022.

I find that the following issues have been raised by the counsel for the parties;

- a. Injunction



- b. Indefeasibility of title
 - c. Expert opinion by a qualified and duly licensed surveyor
 - d. Failure to apply for and/or obtain change of user from agricultural land to residential cum commercial use.
 - e. Trespass
 - f. Damages
 - g. Whether this court has the jurisdiction to hear and determine this suit?
 - h. Whether the first Defendant is a proper party to this suit?
 - i. Whether the court should rely and admit on record the Applicant's survey report in the absence of one by Land Registrar and District Surveyor?
 - j. Whether the Applicant is entitled to the orders sought?
7. I have carefully considered the two applications in their entirety including the grounds, the affidavits, the annexures as well as the pleadings on record. I have also considered the submissions by learned counsel for the parties.
 8. I find that the prayer for resurvey is not within the jurisdiction of this court by virtue of Section 18(2) of the [Land Registration Act](#) which vests such jurisdiction in the Land Registrar. The subsection provides as follows
 9. 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".
 10. The other prayers are within the jurisdiction of this Court but in my view, the first step to be taken is to determine the boundaries of the Plaintiff's land parcel and whether they abut the parcels belonging to the first, second, third and fourth Defendants.
 11. The other issues of injunction, indefeasibility of title, admissibility of expert opinion, failure to apply for or obtain consent for change of user, trespass and damages can only come after the resurvey.
 12. Regarding whether the first Defendant is a proper party to this suit, I find that it is. If it sold land that the Plaintiff claims, to third parties, then the Plaintiff has a cause of action against the first Defendant.
 13. For the foregoing reasons, I allow the Notice of Motion dated December 2, 2020 in terms of prayers 3 and 4 only.
 14. Plaintiff to pay for the costs of the resurvey.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 6TH DAY OF OCTOBER, 2022.

M.N. GICHERU

JUDGE

