

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CIVIL CASE NO.131 of 1986

M'INOTI MUTARI PLAINTIFF

VERSUS

MACIA KIRIMA & OTHERS DEFENDANT

RULING

The application before me seeks an order to the District Land Registrar Meru Central and the District Surveyor to restore the boundaries of land parcel Nos.Ntima/Ntakira/468 and 1091 to their original positions. The application is premised on the ground that the applicant obtained orders from this court in 1986 to have the boundaries of the two parcels of land fixed. That in compliance with that order both the Land Registrar and Surveyor fixed the boundary to the two parcels of land in question. That since then the respondent has interfered with the boundary.

The respondent in reply has maintained that the Land Registrar and Surveyor found that the applicant had encroached on the former's land and adjusted the boundary accordingly. Being aggrieved by this action the applicant filed District Land Dispute Case No.117 of 2000, which was dismissed. It is further stated that the present application is an abuse of the court process. That the boundary has remained intact since it was adjusted by the Land Registrar and Surveyor.

I have duly considered these arguments. The parties were unrepresented and the application does not state the provisions of the law under which it is brought, as in normally the case with applications drawn by laymen.

I find as a fact that the two parcels of land share a common boundary. That indeed in 1986 the applicant brought this suit against the respondent, the Land Registrar, Meru and the Attorney General seeking that the boundary in question be restored to its original position, mesne profit, general damages for trespass, interest and costs.

On 15th May, 1989 the court, (Oguk,J) relying on a report by the District Surveyor, found that the common boundary of the two disputed plots had been interfered with and ordered the Surveyor to fix the same to its correct and original position.

However, on 27th October, 1992 the court(Kuloba,J) having observed that the dispute being that of boundary, referred the same to the Land Registrar for determination. Both parcels are registered under the Registered Land Act. The Act vests in the Registrar exclusive powers to fix boundaries and also to determine, in case of a dispute the precise position of the boundary.

Evidence has been presented that with the assistance of the District Surveyor, the Registrar established the actual extent of each parcel's boundary and made a report to the court. The court found, as I have stated, that the boundary had been interfered with by the applicant extending the boundary of his land slightly into the respondent's. The court's finding followed an application by the applicant, who had at this time retained the services of an Advocate, which had sought that judgment be entered in terms of the Registrar's award dated 1st March,1994. The case was ordered closed after the entry of judgment as sought.

The Registrar having determined the dispute in the manner stated in his report and the court having

entered judgment in terms of that report, and the case having being closed, it was not open to the applicant to make the present application.

Secondly, the applicant has not persuaded me that the respondent has once again interfered with the boundary. It was the applicant who applied that the Registrar's award to be adopted as judgment of the court. The original boundary which he now seeks to be reverted was found to be an interference of the actual position.

From all this, I find that this application is an abuse of the process of this court and it must fail. It is dismissed with costs.

Dated and delivered at Meru this 2nd day of March 2007.

W. OUKO

JUDGE