



REPUBLIC OF KENYA

HIGH COURT OF AT NAIROBI (MILIMANI LAW COURTS)

Civil Case 962 of 2003

JOHN CHEGE & 16 OTHERS.....PLAINTIFF

VERSUS

JAMES MICHAEL MWANGI KUBUGI.....1ST DEFENDANT

LAND REGISTRAR NAIROBI CENTRAL REGISTRY....2ND DEFENDANT

1. Land and Environmental Law Division
2. Civil Practice and Procedure
3. Subject of main suit:-
 - i) Encroachment of land
 - ii) Canceling registration of charges in the boundaries between Riruta/Dagoretti/1351 and Riruta/Dagoretti/961
 - iii) Portion seize effected 7 ft by 276 ft by fifteenth
4. Preliminary Objection by defendant
 - a. The court has no jurisdiction to determine this matter
 - b. Boundary issue
 - c. Section 21 (1) of the Registered Lands Act Cap.300 deals with boundaries
Section 21 (2) disputes to be dealt with by the Registrar
Section 21 (4) no court shall entertain action relating to dispute to boundary.
5. Held:
 - i) Dispute concerns the boundaries
 - ii) Court has no jurisdiction

Obiter dictum – The registrar is sued instead of the Attorney general. Land Registrar not sued in their capacity.

6. Statute

The Registered Lands Act Cap.300

Section 21 (4)

Section 159

7. Advocate

N Wanyonyi for Nyokabi & Waiganjo Advocates for the plaintiff/respondent – present

M. Chege for Mwangi Chege & Co. Advocates for the defendant/applicant - present

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RULING

ON A PRELIMINARY OBJECTION.

I: Background of Suit.

1: The plaintiff's number 17 in total. One John Chege Kahora has obtained authority from the 16 others to file this suit.

2. The claim by the 17 plaintiff is that they are the registered owners of LR Dagoretti Riruta 961 being 2.5755 Hectares. A title deed is said to have been issued to them (the law required only 4 persons should be registered as owner of the title but perhaps there may be later an explanation on this).

3. Adjacent to their said parcel of land is LR Dagoretti/Riruta 3151 owned by the 1st defendant who purchased the same from the son of the original owner measuring 0.1 hectares.

4. According to the plaintiff the 1st defendant encroached into their portion of land. On 13 August 03 the 1st defendant came with police officers and his agents and changed the hectares to the land. The portion alleged to have been encroached into is 7 ft x 276 ft and 15 ft.

5. The plaintiff filed suit seeking orders of injunction against this action. That the 1st defendant be disposing wanting the said portion of land. That the sub- of Dagoretti Riruta 1`351 and Dagoretti Riruta/961 be not registered. In the alternative the court to order the cancellation of the changed made to the boundary.

6. In September 2003 an injunction was granted to the defendant (Nyamu J) 16 September 2003).

7. The defendant No.1 filed a notice of Preliminary Objection to these proceeding on 2 February 2005.

This Preliminary Objection was set down for hearing on 9 July 2005 by consent of both parties. The plaintiffs advocate failed to attend court on 9 July 2005. The proceeding continued under order IXb r 3(a) Civil Procedure Rules.

II Preliminary Objection

8. The defendant No.1 applicant brought to the courts attention that this matter concerns boundary. Only the registrar of Land under the Registered Lands Act had jurisdiction to determine issue of boundaries.

9. Section 21 of the act reads:-

1) "Except where, under section 22 it is noted the register that the boundaries of an parcel have been fixed, the registry may and any and any filed plan state be deemed to indicate the approximate boundaries and the approximate section only of the parcel.

2) Where any uncertain or dispute arises as to the position of any boundary, he Registrar, . . shall determine and indicate the position of the uncertain or disputed boundary.

3) _____

4) No court shall entertain any action or other proceeding relating to a dispute as to the boundaries of registered land unless the boundaries have been determined as provided in this section."

10. Under the Registered Lands Act Cap.300 (herein referred to as the act) the jurisdiction of the court is outlined in section 159. Within this section there is no mention of the dispute over boundary.

11. The plaintiff may be correct to attend to court to seek injunction orders to deal with any unlawful act that may effect their rights on the land but has this court jurisdiction to hear issues of boundaries?

II Findings

12. The law herein is clear that under section 21(4) of the Registered Lands Act only the Registrar of Lands has powers to deal with the issue of boundaries. This court has no jurisdiction to determine the boundary issue.

13. I need to clarify that Nyamu J gave orders of injunction. This is correct as the court has jurisdiction to give restraining orders but not determine the boundary dispute. Further, the Attorney General and not the Registrar of Land is the one sued.

14. I hereby uphold the Preliminary Objection. This suit is stayed pending further determining and or action by the Registrar of Lands on the boundary issues raised.

15. That parties are hereby given 150 days from to days date to determine the said issue.

16. There be liberty to apply.

17. The costs of this application be awarded to the 1st defendant applicant.

Dated this 11th day of July 2007 at Nairobi.

M.A. ANGA'WA

JUDGE

N. Wanyonyi for Nyokabi & Waiganjo & Co. Advocates for the plaintiff

M. Chege for Mwangi Chege & Co. Advocates for the defendant