



REPUBLIC OF KENYA



KENYA LAW
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Koech & another (Suing as Administrators of the Estate of Kipkereng Arap Koech - Deceased) v Kurere & another (Environment & Land Case 626 of 2013) [2022] KEELC 14911 (KLR) (17 November 2022) (Ruling)

Neutral citation: [2022] KEELC 14911 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 626 OF 2013
JM MUTUNGI, J
NOVEMBER 17, 2022

BETWEEN

JOB KOECH & PHILIP KIPTOO KOECH (SUING AS ADMINISTRATORS OF THE ESTATE OF KIPKERENG ARAP KOECH - DECEASED) PLAINTIFF

AND

PAUL KIPKECH KURERE 1ST DEFENDANT

KIPSYENAN FARMERS CO. LIMITED 2ND DEFENDANT

RULING

1. The plaintiff instituted the present suit *vide* a plaint dated March 16 2013 and sought the following substantive order:-
 - a. Perpetual injunction to restrain the defendants herein by themselves, their servants and agents from trespassing, sub-dividing, selling, dealing and or interfering with L R no 9535 (original no L R no 487/10) in any manner whatsoever.
2. The defendants filed a defence and counter-claim on January 22, 2014. The defendants denied they were trespassing into the plaintiff's land parcel L R no 9535 but admitted their three land parcels namely Kampi Ya Moto Block 6/130, 131 and 146 were adjacent to each other and separated from L R no 9535 by a murrum Road. They stated there was no road reserve as alleged by the plaintiff as the 2nd defendant was allocated by the government what used to be a stock route. The defendants by way of counter-claim *inter-alia* sought general damages for trespass and permanent injunction restraining the plaintiff from entering, remaining on or disposing of or interfering with the defendants' land parcels in any manner
3. The court in the cause of issuing directions on June 8, 2021 appreciated the matter raised issues that could best be resolved by engaging the services of a surveyor and invited the parties to consider whether



they could agree on a joint surveyor to undertake the exercise. On September 20, 2021, following agreement of the parties, the court made an order of reference in the following terms:-

“As the parties agree, it is ordered by consent that the government regional surveyor do visit land parcel L R no 9535 (originally L R no 487/10 and L R no 9335 situate in Rongai Sub-county and do an inspection and establish their boundaries. The regional surveyor to also include an inspection of land parcels Kampi Ya Moto Block 6/131 and 146 and advise whether there is any super-imposition of any parcels of land on others. The parties shall be entitled to be represented by their independent surveyors during the exercise. The regional surveyor to file an illustrated sketch plan together with his report within 90 days from today”.

4. The regional surveyor filed his report dated June 14, 2022 on the same date. The parties made their written comments/observations respecting the report which I have duly considered. In the present matter, it was evident from the pleadings that the issue was one of the positioning and delineation of the plaintiff's and the defendants' parcels of land on the ground. The court by virtue of section 18(2) of the *Land Registration Act* 2012 is divested of any jurisdiction to entertain disputes relating to boundaries. Section 18(2) of the Act provides:-

18(2) The court shall not entertain any action or other proceedings relating to dispute as to the boundaries of registered land unless the boundaries have been determined in accordance with this section.

5. The regional surveyor in his report has affirmed that they successfully inspected the identified properties. The regional surveyor was emphatic that they successfully carried out the survey as per the survey regulations. Although the report is silent on whether or not the parties were present when the survey exercise was undertaken, no party has complained that they were not present and/or duly represented during the exercise.
6. Having reviewed the report of the regional surveyor, I am satisfied that the regional surveyor carried out the exercise as requested under the order of reference from the court. On the basis of the report, the land parcels Kampi Ya Moto Block 6/131 and 146 abutt the Nakuru-Ravine high-way and does not share a boundary with land parcel 9535 belonging to the plaintiff. As this court observed in the case of *Paul Orango Muma Vs Dominic Muma Kworo* (2019) eKLR, the court has no technical capacity to deal with disputes relating to the positioning of boundaries and that is a job that is best left to the persons given the mandate by the law. In the case 1, I stated thus:-

“These provisions of the Act clearly show (Reference to sic clause 18 & 19, *Land Registration Act*); It is the land registrar and the surveyor who have the mandate to determine the position of boundaries in regard to registered land. It is not difficult to understand why jurisdiction for the court to deal with boundary disputes is ousted. The court lacks the capacity to determine the positioning of boundaries as that requires technical people and equipment to do that which the court does not possess. The land registrar would normally have custody of the records and the surveyor would possess the technical knowhow and the equipment to interpret the survey records”.

7. In the instant matter, the surveyor has executed his mandate and what is not clear is whether after establishing and defining the parcel boundaries, there was a necessity to amend the survey plans as envisaged under section 19 of the *Land Registration Act*. In the present matter, Land parcels L R no 9535 and 9335 were defined by fixed boundaries whereas land parcels Kampi Ya Moto Block 6/131



and 146 had general boundaries illustrated by the Registry Index Map (RIM). As per the report, the regional surveyor was able to pick the beacons defining the fixed boundaries and the same did not conflict with those boundaries of land parcels Kampi ya Moto Block 6/131 and 146 defined by the RIM.

8. Under sections 18 and 19 of the *Land Registration Act*, the land registrar and the surveyor are expected to act in conjunction as they complement each other. Section 19(3) of the *Land Registration Act* provides as follows: -

19(3) Where the dimensions and boundaries of a parcel are defined by reference to a plan verified by the office or authority responsible for the survey of land, a note shall be made on the register and the parcel shall be deemed to have had its boundaries fixed under this section.

The reference to the regional surveyor was by consent of the parties. He has duly executed his mandate and has filed his report as directed by the court. The report is clear that he identified and established the boundaries of the parcels of land that were specified. The court accepts the report as representing the positions on the ground in regard to the parcels of land and adopts the report for implementation. The regional surveyor shall implement the report in consultation with the land registrar such that if any notation requires to be made in terms of section 19(3) of the *Land Registration Act*, the same will be made appropriately.

9. The court has considered the pleadings and having regard to the surveyor's report, the court is satisfied that the issue of trespass that both the plaintiff and the defendants raised in their pleadings, has been aptly dealt with as the position of the respective boundaries of the parcels of land was identified. The parties should respect the boundaries as established by the regional surveyor. Though the defendants had in their counter-claim pleaded general and special damages on account of trespass, there was no substantiation and/or proof of the same and I decline to make an award for damages. The parties should be content that the issue of their parcel boundaries had been resolved.
10. In the result, the court adopts the report by the regional surveyor as its judgment and directs that the report be implemented by the regional surveyor together with the land registrar, Nakuru. The plaintiff's suit has not been proved to the required standard and is ordered dismissed. The defendants have been partially successful to the extent that they were adjudged not to have trespassed on to the plaintiff's land. The defendants claim for damages was not proved and is disallowed. The court orders that each party shall bear their own costs of the suit and counter-claim.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THROUGH VIDEO LINK THIS 17TH DAY OF NOVEMBER, 2022.

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HON J M MUTUNGI

ELC JUDGE

