

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Civil Case 6085 of 1990

DANIEL KIMANI NJIHIA.....
.....PLAINTIFF

VERSUS

FRANCIS MWANGI KIMANI.....
.....DEFENDANT

JUDGMENT

This claim arises out of a land dispute between the plaintiff and the defendant. The plaintiff is the registered proprietor of land parcel **NO.Loc.1/MUKARARA/253** while the first defendant is the registered proprietor of land parcel **NO.LOC.1/MUKARARA/960**.

The second defendant is the District Land Registrar Muranga District and was sued in his official capacity.

The plaintiff claims that about 0.62 acres were removed from his parcel of land **NO.LOC.1MUKARARA/253** and added to the defendants land parcel **NO.LOC.1/MUKARARA/960** and filed this suit seeking orders that the first defendant be directed to give vacant possession of the said area of 0.62 acres formally part of parcel **NO.LOC.1/MUKARARA/253** and further that an order do issue to the second defendant directing him to re-amend the Registry Index Map Boundary between land parcel **NO.LOC.1/MUKARARA/253** and land parcel **NO.LOC.1/MUKARARA/960** and thereby relocating the boundary of the plaintiff's land parcel to its original and correct position. The plaintiff also seeks damages for trespass against the first defendant plus costs of this suit.

The plaintiff in his evidence told the court that he is the registered proprietor of land parcel **NO.LOC1/MUKARARA/253** measuring 4.2 acres or thereabouts. In 1988 when he went to check the survey map at the Muranga Land Registry Offices, he found that a portion of 0.62 acres had been removed from his land parcel **NO.LOC.1/MUKARARA/253** and added to the land of the first defendant land parcel **NO.LOC.1/MUKARARA/960**. He came to learn that the changes were caused by the second defendant through the request of the first defendant and decided to instruct a lawyer to file this suit.

The first defendant in his evidence told the court that he is the registered proprietor of land parcel **NO.LOC.1/MUKARARA/960**. He realized that his parcel of land looked smaller than the physical land he actually occupied. He contacted the District Land Registrar Muranga about the dispute. Sometimes in 1988 there was a land dispute between parcels **LOC.1/MUKARARA/253** and **LOC.1/MUKARARA/311**.

The land Registrars together with the District Surveyor visited the disputed parcels and found out that parcel No.311 crossed the road since the time of demarcation. The boundaries of that piece of land across the road were surveyed and the Land Registrar authorized the amendment of the Registry Index Map.

Almost at the same time of the dispute the owner of parcel No.311 applied for subdivision. The land was subdivided creating parcels No.958, 959 and 960. Parcel No.960 crossed the road to include that piece of land which had been declared to be part of parcel No.311. The amendment of the map to show

the sub-division was also done in November 1988 and that on the ground this has been the position.

The Land Registrar was called to give evidence as to how the amendment on the map was made. **KENNEDY EDWARD OSORO (DW1)** in his evidence told the court that the amendment on the map between parcels NO.311 and 253, Parcel 960 came out of the subdivision of parcel NO.311. The boundary between parcels NO.253 and 311 was determined out of a boundary dispute. Since it was determined that a portion of land in parcel NO.253 belonged to owner of parcel NO.311 since the time of demarcation then the map had to be amended to indicate the ground occupation out of the boundary dispute a portion of 0.62 acres or thereabouts was removed from parcel NO.253 and added to parcel NO.311. Parcel NO.960 which apparently belonged to the Original Owner of parcel NO.311 was created in the subdivision of parcel NO.311. This explains why some amendments had to be made on the map index to reflect the actual ground occupation.

Both the plaintiff and the first defendant concede that there were no changes on the physical ground occupation since the titles were issued in 1988. That being the position the plaintiff claim that amendment effected on the map index deprived him of his 0.62 acres that were reflected on the map as having been removed and added to land parcel NO.960 of the first defendant as amendment of the register did not affect ground occupation by both the plaintiff and the first defendant.

From the above reasons it follows therefore that the plaintiff's claim cannot succeed and the suit is dismissed with costs to the first defendant.

Delivered and dated at Nairobi this 7th June day of 2006.

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J.L.A. OSIEMO

JUDGE