



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KITALE**

**LAND CASE NO. 48 OF 2019**

**MUDE HUSEIN MOHAMED.....1<sup>ST</sup> PLAINTIFF**

**RODGERS SAMANYA.....2<sup>ND</sup> PLAINTIFF**

**HASSAN ABDULAHI ALI.....3<sup>RD</sup> PLAINTIFF**

**JAMES NJENGA NYAGA.....4<sup>TH</sup> PLAINTIFF**

**ABDULRAHMAN WAMALA.....5<sup>TH</sup> PLAINTIFF**

**THE PUBLICAN (AFRICA) LTD.....6<sup>TH</sup> PLAINTIFF**

**VERSUS**

**MASINDE MULIRO UNIVERSITY**

**OF SCIENCE AND TECHNOLOGY.....1<sup>ST</sup> DEFENDANT**

**TURKANA UNIVERSITY COLLEGE(Being sued as**

**a Constituent College of the 1<sup>st</sup> Defendant).....2<sup>ND</sup> DEFENDANT**

**THE COUNTY GOVERNMENT**

**OF TURKANA.....3<sup>RD</sup> DEFENDANT**

**THE COMMISSIONER OF LAND.....4<sup>TH</sup> DEFENDANT**

**THE COUNTY SURVEYOR**

**TURKANA COUNTY.....5<sup>TH</sup> DEFENDANT**

**THE HON. ATTORNEY GENERAL.....6<sup>TH</sup> DEFENDANT**

**AND**

**MOUNT KENYA UNIVERSITY.....INTERESTED PARTY**

**RULING**

1. The application dated 11/5/2020 and filed in court on 29/5/202, has been bought under **Order 40 Rule 1 (a)** of the **Civil Procedure Rules**. The plaintiffs seek the following orders:-

**(1) That upon hearing and determination of this application this honourable court be and hereby pleased to order a survey to be conducted and report be filed in court on the following disputed parcels of land by establishing their actual acreage on the ground:**

**(a) Land Parcel No. LR.14691/425 Kanamkemer, Lodwar-Turkana County**

**(b) Plot No. 931**

**(c) Plot No. 932**

**(d) Plot No. 829**

**(e) Plot No. 976 'A'**

**(f) Plot No. 790**

**(g) Plot No. 920**

**(h) Plot No. 888.**

**(2) That the survey report to establish whether land parcel LR No. 14691/425 Kanamkemer, Lodwar-Turkana County extends to the main Lodwar-Kitale Road including the plaintiffs/applicants plots described at prayer 1(b), (c), (d), (e), (f) and (g) above.**

**(3) The OCS, Lodwar Police Station be directed to maintain peace, supervision and enforcement of the orders of this honourable court.**

**(4) That costs of the survey be borne by the p plaintiffs/applicants but to ultimately abide by the outcome of the main suit.**

**(5) That the costs of this application be in the cause.**

2. The application is supported by the affidavit sworn on **11/5/2020** by the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs who have authority from the 3<sup>rd</sup> to 6<sup>th</sup> plaintiffs herein. The grounds upon which the application is made are that the plaintiff's case in the plaint is that their plots are separate and distinct from the 1<sup>st</sup> defendant's land parcel yet the 1<sup>st</sup> defendant asserts that the plaintiff's parcels of land are part of its land hence the need for a survey.

3. The 1<sup>st</sup> and 2<sup>nd</sup> defendants through its **Ag. Principal, Prof. George Chemining'wa** filed replying affidavit sworn on **11/5/2020**. His response is that the application lacks merit; that the plaintiffs made specific claims that they had parcel numbers adjacent to the fence in the forecourt of the 2<sup>nd</sup> defendant's land and gave their specific plot measurements while the 1<sup>st</sup> defendant purchased land measuring **42.02 ha**; that the plaintiffs therefore know their actual acreage on the ground; that the issues in respect of the plaintiff's claim over the defendants' land is already addressed by this court in its ruling of **13/2/2020** and the plaintiffs are merely intent on secretly introducing new issues and are engaged in a fishing expedition and the only option for them is to set down the suit for hearing.

4. The Interested Party and the 3<sup>rd</sup>, 4<sup>th</sup> 5<sup>th</sup> and 6<sup>th</sup> respondents were not opposed to the application dated **11/5/2020**.

5. The plaintiffs filed their written submissions on **9/12/2020**. The 1<sup>st</sup> and 2<sup>nd</sup> defendants filed their submissions on **11/1/2021**.

6. I have considered the application, the response and the submissions of the parties. The main question that arises for determination is whether a survey should be ordered by the court. This court must therefore address itself whether there is need for such a survey. The argument of the plaintiffs is that there is need to ascertain the acreage of the total sizes of the land occupied by the plaintiffs and the 1<sup>st</sup> defendant on the ground.

7. Having considered the application, I find that the present dispute is not a boundary dispute, it is a dispute regarding title to land. It is therefore incumbent upon the parties to bring evidence to the fore in order to demonstrate that their plots were properly surveyed, that they exist or that they have titles to them.

8. It is this court's view that if the processes of allocation and survey of the parties' respective plots were properly documented by the relevant offices or titles issued pursuant to such allocation and survey, then such evidence as any of the parties requires to prove either the statements in the plaint and defence can only be based on the existing records and not any future records to be created. I do not have any evidence before me that the existing records are not sufficient, when presented adroitly in evidence, to establish each party's respective claim. In other words this court agrees that the parties already have the evidence with which to prove their respective claims of purchase, allocation, or survey with them and it does not appear necessary for this court to commission a survey in respect of the land. Consequently, this court finds that the application dated **11/5/2020** is unmerited and the same is hereby dismissed with costs to the defendants **Nos. 1 and 2** only.

It is so ordered.

**Dated, signed and delivered at Kitale via electronic mail on this 26<sup>th</sup> day of January, 2021.**

**MWANGI NJOROGI**

JUDGE, ELC, KITALE.