



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO. 307 OF 2016

WILSON NDUNGU NJUU.....1ST PLAINTIFF

JOSPEH RICHU.....2ND PLAINTIFF

VERSUS

JAMES MUMO.....1ST DEFENDANT

BROOK OF HOPE COMMUNITY

BASED ORGANIZATION.....2ND DEFENDANT

AND

PROF. GITHU MUIGAI.....1ST INTERESTED PARTY

PETER MWIHIA.....2ND INTERESTED PARTY

SAMUEL NGIGI NGERA.....3RD INTERESTED PARTY

WAMBUI GITHUKI.....4TH INTERESTED PARTY

NDUTA KIMANI.....5TH INTERESTED PARTY

DISTRICT LAND REGISTRAR- NAIVASHA.....6TH INTERESTED PARTY

REGIONAL SURVEYOR RIFT

VALLEY REGION.....7TH INTERESTED PARTY

RULING

1.The plaintiffs in the present suit claim beneficial ownership of land parcel number **Kijabe Kijabe Block1/2918**. The plaintiffs vide the plaint dated 1st August 2016 averred that the 2nd defendant was the registered owner of Land parcel number **Kijabe/Kijabe Block1/3765** which was adjacent to the plaintiffs plot. The plaintiffs claimed that the defendants attempted to relocate the boundary of their plot to inside the plaintiffs plot by about 1.01 hectares. The plaintiffs sought the delineation of the boundary between the two parcels of land by the Nakuru County Surveyor and the Naivasha Land Registrar.

2.The Court noting that the dispute related to boundaries on the 10th August 2016 made an order referring the matter to the District Surveyor and the Land Registrar to delineate and mark the boundaries of the two parcels of land. The Land Registrar made a report dated 17th October 2016 which showed land parcels **Kijabe/Kijabe Block1/2918 and 3765** sizes on the ground did not correspond with the records held as the ground area reflected a shortfall of about 1.01 ha (approximately 2.5 acres). The report further revealed the adjoining parcel Numbers 2916, 2917,2019,2920 and 2921 had a combined excess in area of 1.01 ha (approximately 2.5 acres).The Land Registrar recommended that the proprietors of the affected parcels be enjoined to the suit to enable all the boundaries of the land parcels in the block to be aligned

appropriately.

3. The owners of land parcels Kijabe/Kijabe block 1/2916, 2917, 2919, 2920 and 2921 were ordered to be enjoined to the suit on 11th November 2017 and the plaint was duly amended to reflect this position. The matter was part heard before Hon Justice Munyao on 18th October 2018 when the 2nd plaintiff presented the plaintiffs case.

4. The parties appeared before me for further hearing on 5th November 2019 and by consent of the parties it was agreed that the Land Registrar and the surveyor be summoned to present the report they had prepared. The Land Registrar and the surveyor attended court on 28th November 2019 and Mr. Dismus Kwaria, a Senior Land Surveyor at the Regional Survey Nakuru Office presented the surveyor's report dated 28th June 2017 and was duly cross examined.

5. Arising from the evidence tendered by the surveyor via the report, the Court suo moto and with a view of having the matter finally resolved issued directions/orders directed at the survey office and the Land Registrar in the following terms :-

1. That from the Surveyor's Report, its evident that Land parcels numbers 2916, 2917, 2918, 2919, 2920, 2921 and 3765 have a problem in regard to their delineation and areas.

2. That the Regional Survey office in liaison with the Land Registrar, Naivasha be and are hereby directed to visit the Land Parcels number 2916, 2917, 2918, 2919, 2920, 2921 and 3765 and prepare a Survey Rationalization sketch plan having regard to any permanent developments and occupancies by the affected parties for approval by the parties and the court before implementation.

3. That the Regional Survey Office and the land registrar, Naivasha be and are hereby directed to file their Report in Court by 31st January, 2020.

4. That the OCS Maai Mahiu police station be and is hereby directed to provide security during the exercise.

6. The Land Registrar and the Regional Surveyor made a joint visit to the disputed land parcels on 13th February 2020 and took measurements of all the affected parcels of land which are all within one block (parcels 2916-2921 with the parcel 3765 sandwiched between parcels 2918 and 2919). The block is served by access road on all the 4 sides so that it is enclosed such that it is disintegrated and could be dealt with as a stand alone without affecting the other parcels of land comprised in the registration section **Kijabe/Kijabe Block 1**. The report by the Land Registrar and the surveyor dated 30th June 2020 was presented to the Court in the presence of the parties by the Land Registrar, Naivasha on 28th January 2021.

7. It was clear from the report that there was variance between the area shown on the titles held by the parties, the Registry Index Map (RIM), and the physical ground area of each of the parcels of land. Some of the parcels were markedly larger on the ground than the area shown on the RIM and that indicated on the title. The Land Registrar indicated that there was necessity for the plots to be rationalized having regard to the ground area, the RIM, and the titles held by the parties. The Land Registrar indicated the rationalization would result in having each of the plot owners whose title was 2.02ha increased to 2.70ha. (Parcels 2916, 2917, 2918, 2019, 2920 and 2921). Land parcel 3765 whose title was 1.01 hectares would increase to 1.35hectares.

8. There is no doubt that the present suit concerned the delineation of the parcel boundaries between land parcel **Kajabe/Kijabe Block 1/2918** and **3765**. Upon the Land Registrar and the Surveyor visiting the site to fix the boundary it became apparent, the boundaries of the entire block had a problem necessitating the enjoinder of all the proprietors of the affected parcels of land as interested parties. The dispute related to the positioning of the boundaries of the 7 affected plots and the court properly made a reference for the matter to be handled by the Land Registrar and the Surveyor who have mandate under sections 18 and 19 of the **Land Registration Act 2012** to establish and fix boundaries. Indeed, under section 18 (2) of the Act the court lacks the jurisdiction to deal with issues relating to boundary disputes. That is for good reason because the court has no technical capacity to deal with issues touching on boundary disputes. The Land Registrar and the surveyor are clothed with that mandate and are the custodians of the records and have the technical ability to execute that function.

9. Having carefully perused the report by the Land Registrar and the Surveyor, I am satisfied that the report conclusively disposes of this matter as it fully determines the size of the land all the affected parties are entitled to on the ground. I accordingly adopt the report as filed as judgment of the court save only that the adjusted ground area of land parcel **Kijabe/Kijabe Block 1/3765** should be 1.35 Ha and not 2.70 Ha as indicated in the report while land parcel **Kijabe/Kijabe Block1/2918** should be 2.70Ha and not 1.35 Ha as indicated in the report. The implementation of the report will result in the alignment of all the boundaries and rectification of the titles so that the areas shown correspond with the area on the ground and the amended RIM for the block.

10. The court directs that the report be implemented by the Land Registrar and the Surveyor within the next 4 months (120 days) from the date of this ruling. If required to do so, the parties will surrender the titles they hold to facilitate appropriate rectifications.

11. It is directed that the matter be mentioned on 5th July 2021 to confirm whether the report had been fully implemented.

12. Each of the parties will be a beneficiary of the exercise carried out by the Land Registrar and they surveyor. In exercise of my discretion I order that each party is to bear their own costs of the suit.

13. Orders accordingly

Ruling dated signed and delivered virtually at Nakuru this 18th day of February 2021.

J M MUTUNGI

JUDGE