



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MAKUENI

ELC CASE NO. 363 OF 2017

TERESIAH WANJIKU MUTINDA.....1ST PLAINTIFF

PHILIP MUTINDA NGUMBI.....2ND PLAINTIFF

-VERSUS-

RICHARD BEN KASAA MUSEMBI (Sued as the

Administrator of the Estate of MANGONDU KING'OTO

MUSYIMI - Deceased.....DEFENDANT

RULING

1. Pursuant to this Court's Order dated 29th May, 2020, the Land Registrar Makueni, C.K. Nyakundi prepared the report dated 22nd July, 2020 and the same was filed in Court on 23rd July, 2020. The report presents the Land Registrar's findings following her visit to Parcel Nos. Kibauni/Kavumbu/643 and Kibauni/Kavumbu/644 where she was tasked with the resolution of the boundary dispute between the Plaintiffs and the Defendant.
2. The report states that the Land Registrar visited the disputed land in the company of D.O.I Mbumbuni, the D.O Kalawa, the OCS Kalawa, the area Chief – Miangeni, the Assistant Chief, Surveyors and other Security contingents. It was further outlined that the interested parties and neighbours were present for the exercise. After the surveyors conducted a study of the disputed land, Kibauni/Kavumbu/644 resulted in an area equivalent to 5.13 hectares whereas Kibauni/Kavumbu/643 resulted in an area equivalent to 3.92 hectares. The area that is disputed measures an equivalent of 1.18 hectares. In conclusion, the Land Registrar reinstated the boundary for the two properties in accordance with the map.
3. When cross-examined over the Report by Counsel for the Plaintiffs, the Land Registrar stated that she had adopted her Report to match the findings of the Surveyors whom she had supervised when they visited the site. She went on to state further that the boundaries were remarked on the material day of the exercise as there weren't any physical boundaries at the time.
4. The Plaintiffs filed their submissions with respect to the report on 22nd June, 2021. It was submitted that the Land Registrar did not discharge her mandate as contemplated under **Section 18(2)** of the **Land Registration Act, 2012**. Accordingly, it is the Plaintiffs' position that the Land Registrar has failed to settle the boundary dispute. The Plaintiffs submitted that the Land Registrar did not accord them a fair hearing because she never visited the site. For the submission that the report ought to be disregarded for violating their right to a fair hearing, the Plaintiffs relied on the case of **Re Estate of Said Abdalla (Deceased) [2018] eKLR**.
5. On his part, the Defendant filed submissions on 28th June, 2021. It was submitted that the Plaintiffs had not demonstrated that the Land Registrar's report was tainted with impropriety or illegality and thus, the parties herein are bound by the findings of the report. That the report determines the issues in controversy between the parties and hence it ought to be adopted as the judgment of this Court.
6. Under **Sections 18 and 19** of the **Land Registration Act, 2012**, the duty to determine boundary disputes and to fix boundaries is vested with the Land Registrar. Under **Section 19(2)** of the said **Act**, the Land Registrar is required to give the disputing parties an opportunity to be heard before filing a field plan showing the precise position of the boundary. Under **Section 18(3)** of the **Act**, the Land Registrar is mandated to receive such evidence as may be necessary to resolve a boundary dispute. Under **Section 87 (1) (a)** of the **Act**, an opportunity to be heard is defined as follows: -

(1) If this Act requires that a person be given an opportunity to be heard before a particular thing is to be, or may be done, that person shall be deemed to have been given such an opportunity—

(a) if the person attends before the Registrar personally or by an advocate or other agent, and is given such an opportunity; or...

7. Having perused the Land Registrar's report dated 22nd July, 2020 it is clear as day that the 1st Plaintiff was present when the Land Registrar, Caren Nyakundi conducted the field exercise. That fact remains unchallenged. Also present were the Surveyors, Chiefs and other Security personnel. There is no record of the 1st Plaintiff having presented any evidence during the exercise in support of her case, either in her own capacity or through her advocate and that such evidence was omitted from consideration. It would thus be inimical to reach a conclusion that the Plaintiffs were not heard.

8. That being said, my finding is that the report of the Land Registrar dated 22nd July, 2020 is conclusive enough to determine the dispute herein. No material was presented to impugn the report and the oral evidence by the maker thereof remained resolute. The parties herein are bound by the findings of the report. The upshot of the above is that this Court hereby disregards boundary line KL and adopts boundary line CG shown in the tracing under Sheet No. 13 of the Registry Index Map annexed to the Land Registrar's Report of 22nd July, 2020. Each party shall bear his own costs.

SIGNED, DATED AND DELIVERED VIA EMAIL ON THIS 9TH DAY OF MARCH, 2022.

MBOGO C.G.

JUDGE

9/3/2022

Court Assistant: Mr. T.Chuma