REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NYAHURURU

ELCA NO. 55 OF 2018

PASQUALINA TIRINDI MURIANKI.....PLAINTIFF

VERSUS

MARTHA MUTHONI MWICHIGI (suing as presumedpersonal representative of the estate of

MWICHIGI MUNIU (Deceased).....DEFENDANT

RULING

1. By a notice of motion dated 15th December, 2020 grounded upon **Section 5** of the **Judicature Act** (*repealed*) **Sections 1A, 1B, 3 and 3A of the Civil Procedure Act (Cap. 21) the inherent jurisdiction of the court and all enabling provisions of the law,** the Plaintiff sought the following orders:

(a) ...Spent

(b) That this honourable court be pleased to re-open this file as it was "deemed as closed" at paragraph No 3. Of the court's order dated 24th January, 2019 in this matter.

(c) That this honourable court be pleased to order that the Defendant- Martha Muthoni Mwichigi show cause why she should not be committed to civil jail and/or be penalized accordingly for contempt of and disobedience of court's order dated 24th January, 2019 in that on 7th August, 2019, she mobilized members of her family, relatives and friends so as to prevent the Land Registrar, Nyandarua (W.N. Muguro) and her team from carrying out her official duties of resolving the boundary dispute between the Plaintiff's land Title Number Nyandarua/Karati/770 and the Defendant's land title Number Nyandarua/Karati/769 contrary to the directions of the aforesaid order.

(d) That a formal order be issued by this honourable court to the Assistant County Commissioner, Magumu Division and/or the Officer Commanding Police Division Magumu to oversee the fresh boundary dispute resolution exercise between the Plaintiff's land Title Number Nyandarua/Karati/770 and the Defendant's land Title Number Nyandarua/Karati/2674 to be undertaken afresh by the Land Registrar, Nyandarua in compliance with the aforesaid order dated 24th January, 2019.

(e) That the Defendant be given strict warning by this court never to disrespect it's orders so as to allow the Land Registrar, Nyandarua to carry out the duties as directed by this court herein.

(f) That the Defendant be condemned to refund the Plaintiff Ksh 50,000/= being estimated costs in mobilizing and preparing for the aforesaid aborted boundary dispute resolution exercise that was scheduled for 7th August, 2019.

(g) That the Defendant be condemned to bear the costs of this application.

2. The said application was based upon the grounds set out on the face of the motion and the contents of the supporting affidavit sworn by the Plaintiff on 15th December, 2020 and the exhibits thereto. It was contended that the Defendant had deliberately failed to respect and comply with the court order made on 24th January, 2019 which referred the dispute between the parties to the Land Registrar for resolution of a boundary dispute. It was contended that the Defendant had mobilized her family members and friends on 7th august, 2019 to prevent the Land Registrar from undertaking his statutory duties.

3. The Defendant filed replying affidavit sworn on 5th February, 2021 in opposition thereto. The Defendant denied the allegation that she had

prevented the Land Registrar and her team from undertaking their statutory duties. It was further contended that the court did not have jurisdiction to entertain the suit hence the reason why it ordered closure of the court file. Moreover, the Defendant contended that she had never been served with the said order.

4. When the said application was listed for hearing on 15th February, 2021 it was directed that it shall be canvassed through written submissions. The parties were granted 21 days each to file their respective submissions. The material on record shows that the Plaintiff filed her submissions on 5th March, 2021 whereas the Defendant filed hers on 1st April, 2021.

6. Whereas the Plaintiff held the view that the court had made positive orders on 24th January, 2019 capable of implementation or enforcement, the Defendant was of the view that the court had clearly determined that it had no jurisdiction to entertain the matter hence the reason why the court file was closed.

7. The court has perused the entire ruling on 24th January, 2019 whereby the court stated as follows:-

> **"I have considered the pleadings before this court and I note that the same touch on a boundary issue that has been ongoing between the parties for a long time. The provisions of Section 18 (2) of the Land Registration Act are very clear that this court has no jurisdiction to entertain issues that touch on boundary disputes. It is also trite law that jurisdiction is everything without which a court shall down its tools. I therefore find that this matter is premature before this court and direct that the matter be referred to the Land Registrar to solve the issue on the boundary dispute before the matter can be escalated to this court. These are the orders of the court. The file be deemed as closed."**

8. The court is satisfied that the net effect of the said ruling is that the court clearly declared that it had no jurisdiction to entertain the suit hence the reason it ordered that the file shall be deemed as closed. The court was clear that the moment it formed the opinion that it had no jurisdiction it could not make one more step in the matter. The subsequent referral of the dispute to the Land Registrar for resolution did not confer jurisdiction upon the court to entertain the suit.

9. There is no indication that the order of the court declining jurisdiction was ever challenged either on appeal or review. There is also indication to show that the orders was ever varied, discharged or set aside. In the premises, it would follow that the court has no jurisdiction to entertain the Plaintiff's application. Accordingly, the Plaintiff's notice of motion dated 15th December, 2020 is hereby struck out in its entirely with no order as to costs.

10. It is so ordered.

RULING DATED AND SIGNED IN CHAMBERS AT NYAHURURU THIS 10TH DAY OF JUNE 2021 AND DELIVERED VIA MICROSOFT TEAMS PLATFORM.

In the presence of:

Mr. Kirika for the Plaintiff

Mr. Kinyua Njogu holding brief for Mr. Waithaka Mwangi for Defendant

.....

Y. M. ANGIMA

JUDGE