



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT & LAND COURT**  
**AT MILIMANI LAW COURTS**  
**ELC CASE NO. 1012 OF 2013**

PARLAD SINGH THATTI.....1<sup>ST</sup> PLAINTIFF

GURMINDER KAUR THATTI.....2<sup>ND</sup> PLAINTIFF

VERSUS

ALICE KIPTARUS.....1<sup>ST</sup> DEFENDANT

SIMON KAHWAI ALIAS MWAURA.....2<sup>ND</sup> DEFENDANT

EDIYA ROBOW ALIAS MAMA HASSAN.....3<sup>RD</sup> DEFENDANT

PETER NDUMIA WANJA ALIAS COUNSELLOR.....4<sup>TH</sup> DEFENDANT

**RULING**

1. The Plaintiffs/Applicants filed a notice of motion dated 6<sup>th</sup> July 2015 in which they sought the following orders:-

***1) Spent***

***2) An order be issued to the Land Surveyor Nairobi County to survey the suit property of Land Reference No LR 9042/591 and determine its boundaries and prepare a report on the same.***

***3) The Report from the Land Surveyor be adopted by this Honorable Court***

***4) Costs of this application.***

2. The Applicants contend that they are the registered owners of LR No.9042/591(suit property). Sometime in 2010, the 1<sup>st</sup> Applicant fell ill and proceeded to India for specialized treatment. While he was away, the Defendants/Respondents invaded the suit property and constructed on it.

3. The Respondents in their defence contend that they are owners of LR No.9042/213, LR No.9042/310 and LR 9042/320 Tassia Embakasi and that they have no interest in LR No.9042/591. The Applicants therefore contend that for an expeditious conclusion of this case, the court should be ordered to go to the ground and file a report regarding LR No. 9042/591.

4. The Respondents opposed the Applicants' application based on grounds of opposition dated 26<sup>th</sup> August 2015. The Respondents contend that the Applicants' application is frivolous, vexatious and an abuse of the process of the court; that the application is incompetent; misconceived and bad in law and that the orders sought are legally untenable and incapable of being granted.

5. The parties were directed to file written submissions. The Applicants filed their submissions on 25<sup>th</sup> November 2015. The Respondents filed theirs on 15<sup>th</sup> December 2016. I have considered the Applicants' application as well as the opposition to the same by the Respondents. I have also considered the submissions by the parties herein.

6. This Ruling has been pending for over six years because the file went missing. It only resurfaced after an application for reconstruction was made. A look at the case herein shows that the dispute here is not on boundary but rather encroachment. The Respondents who have

invaded the Applicants property are simply claiming that they have their own properties which they have named in their defences.

7. It is important for a surveyor to go to the ground to ascertain the position of Plot No.9042/591 in relation to the alleged Plot Nos.LR 9042/213, 9042/310 and 9042/320 Tassia Embakasi.

8. I therefore make the following specific order. Let the County Surveyor move to the ground and ascertain the ground position of LR No.9042/591 in relation to Nos.LR 9042/213, 9042/310 and 9042/320 which are alleged to belong to the Respondents. The report of the County Surveyor should be filed in court within 60 days. Costs of this application shall be in the cause.

**IT IS SO ORDERED.**

**DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 11TH DAY OF NOVEMBER 2021**

**E.O.OBAGA**

**JUDGE**

In the Virtual absence of parties who were aware of the date of delivery of Ruling.

Court Assistant: Mercy

**E.O. OBAGA**

**JUDGE**