



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO. 175 OF 2014

GICHOBO FARMERS & 15 OTHERS.....PLAINTIFFS

VERSUS

MUIRURI GITITO.....1ST DEFENDANT

KINUTHIA IRUNGU.....2ND DEFENDANT

PWANI FARMERS.....3RD DEFENDANT

RULING

1. The plaintiffs filed the present suit seeking an order that the District Land Registrar together with the surveyor do visit the suit properties owned by the plaintiffs as itemized in the plaint and to establish and correct the boundaries. The plaintiffs further prayed that the OCS Njoro Police Station be required to provide security during the survey exercise.
2. The defendants by their statement of defence dated 25th July 2014 did not deny there was a boundary dispute. Under paragraph 6 the defence the defendants admitted there was a boundary dispute as pleaded under paragraphs 7 and 8 of the plaint but averred that it was the plaintiffs who thwarted the efforts to establish the disputed boundary.
3. On 8th June 2015 the Court issued an order for the Land Registrar and the District Surveyor to visit the suit properties and to verify whether there was a road that passed through the properties and to confirm the status on the ground.
4. The District Surveyor filed a report dated 3rd March, 2016. As per the report the surveyor observed that there was no road passing through the suit properties but that the parcels of land fronted and/or abutted the main access road. There was no report by the Land Registrar though the order of reference was made jointly to the Land Registrar and the Surveyor.
5. The parties apparently did not agree on how the surveyor's report could be implemented and the Court on 24th February 2020 directed that it would review the record and render a ruling. I have reviewed the pleadings and I am satisfied that indeed this was a matter related to some boundary disputes and/or the establishment of boundaries and the access road in regard to parcels of land owned by the parties. The Court by virtue of Section 18(2) has no jurisdiction to determine issues relating to boundary disputes. The Court lacks the technical capacity to determine such disputes and that is why that mandate, has been given to technical experts. Under Section 18 and 19 of the Land Registration Act No. 3 of 2012, the Land Registrar and the Surveyor who are the custodian of the land records have been given the power and mandate to handle issues relating to boundary disputes.

Section 18 and 19 of the Land Registration Act provide as follows:-

(1) Except where, in accordance with [section 20](#), it is noted in the register that the boundaries of a parcel have been fixed, the cadastral map and any filed plan shall be deemed to indicate the approximate boundaries and the approximate situation only of the parcel.

(2) The court shall not entertain any action or other proceedings relating to a dispute as to the boundaries of registered land unless the boundaries have been determined in accordance with this section.

(3) Except where, it is noted in the register that the boundaries of a parcel have been fixed, the Registrar may, in any proceedings concerning the parcel, receive such evidence as to its boundaries and situation as may be necessary:

Provided that where all the boundaries are defined under [section 19\(3\)](#), the determination of the position of any uncertain boundary shall be done as stipulated in the Survey Act ([Cap. 299](#)).

19. Fixed boundaries

(1) If the Registrar considers it desirable to indicate on a filed plan approved by the office or authority responsible for the survey of land, or otherwise to define in the register, the precise position of the boundaries of a parcel or any parts thereof, or if an interested person has made an application to the Registrar, the Registrar shall give notice to the owners and occupiers of the land adjoining the boundaries in question of the intention to ascertain and fix the boundaries.

(2) The Registrar shall, after giving all persons appearing in the register an opportunity of being heard, cause to be defined by survey, the precise position of the boundaries in question, file a plan containing the necessary particulars and make a note in the register that the boundaries have been fixed, and the plan shall be deemed to accurately define the boundaries of the parcel.

(3) Where the dimensions and boundaries of a parcel are defined by reference to a plan verified by the office or authority responsible for the survey of land, a note shall be made in the register, and the parcel shall be deemed to have had its boundaries fixed under this section.

6. The Court properly made an order referring the matter to the Land Registrar and the Surveyor on 8th June 2015 as the matter fell within their mandate pursuant to the above provisions of the law. Under Sections 18 and 19 of the Land Registration Act, the Land Registrar is the main actor and the surveyor merely renders a supportive role. Without any evidence that the Land Registrar was present and played an active role when the surveyor visited the site, it cannot be said that there was compliance with the Court's order of reference and/or Sections 18 and 19 of the Act.

7. The Court therefore holds that there was no compliance with the Court Order of 8th June 2015 and that the report dated 3rd July 2016 cannot be implemented. In the premises the Court orders that both the Land Registrar and the County Surveyor implement the Court's Order of 8th June 2015 by jointly visiting the suit premises upon giving all the affected parties and/or are likely to be affected notice of their visit and thereafter to file either a duly signed joint report, or separate reports within a period of 90 days from the date of this ruling. The matter to be mentioned on 30th July 2020 to confirm compliance and for further directions and/or orders.

Orders accordingly.

Ruling dated, signed and delivered electronically at Nakuru this 30th day of April 2020.

J M MUTUNGI

JUDGE