



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT MIGORI

ELC CASE NO 410 OF 2017

(Formerly Kisii Environment and Land Court case no 340 OF 2016)

PATRICK OKOTH OCHWA (Suing as administrator

ad litem for the estate of MISHAEL OCHWA OJWANG

alias MICHAEL OCHWA OJWANG (DECEASED).....PLAINTIFF

VERSUS

BERNARD OTIENO OCHOLA.....1ST DEFENDANT

STEPHEN ODHIAMBO OPUODHO.....2ND DEFENDANT

JANE BANDE.....3RD DEFENDANT

JOASH OGEMBO BANDE.....4TH DEFENDANT

SAMUEL AGOLA.....5TH DEFENDANT

ESTHER ANYANGO WASONGA.....6TH DEFENDANT

JAKOYO MITO.....7TH DEFENDANT

OMONDI WASONGA.....8TH DEFENDANT

REGISTERED TRUSTEES,

\MINYENYA CATHOLIC CHURCH.....9TH DEFENDANT

RULING

1. This ruling is in respect of a report Ref No. CC/L & 0.17/1/VOL.1/148 dated 7th August 2019, duly filed in court on 8th August 2019 and prepared by Mr. Joseph K Rotich, County Commissioner, Migori pursuant to an order of this court granted on 7th November 2017 and issued on 9th November 2019. The report reads, inter alia;

“The parties have agreed to have the County Commissioner or his appointed representative, Migori County to arbitrate this case.....”

2. The report reveals that following Rongo sub county meeting held on 3rd April, 2019 at Minyenya Health Centre, the dispute between the plaintiff and the defendants over the suit land, LR No. Kamagambo/Kamwango/597, was resolved in favour of the plaintiff. The report, too, disclosed another parcel of land, LR No. Kamagambo/Kamwango/596.

3. The genesis of the present dispute is that by a plaint dated 17th October 2015 and amended on 19th November 2018 further to leave of the

court granted on 9th October 2018, the plaintiff through Cootow and Associates Advocates, is seeking reliefs including eviction and mandatory injunction against the defendants in respect of the suit land. He contends that the defendants unlawfully entered the suit land registered in the name of the original plaintiff, Michael Ochwa Ojwang alias Michael Ochwa Ojwang (deceased).

4. The 2nd to 6th defendants through S. O Omwega and company Advocates denied the plaintiff's claim in their amended statement of defence dated 4th March, 2019 and filed in court on 5th March 2019. Notably, the said defendants sought dismissal of the plaintiffs' case with costs.

5. The 1st, 7th and 9th defendants denied the plaintiffs' claim in their statements of defence filed in court on 13th November 2016, 11th November 2016 and 11th December 2016 respectively. They did not amend their respective statements of defence.

6. The 8th defendant did not file any statement of defence herein.

7. On 17th September 2019, the court directed the parties to file and serve comments on the report. So, learned counsel for the plaintiffs and learned counsel for the 2nd to 6th defendants filed their respective submissions dated 17th September 2019. While the 7th and 9th defendants also filed their respective submissions dated 28th November 2019, the 1st and 8th defendants failed to file their submissions or at all.

8. I have duly considered the report, the pleadings and rival submissions including authorities cited therein. To that extent, have the orders that generated the report been complied with?

9. It is cardinal to note that on 7th November 2017, the court further directed and ordered the Land Registrar and Surveyor, Migori County to visit the site to establish and fix boundaries of the suit land and file report (s) accordingly. Quite clearly, the two (2) orders are to be read conjunctively and be complied with.

10. This court's order directed at the Land Registrar and Surveyor is in consonant with sections 18 and 19 of the Land Registration Act, 2016 (2012)-The RLA. Furthermore, I approve the position taken by John Mutungi, J in *Andrew Marigwa –Vs- Josephat Ondieki Kebati (2017)eKLR* that the Land Registrar and surveyor are the officers mandated under the LRA to determine disputes relating to land boundary.

11. **Article 159 (2)(d) of the Constitution** provides for the application of Alternative Dispute Resolution methods. Undoubtedly, the methods include orders (a) and (b) made on 7th November 2017 in the instant matter.

12. In the spirit of **Articles 25 (c), 48 and 50(1) of the Constitution (supra)**, the reports ordered for by this court need to be considered together in their entirety. The bottom line is to meet the ends of justice in this dispute.

13. Thus, I defer the possible adoption of the report dated 7th August 2019 at this stage to await the compliance of Order (a) of 7th November 2017 issued pursuant to sections 18 and 19 of the LRA. The Land Registrar and Surveyor shall comply with the latter order within the next ninety (90) days from this date.

Delivered, Signed and Dated at Migori through email pursuant to, inter alia, Articles 7 (3) (b), 159 (2) (b) and (d) of the Constitution of Kenya, 2010, Section 3A of Civil Procedure Act chapter 21 Laws of Kenya and Sections 3 and 19 of the Environment and Land Court Act, 2015 (2011) due to the prevailing Corona Virus pandemic, this 27th day of May, 2020.

G.M. A. ONGONDO

JUDGE