



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISUMU

ELC 802 OF 2015

FORMERLY CIVIL SUIT NO. 22 OF 2008

JOHN OMWARE ROGA.....PLAINTIFF

VERSUS

OPEYO AGUTU.....DEFENDANT

JUDGEMENT

John Omware Runga, the Plaintiff herein came to this court against the defendant Opeyo Agutu claiming to have a boundary dispute. His land parcel number is Kisumu Manara/1444. The defendant's land parcel number is Kisumu Manara/1442. The Land Registrar determined the boundary and a report filed on 14/1/2009. He produced the map and proceedings of the Land Dispute Tribunal. He produced the proceedings in Kisumu H.C.C.C No. 140 of 2008.

The plaintiff claims that the Defendant has built in Kisumu Manara/1442. The defendant has trespassed into Kisumu Manara/1444. The Tribunal held that the Defendant had built on his parcel of land being Kisumu Manara/1442 and not the plaintiff's parcel of land.

On cross examination by Mr. Anyul, he states that the decision of the Tribunal was adopted by the court.

The Defendant also testified that the case was before the tribunal and the parties gave evidence and a decision was made. The District Land Registrar made a report. The tribunal gave him land and the Decree of the tribunal has not been challenged.

I have considered the pleadings, evidence on record and do find that this was a boundary dispute within the jurisdiction of the Land Dispute Tribunal.

Section 3(1) of the Land Dispute Tribunal, Act of 1990 provides as follows:

“The jurisdiction of the Land Dispute Tribunals are:-

- a) To determine boundaries to the land held in common.***
- b) Claim to occupy or work on land and finally;***
- c) Trespass to land.***

The Kisumu Land Dispute Tribunal in Case No. 3 of 2006 relied on the above jurisdiction and made a decision which has not been challenged. The decision was adopted by the Chief Magistrates Court Kisumu as a judgment of the court and a decree was issued.

Section 7 of the repealed Land Disputes Act no 3 of 1990 provides:-

“7(1) The Chairman of the Tribunal shall cause the decision of the Tribunal to be filed in the Magistrate's Court together with any depositions or documents which have been taken or proved before the Tribunal.

(2) The court shall enter judgment in accordance with the decision of the Tribunal and upon judgment being entered a decree shall issue and shall be enforceable in the manner provided for under the Civil Procedure Act.”

Section 8 further provides as follows:-

“8(1) any party to a dispute under Section 3 who is aggrieved by the decision of the Tribunal may, within thirty days of the decision appeal to the Appeals Committee for the province in which the land which is the subject matter of the dispute is situated.

8(9) Either party to the appeal may appeal from the decision of the Appeals Committee to the High Court on a point of law within sixty days from the date of the decision complained of:-

Provided that no appeal shall be admitted to hearing by the High Court unless a Judge of that court has certified that an issue of law (other than customary law) is involved.”

The decree being the Judgment of the court the only option for the plaintiff was to appeal to the appeals’ committee as it then was but he never did so. The plaintiff did not file a Judicial Review to challenge the decision.

The dispute has been determined through other legally recognised mechanism.

Paul Muraya Kaguri -vs- Simon Mbaria Muchunu [2015] eKLR where in a similar matter as the one before me L. N. Waithaka, J. stated:

“It is now trite law that where a statute establishes a dispute resolution mechanism, that mechanism must be followed. Where a party fails to follow the established dispute mechanism, they cannot be heard to say her rights were denied.

...the Trial Magistrate’s duty under the law was merely to adopt the award of the Land Disputes Tribunal, she had no mandate to enquire into the legality or otherwise of the judgment..”

I do find that the decision of the Tribunal having been adopted by the Court and a decree issued, this suit is a non-starter and an abuse of the process of court. The same is dismissed with costs. Orders accordingly.

DATED , DELIVERED and SIGNED THIS 22nd DAY OF MAY, 2020.

A.O. OMBWAYO

ENVIRONMENT & LAND

JUDGE

This judgment is hereby delivered to the parties by electronic mail due to the measures restricting court operations due to COVID -19 pandemic and in light of directions issued by the Honourable Chief Justice on 15TH March 2019 and with the consent of the parties.

A.O. OMBWAYO

ENVIRONMENT & LAND

JUDGE