



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NYERI

ELC NO. 19 OF 2015

FRANCIS WANJOHI METHU.....APPLICANT

-VERSUS-

DAVID MBUTHIA KAROGO.....RESPONDENT

RULING

1. The notice of motion dated **19th May, 2014** seeks an order directing the Land Registrar, Nyeri District, to visit the parcels known as **L.R. No. Gikondi/Kiirungi/36** and **Gikondi/Kiirungi/1035** and determine the boundaries between the two parcels of land.

2. On **11th August, 2014** the parties to the dispute hereto recorded a consent in the following terms:-

“By consent the Land Registrar Nyeri and the County Land surveyor Nyeri to visit the disputed properties and determine the boundary between Gikondi/Kiirungi/36 and Gikondi/Kiirungi 1035...”

3. In compliance with the above cited order, both the Land Registrar and the County Land Registrar Nyeri, visited the properties herein and filed the following report:-

Report by the County Land Registrar, Nyeri-

“Implementation of court order in civil case No.30 of 1989

The order was issued on 11th August, 2014 and sought the establishment of the boundary between land parcels Gikondi/Kiirungi/36 and Gikondi/Kiirungi 1035.

Present during the exercise were the following:-

.....

Observation and findings

Parcel No.Gikondi/Kiirungi/35 has since been sub- divided into six portions i.e 1040-1035. In essence, the dispute is between parcel Nos. 36 and 1035.

I undertook to establish whether or not the map could be relied upon as an authority. All measurements were taken, incorporating the neighbouring parcels.

The map was found to be reliable. All this corroboration between map and ground measurements was done with participation of the parties.

Parcel No. 1035 was found to have encroached into parcel No. 36 by 0.15 ha. The new boundary marks were planted and the alignment done to ensure the straightness.

The parties were advised on their right of appeal.”

4. The District surveyor, **Mr. David Ngata** when called by the court to present the report informed the court that he visited the suit property as directed by the court, with the parties and some elders, took measurements of the two parcels of land and found that parcel No. 1035 encroached into parcel number 36 by 24.5m on the lower side and 3m on the upper side. The ground was adjusted as per Registry Index Map.

Law applicable

5. The Law applicable to the dispute herein is found in **Section 19** of the Land Registration Act, 2012 which provides as follows:-

“19(1) If the Registrar considers it desirable to indicate on a filed plan approved by the office or authority responsible for survey of land or otherwise define in the register, the precise position of boundaries of a parcel or any other parts thereof, or if an interested person has made an application to the Registrar, the Registrar shall give notice to the owners of the land adjoining the boundaries in question of the intention to ascertain and fix the boundary.

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 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.”

6. In the case **Lawrence Kairu Nyambura v. Simon Kabugi Kinyuru (2015) eKLR** the Court of Appeal held:-

The above provisions have been re- enacted under Sections 16, 19, 20 and 21 of the *Land Registration Act*. Upon careful consideration of this matter, we find merit in the contention that by directing the Land Registrar on how to draw the boundaries when no such evidence was adduced before the Judge, and the order by the Provincial Appeals’ Committee did not include the acreage was indeed misdirection on the part of the Judge. Certainly, the Land Registrar had to comply with the order issued by the Judge. The Judge directed him how to draw the boundaries. What the Land Registrar did was to merely amend an earlier report where he had recommended that the boundaries were to remain as they were and moved them to reflect the acreage as ordered.

The aforementioned provisions of the law, gave the Land Registrar the power to determine the boundaries. He has powers to summon evidence from the Survey record and other sources that he may deem necessary and the courts have no role in that regard. The order by the Judge directing the Land Registrar how to draw the boundaries and the additional order that if he failed to do so he would be in contempt of Court and liable to imprisonment for six months did not leave the Land Registrar with any option but to draw the boundaries as ordered by the Judge.”

7. In the case of **School Management Committee & Another vs. Ezekiel Maritim & Others (2014)e KLR Obaga J.**, Stated:-

“This court has no jurisdiction to interfere with the Land Registrar's finding as regards, the boundary in dispute. The respondent's complaints contained in the replying affidavit and submissions are therefore misplaced. In any case the issue herein was whether the court should grant the orders being sought. In prayer one the applicant is seeking an order of this court to order

the Land Registrar to fix boundaries in accordance with the surveyor's report 6/9/2012. The Land Registrar cannot be ordered or directed to do his/her job. Already he has made his report of 17/9/2012. This report was made with the assistance of the surveyor who went to the ground. The Land Registrar's duty is to implement his report, which report can be implemented by the surveyors who are professionals in that area.”

8. As pointed out herein above, the parties to the dispute herein recorded a consent for the Surveyor and the Registrar of Lands, Nyeri District, to visit the suit properties and determine the boundaries. In compliance with the order of the court, the District Surveyor and the Land Surveyor visited the suit properties and did what was expected of them.

9. The evidence on record shows that in determining and fixing the boundaries of the suit properties the Surveyor and the Registrar complied with the provisions of **Section 19** of the Land Registration Act, 2012 in that the parties were present and were given an opportunity to be heard before the officers made their determination.

10. Although the respondent, David Mbuthia Karogo, took issue with the outcome of the exercise on grounds that three Registrars had visited the property and fixed the boundary differently, the evidence on record shows that the earlier attempts to fix the boundary were not done in accordance with the law. In this regard see the observation of the elders in HCC NO. 30 of 1989 that:-

“the Registrar of lands has refused to survey the parcel of the plaintiff. Each time the clan calls him he only surveys the parcel of the defendant. They observed that it is difficult to determine the offender in this case until the court orders the Land Registrar to re-survey land parcel Gikondi/Kiirungi/36 and Gikondi/Kiirungi/35.”

11. From the foregoing observation by the elders in HCC No.30 of 1989, it is clear that the only boundary fixing exercise conducted in accordance with the dictates of the law is the one conducted pursuant to the court order issued on 11th August, 2014.

12. There being no basis for doubting the reports filed in court after the Land Registrar and the District Surveyor visited the suit properties, in accordance with the provisions of **Section 19(2)** of the Land Registration Act, 2012, I order that the boundaries of the suit properties remain as fixed by the surveyor and the Registrar pursuant to the Court order hereto.

13. As the applicant has succeeded in his application, I award him the costs of the application.

Orders accordingly.

Dated, signed and delivered at Nyeri this 11th day of February, 2016.

L N WAITHAKA

JUDGE

In the presence of:

Francis Wanjohi Mathu – applicant

David Mbuthia Karogo – respondent

Court assistant - Lydia