



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO. 169 OF 2014

DAVID A. LANGAT.....PLAINTIFF

VERSUS

REUBEN YEGONDEFENDANT

AND

ARAP SIGIRAI.....1ST INTERESTED PARTY

RUSI LANGAT.....2ND INTERESTED PARTY

JUDGMENT

(Plaintiff filing suit for possession of property; claim that defendant has invaded the same; matter referred to survey for a report; report showing that there has been confusion on the ground on occupation of four land parcels; report proposing either parties to respect the RIM or for reparcellation; plaintiff not interested in reparcellation; plaintiff entitled to assert his rights; judgment for the plaintiff)

1. This suit was commenced by way of plaint filed on 16 June 2014. The plaintiff's case against the defendant is that the defendant has encroached into the plaintiff's land parcel Nakuru/Tinet/Sotik Settlement Scheme/1017 which is land measuring 2.2 hectares. It was claimed that the defendant has gone ahead to cultivate and rear cattle on the property. In the suit, the plaintiff has sought a declaration that he is the owner of the said property and orders of eviction.

2. The defendant filed defence and stated that he owns the land parcel Nakuru/Tinet/Sotik Settlement Scheme/1016 having purchased it from the previous owner, one Wilson Kipngetch Maritim. He averred that he was in occupation of the parcel of land that belongs to him.

3. In the course of the proceedings, I did order the inclusion of two persons, John Kiprotich Sigilai alias Arap Sigirai and Lucy Langat alias Rusi Langat, into the suit as interested parties. They are owners of the adjacent parcels of land which are parcel Numbers 1015 and 1018. They were included in the matter because of the uncertainty over the boundaries and it was shown that there could be an overlap over what the plaintiff and defendant claim, with what is owned by the two additional persons. I did direct the District Land Surveyor, Nakuru, to proceed to the ground and make a report on the occupation of the ground in the disputed parcels of land. A report was duly filed which revealed the following :-

4. That there are four parcel numbers which are involved. These are the parcel numbers 1015, 1016, 1017 and 1018. These four parcels in the Registry Index Map measure 2.5 Ha, 2.0 Ha, 2.20 Ha, and 2.4 Ha. However, on the ground, the parcel No. 1015 occupies a lesser acreage of 2.15 Ha; parcel No. 1016 occupies a lesser acreage of 1.73 Ha; parcel No. 1017 occupies a lesser acreage of 2.12 Ha; whereas parcel No. 1018 occupies a larger acreage that is 2.42 Ha. Thus, parcel No. 1015 is less on the ground by 0.35 Ha; parcel No. 1016 is less on the ground by 0.17 Ha; parcel No. 1016 is less on the ground by 0.08 Ha; and parcel No. 1017 is more on the ground by 0.02 Ha. The surveyor noted that the scaled distances are bigger on the map than on the ground.

5. He also noted that on the ground, the parties are not in occupation of what they own. Parcel No. 1015 is owned by Lucy Langat but it is John Kiprotich Sigilai, the proprietor of parcel No. 1015 who is in occupation. Parcel No. 1016 is owned by Wilson Kipnetich Maritim from whom the defendant claims title, but it is occupied by Lucy Langat, the proprietor of parcel No. 1015. Parcel No. 1017 is owned by the plaintiff, but it is Reuben Yegon, the defendant who is in occupation together with John arap Sigilai. Parcel No. 1018 is owned by John Sigilai. However, the plaintiff, David Langat has planted some tea and it was noted that 80% of the farming therein is by the plaintiff.

6. The surveyor, gave two options. In the first, he proposed that parties retain their land parcels and move to the correct positions on the ground, slightly adjusted to accommodate the fact that the RIM is smaller than the ground. The second option was to have the parties reside where they are, and the titles be re-registered.

7. In his submissions, Mr. Wambeyi for the plaintiff submitted that it is clear that the defendant has encroached into the plaintiff's land parcel No. 1017 and he should be evicted. Essentially, the plaintiff sought to have the RIM respected to the hilt. On the part of the defendant, Ms. Njoroge, submitted that the defendant has been on the plaintiff's land for over 13 years. It was submitted that when he bought the land he thought that he was buying the parcel No.1016. She asked that the court adopts the second option by the surveyor.

8. I have considered the matter. I think the facts do reveal that there has been confusion on the ground and parties have occupied land which is not within the confines of their boundaries. The plaintiff insists that he wants the land that he is entitled to and does not wish to compromise. On the other hand, what the defendant has called for is a change in the layout of the respective land parcels, or what is called reparation. Reparation is covered by Section 23 of the Land Registration Act, 2012, which provides as follows :-

Reparation

S. 23. (1) Subject to section 15 and authentication of the cadastral map, on the application of the proprietors of contiguous parcels who are desirous of changing the layout of their parcels, and with the consent in writing of all other persons in whose names any right or interest in the parcels is registered and of any cautioner, the Registrar may—

(a) cancel the registers relating to those parcels and prepare new registers in accordance with the new edition of the cadastral map; or

(b) refuse to effect the reparation if the Registrar considers that the proposed reparation involves substantial changes of ownership, which should be effected by transfers without invoking this section, in which case, the Registrar shall direct the proprietors accordingly.

(2) Upon reparation, the new parcels shall vest in the persons in whose names they are registered.

9. It will be observed that a Land Registrar has power to reparcel. However, this is subject to consent being given by the land owners. I think it is the same principle that the court ought to apply. Where one

party insists on its rights and has no interest in re-parcelling, the court ought to be slow to order a re-parcellation. It does not mean that a re-parcellation can never be ordered by the court, unless with consent, but I think it will need exceptional circumstances, before the court orders a re-parcellation despite the objections of one land owner.

10. In our case, there is confusion on the ground, but I do not think that the mere fact that there has been confusion is itself an exceptional circumstance to order a re-parcellation. The defendant has made small developments on the plaintiff's land which to me are not too significant. The plaintiff as owner of the land parcel No. 1017 is entitled to assert the rights given in Section 24 (a) of the Land Registration Act which provides as follows :-

- a. *the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto.*

11. The plaintiff is vested with all rights over the land parcel No. 1017. Through this suit, he wishes to assert those rights. He is perfectly entitled to do so. I see no reason why I should deny him the order of eviction sought against the defendant. As between himself and the defendant, I do also declare that it is the plaintiff who is the proper proprietor of the land parcel Nakuru/Tinet/Sotik Settlement Scheme/1017. The parties are also ordered to respect all roads of access noted in the RIM. For the avoidance of doubt, as to where the boundaries ought to be, the District Surveyor is directed to place beacons, if he had not done so, to delineate the four parcels of land, taking into account the reformulated ground acreages.

12. Given the circumstances of this case, I make no orders as to costs, as it appears as if the parties were in genuine confusion on the correct ground which to occupy.

13. Judgment accordingly.

Dated, signed and delivered in open court at Nakuru this 11th day of May, 2016.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU

In presence of :

Ms. Njoroge for defendant

N/A on part of M/s Wambeyi & Company for plaintiff.

1st interested party - present

2nd interested party - absent

Court Assistant Janet

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU