



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT NYAHURURU**

**ELC CASE NO. 2A OF 2020**

**JOSEPH MUCHIRI KARURI**

**(suing as the legal representative of the estate of**

**JAMES KARURI KABUI ALIAS JAMES KARURI KABWE...PLAINTIFF/APPLICANT**

**VERSUS**

**MINISTER OF LANDS, HOUSING & PHYSICAL PLANNING,**

**COUNTY GOVERNMENT OF NYANDARUA.....1<sup>ST</sup> DEFENDANT/RESPONDENT**

**COUNTY GOVERNMENT OF NYANDARUA.....2<sup>ND</sup> DEFENDANT/RESPONDENT**

**RULING**

1. Vide an application by way of Notice of Motion dated 21<sup>st</sup> January 2020, brought under *the provisions of Order 40 Rule 3, and Order 51 Rule 1 of the Civil Procedure Rules, Sections 1A, 1B and 3(A) of the Civil Procedure Act and all other enabling provisions of the Law and procedures, the Plaintiff/Applicant herein* sought interim orders to restrain the Respondents herein by themselves, their agents, and/or servants, from harassing, threatening, intimidating, trespassing upon grading into and/ or in any manner whatsoever interfering with the boundaries of the property known and described as LR Nyandarua /Oraimutia/180 measuring approximately 19.5 Ha.

2. The Plaintiff/Applicant also sought that the District Surveyor Nyandarua North files a report on the status of the road passing through the suit parcels of land as well as parcel No. Nyandarua/Oraimutia/181, 172, 173, 174, 205, 1736, 2046, 2045, 1734, 1730 and 1557 and to include the true size of the road and land upon which the road may have trespassed and whether the suit land is within its boundaries as per the RIM.

3. Pursuant to obtaining of interim orders pending the hearing of the Application inter-parties, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents in response to the Application, filed their Replying affidavit dated the 9<sup>th</sup> March 2020 and Grounds of Opposition dated the 28<sup>th</sup> February 2020 raising a preliminary objection to the effect that the Plaintiff/Applicant's application was founded on a boundary dispute on registered land to which the Court had no jurisdiction to entertain.

4. The Court then directed the Plaintiff /Plaintiff/Applicant to file and serve their response to the grounds of opposition and thereafter parties to file their written submissions. There was no compliance by either of the parties to which effect the Court shall proceed to determine the Preliminary Objection as unopposed.

**Analysis and determination**

5. Having considered the application and grounds of opposition which were not opposed, as well as the Plaintiff in the present case, the issue running through and through the pleadings is the fact that the Defendants' agents herein did cut down trees and maize plantation that was growing along the boundary between the road reserve adjacent to the suit land herein.

6. The Plaintiff/Applicant's pleadings herein show clearly that his deceased father was the registered proprietor of land parcels No. LR Nyandarua /Oraimutia/180 measuring approximately 19.5 Ha. That the Plaintiff had received a letter from the 1<sup>st</sup> Respondent informing him to clear all obstacles that had encroached on the road reserve but not being aware of any such obstacles, he had ignored the said letter. That was when the Defendants had allegedly encroached on the suit land and cut down trees and maize plantation that was growing along the boundary on the road reserve that was adjacent to the suit land.

7. The Respondents' response and grounds of opposition to the Plaintiff's pleading and Notice of motion is that the suit land borders a public land used as a road and/or road reserve which is held in trust by the County Government of Nyandarua for the people of the County. That the underlying issue was that of a boundary dispute relating to the boundaries between the suit land and the public road or road reserve.

8. From the material placed before me, I am unable to determine whether indeed the Defendants herein encroached on the Plaintiff's suit parcel of land or whether the matter is one based on a boundary dispute. It is upon determination of this issue that the Court can conclude whether the Plaintiff has encroached on the said road or not and vice versa as against the Defendants.

9. The Plaintiff has however placed reliance on letter dated the 25<sup>th</sup> November 2019 from Afrigate Surveyors and a Map sheet in support of their contention that the boundaries of the suit properties are off the disputed road.

10. Section 18(1) of the Land Registration Act 2012 provides that unless it is noted in the Register that the boundaries of a particular parcel of land have been fixed, any cadastral map or plan which may be filed in relation to such parcel of land are deemed to indicate only approximate boundaries. The map sheet relied on by the Plaintiff is in the circumstances not conclusive proof of the boundaries of the suit properties.

11. The terms of **Section 18 (2)** of the Land Registration Act, are to the effect that proprietors of registered land with a boundary dispute are obligated to first seek redress or solution from the Land Registrar before moving or escalating the dispute to this Court. These provisions show clearly that the Court is without jurisdiction on boundary disputes of registered land until and after the land Registrar's determination on the same has been rendered. See, the case of, **Wamutu vs. Kiarie [1982] KLR 480**.

12. The onus is therefore upon the Plaintiff to establish a prima facie case against the Defendants. In view of what I have stated above, I am not persuaded that the Plaintiff has made out a prima facie case with a probability of success against the Defendants.

13. I therefore need not consider the other two conditions for the grant of temporary injunction as established in the **Giella –vs- Cassman Brown & Co. Ltd [1973] E.A 358** as the conditions are sequential such that when the first condition fails then there is no basis upon which the Court can give an injunction unless the Court was entertaining a doubt as to whether or not a prima facie case had been established. See the case of **Kenya Commercial Finance Co. Ltd –vs- Afraha Education Society (2001) IEA 86** cited by **Gitumbi, J** with approval in the case of **Joseph Wambua Mulusya –vs- David Kitu & Another (2014) eKLR**.

14. The Plaintiff having failed to satisfy the conditions for granting interlocutory injunction, his application dated 21<sup>st</sup> January 2020 is accordingly dismissed. The Court thus upholds the Grounds of opposition dated the 28<sup>th</sup> February 2020 with the result that the interim injunction granted on 27<sup>th</sup> January 2020 herein stands discharged. Costs to be in the cause.

It is so ordered.

**Dated and delivered at Nyahururu this 21<sup>st</sup> day of September 2020.**

**M.C. OUNDO**

**ENVIRONMENT & LAND – JUDGE**