

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

LAND & ENVIRONMENT CASE NO. 131 OF 2013

JOSEPH OKWOMI OKWENDOPLAINTIFF/APPLICANT

VERSUS

PETER ODUORI OGALODEFENDANT/RESPONDENT

RULING

Before me is a Notice of Motion dated 17th April, 2013. No legal provision was cited under which the application was brought. I note however, that the issue relates to land. The prayers in the application are as follows -

1. **The District Land Registrar together with the Land Surveyor be ordered to visit L.P. No. S/Wanga/Buchifi/681 and L.P. No. S/Wanga/Buchifi/682 and carry out survey to create an access road leading to parcel No. S/Wanga/Buchifi/682.**
2. **The District Land Registrar together with the Land Surveyor be ordered to visit L.P. No. S/Wanga/Buchifi/681 and 682 and carry out survey to mark/plant a permanent boundary between the land parcel and revert the boundaries to its former status.**
3. **The District land Registrar together with the land surveyor be ordered to visit L. P. S/Wanga/Buchifi/681 and 682 and survey the applicant's encroached portion on his parcel and rectify the map/extend the boundary and award the portion to him.**
4. **Costs be provided for.**

The application was filed with a supporting affidavit sworn by the plaintiff/applicant. It was deponed therein that there was a boundary dispute between the plaintiff and the defendant in respect of the two parcels of land herein. That the defendant had encroached and grabbed part of the plaintiff's parcel No. 681. That there was currently no access road to the plaintiff's parcel No. 681 which had mature sugarcane plants. That the defendant had refused to cooperate in carrying out the necessary survey process.

Though the application was served on the defendant, he did not either file a response or appear in court on the hearing date.

This application is not opposed. It has been filed consequent upon the filing of a plaint in which the plaintiff sought an order of permanent injunction against the defendant and costs. The suit is still pending.

I have perused the documents filed. It is evident that parcel No. 681 measuring approximately 9 acres is registered under the Registered Land Act (Cap.300) in the name of Joseph Okwendo, the plaintiff herein.

Under section 21 of the Registered Land Act, the Land Registrar has powers to determine the boundaries of land, where there is a dispute. This application not having been opposed, I find no reason to disallow it. I therefore allow the application and grant prayers 1, 2 and 3, subject to the condition that the defendant shall be notified by the plaintiff attend the visit by the Land Registrar and Surveyor, and that the report of the District Land Registrar and Land Surveyor thereafter be filed in court. Costs will be in the costs.

Dated and delivered at Kakamega this 12th day of June, 2014

George Dulu

J U D G E