



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
ENVIRONMENT AND LAND DIVISION
ELC. CASE NO. 116 OF 2013

PETER NDUKUTHYO.....1ST PLAINTIFF/APPLICANT
PATRICK MANGA KAMUNYU.....2ND PLAINTIFF/APPLICANT
ADAN EIDN MAHAMUD.....3RD PLAINTIFF/ APPLICANT
(Suing as the Officials of MAASAI VILLAGE SELF HELP WOMEN GROUP)

VERSUS

PETER MBUTHIA MWAURA.....1ST DEFENDANT/RESPONDENT
WESTWOOD PROPERTIES LTD.....2ND DEFENDANT/ RESPONDENT

RULING

By a consent order entered into and adopted by all parties herein, the parties agreed to have their selected surveyors and the Thika District Surveyor proceed to the ground and submit their finds on three issues.

1. Whether land parcel Thika Municipality Block 6/1065 formerly unsurveyed Industrial Plot No. A. Thika does exist on the ground and if it does what are its physical boundaries and location on the ground.
2. Whether land parcel L. R. No. 4953/293 Thika Municipality does exist on the ground and if it does what are its physical boundaries and location on the ground.
3. Whether the land on which the Defendant have erected a perimeter wall and are in occupation is the same land as that being claimed by the Plaintiffs.

In deed the three surveyors did go to the ground and compiled their report dated 22nd April, 2013 in which they expressed the following findings.

1. That the two parcels of land do exist and are about 1.2 Kilometers apart.
2. That L. R. No. 4953/2193 has a perimeter wall which is under construction by the Plaintiff. They also found that this is the same parcel of land being claimed by the Plaintiff.

3. That Thika Municipality Block 6/1065 is fully occupied but has no physical boundary.

These findings are now on the court record.

I note however that in their consent, the parties herein did not agree on how the court should treat these findings. The last time this matter was in Court on 22nd May 2013, only the Defendant was present in court and expressed the sentiments that the court should make a final ruling on the pending application and main suit and proceed to dismiss the suit.

In my considered opinion, I do not see that I have the liberty to do so in the absence of the Plaintiff's consent. I therefore decline to dismiss this suit at this juncture until I hear the Plaintiff's view.

It is so ordered.

SIGNED AND DELIVERED AT NAIROBI

ON THE 1ST DAY OF NOVEMBER 2013.

MARY M. GITUMBI

JUDGE