



REPUBLIC OF KENYA

IN THE HIGH COURT

AT KISII

Civil Suit 27 of 2003

PETRO OGERO OWAKA PLAINTIFF/APPLICANT

VERSUS

SILVANUS RAPEMO OBONGO ... DEFENDANT/RESPONDENT

RULING

On 21st June, 2006 Bauni, J. ordered the Land Registrar and Surveyor, Homa Bay District, to determine the boundaries between land parcels numbers **WEST KASIPUL/KOTIENO KOKECH/7 AND 8.**

The said order was made with consent of both parties. The plaintiff is the registered proprietor of parcel No. 8 while the defendant is the registered proprietor of parcel No. 7. The two parcels of land share a common boundary.

A report was filed on 23rd April 2007. The salient findings by the Land Registrar were as follows:

“After my visit to this land twice in the company of surveyor, I came up with the following observation.

- 1. There exist a road of access leading to parcel No. 8 and is properly in use.**
- 2. The road of access in the upper side separating parcel No. 7 is not existing since the proprietor of parcel No. 8 has occupied it as part of his land.**
- 3. The boundary of parcel No. 7 the upper side is marked with huge live eucalypts trees and there are also tree stamp of Eucalyptus and Cyprus tree in a line which appears to be also forming a road leading to Adhanja’s land and leading to other parcel around Opok Range.**

4. The Okwangu river also existing and to the other side of the river is Ngare's land which is commonly accepted by the defendant to be his neighbours at the section in dispute.

5. Both the applicant and the defendant are origins of this area and appear to be from one clan, but from different families.

6. The land of land No. Kasipul/Kotieno Kowach/8 was subject to appeal to the minister and the same was implemented by the Land Registrar and the Surveyor on their visit on 5/9/1990 by confirming the river Okwengu to be the permanent boundary between the property of parcel No. 7 and his neighbour the eastern side who is Mzee Ngare.

7. The brothers to the applicant are using a section of the land towards the Okwengu river from the road leading to parcel of land No. 8.

8. It appears that the matter between the two parties is a land dispute and not a boundary dispute since the same was handled by the Land Adjudication under section 28 of Cap 284 when they failed to agree.

9. From the statement of applicant its true that his father Petro Ogeko has agreed and that it is why the such amendments to the map was done by the Land Registrar as stipulated under section and 22 of Cap 300 of the Registered Land Act and that is the reason that made the applicant to open a case in what his father had accepted.

10. The applicant acted on behalf of his old father

who doesn't have any interest in the case.

CONCLUSION/DECISION

After listening carefully to the applicant and the defendant and his witness and having considered the statement of both parties, I have come to a conclusion that the boundary is as the place shown by the defendant and his witness as it appears in the map to be reaching the river Okwengu that forms his boundary with Mzee Ngare who also reaches river Okwengu as confirmed by his family members to be his boundary with the defendant.

All such case were properly handled by the land adjudication and therefore no such a case was left undone which the applicant is pursuing. In essence, this is a first registration and such boundary planted by the Kosele African court and confirmed by the appeal to Minister is the correct boundary, as the elders in the area were caused to help in determining the dispute on boundary.

However, the defendant has the right to claim his land to reach the Okwengu River which is the boundary of the land and the applicant should desist from interfering with the land belonging to the defendant.

Meanwhile the Land Registrar and the Surveyor should be given a fresh order to plant the boundary so that the dispute can be settled once and for all.

Dated this 30 day of November 2006.”

On 17th December, 2008 the report was read out to the parties by this court’s Deputy Registrar.

On 26th November, 2008 the plaintiff filed an application seeking to have the Executive Officer of this court empowered to sign the transfer forms and the Land Registrar authorized to implement the findings in the said report.

From the contents of the report which was ordered by consent, none of the parties should challenge the validity of the same. The report is now adopted as findings of this court and the Land Registrar and the Surveyor, Homa Bay/Suba/Rachuonyo Districts are hereby ordered to plant the boundary in terms of the report dated 30th November, 2006. Mention on 1/12/2009.

DATED, SIGNED AND DELIVERED AT KISII THIS 2ND DAY OF NOVEMBER, 2009.

D. MUSINGA

JUDGE.

2/11/2009

Before D. Musinga, J.

Nyangaga – cc

Applicant – present

N/A for the Respondent

Order: Ruling delivered in open court.

D. MUSINGA

JUDGE.