



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT AT MURANG'A

ELCA NO. 1 OF 2018

NDIRANGU MWAURA.....APPELLANT

VERSUS

THE CHIEF LAND REGISTRAR.....1ST RESPONDENT

DISTRICT LAND REGISTRAR, MURANGA.....2ND RESPONDENT

(An Appeal against the ORDER of NMJ , the 1st Respondent issued on the 21/10/2010

RULING/DIRECTIONS

1. By an amended Memorandum of Appeal dated 26/3/2019, the Appellant appealed to this Court against the decision of the Chief Land Registrar of the 21/10/2010 in its entirety on the following grounds;

a. That the 1st Respondent erred in fact by failing to adhere by the terms of the amended decree dated 8th March 2010 which had directed the 2nd Respondent (an agent of the 1st Respondent) to direct a government surveyor to the disputed parcels of land being LOC.3/MUKANGU/209,74 & 217 in accordance with the registry index map.

b. That the 1st Respondent erred in fact in failing to provide an in-depth analytical report of how if any the alignment of the boundaries was done to satisfy the terms set out in the amended decree.

c. That the 1st Respondent misdirected himself by finding that the land boundary dispute had been resolved without actual proof of the same having been done.

2. The Appellant enjoined this Court to allow the Appeal by setting aside the 1st Respondent's decision of the 21/10/2010 and award costs to the Appellant.

3. Before I delve into the merit of the Appeal, I must point out that the parties in DO No 70 of 2006 have always been the Appellant and Joseph Irungu Ngari and Robinson Karanja Gacheru, being the registered owners of the suit properties namely LOC 3 MUKANGU/217 and 74 respectively. It is on record that the parties agreed by consent which consent was adopted as the orders of this Court on how their dispute should be resolved, that is to say the Government surveyor to align the boundaries with the RIM- MUKANGU Sheet No 6.

4. I have seen attempts by the Appellant's Counsel to serve the said land owners and even cite them in the recital of the Appeal but to the extent that they have not been enjoined in the Appeal they cannot be deemed to be parties by association.

5. This Appeal has been brought by the Appellant alone and given the likelihood of the orders in this matter affecting the other two land owners, it is the view of the Court that they ought to have been enjoined in the Appeal so that they are afforded the opportunity to be heard on the Appeal.

6. Guided by Order 10 Rule 2 of the Civil Procedure Rules read together section 1A and 1B of the Civil Procedure Act and Article 159(2)(b) of the Constitution, the view of the Court is that substantive justice shall not be served with the dismissal of this Appeal on grounds of non-joinder of parties. I have considered the age of the case having been filed in 1986 and some of the parties have met their demise as they tarried at the alter of justice.

7.

- b. *The Appellant is directed to serve these directions on the two parties within 7 days from the date of this ruling.*
- c. *Thereafter the parties to appear before the Court on the 19/1/2021 for directions.*
- d. *Costs shall abide the determination of the main Appeal.*

8. It is so ordered.

DATED, SIGNED & DELIVERED THIS 10TH DAY OF DECEMBER 2020.

J. G. KEMEI

JUDGE

Delivered in open Court in the presence of:

All parties absent but served.

Court Assistants, Njeri & Kuiyaki