



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MACHAKOS

ELC. CASE NO. 5 OF 2016

SHAMBA POA INVESTMENTS LIMITED.....PLAINTIFF

VERSUS

HILLARY KAMUNYU WAKAIGWA.....1ST DEFENDANT

SAMUEL GACHERU GATEHI.....2ND DEFENDANT

DAVID WARUTERE GITHENYA.....3RD DEFENDANT

BONIFACE MWANGI KARIO.....4TH DEFENDANT

VICTOR KAROKI GATHARA.....5TH DEFENDANT

EDON KAGO KAGOI.....6TH DEFENDANT

ANDREW MWAI NJOGI.....7TH DEFENDANT

FRANCIS MACHARIA NGUNYI.....8TH DEFENDANT

MICHAEL NGARI MWANIKI.....9TH DEFENDANT

ALFRED KIMURI NJOGU.....10TH DEFENDANT

SAMUEL KAROKI NGARI.....11TH DEFENDANT

PATRICK WANYIKA.....12TH DEFENDANT

ERIC NGARI KAROKI.....13TH DEFENDANT

PATRICK MUCHOKI MURIITHI.....14TH DEFENDANT

IRENE NGECHI MWANGI.....15TH DEFENDANT

ROSEMARY WAIRIMU GATHARA.....16TH DEFENDANT

LUCY NGIMA MAINA.....17TH DEFENDANT

MARYANNE NJOKI MUGO.....18TH DEFENDANT

MILKAH NJERI GITAU.....19TH DEFENDANT

CATHERINE WAIRIMU GATOME.....	20 TH DEFENDANT
ROSE WAIRIMU MUNENE.....	21 ST DEFENDANT
WAIRIMU MUNENE.....	22 ND DEFENDANT
NANCY WANGUI MWANGI.....	23 RD DEFENDANT
LUCY WANGUI KAROKI.....	24 TH DEFENDANT
CAROLINE WANJA NJUE.....	25 TH DEFENDANT
LUCY WANGUI MUNENE.....	26 TH DEFENDANT
FLORENCE WANGUI GATOME.....	27 TH DEFENDANT
ANASTASIA MBULA KILUNGU.....	28 TH DEFENDANT
LOISE MUMBI KIAMA.....	29 TH DEFENDANT
CATHOLIC DIOCESE OF MACHAKOS.....	30 TH DEFENDANT
WETEN INVESTMENT LTD.....	31 ST DEFENDANT
JOHN ELIAS KIRIMI.....	32 ND DEFENDANT
SILAS DOMINIC MUGERIA.....	33 RD DEFENDANT
JACOB KIRIINYA NAIRUTI.....	34 TH DEFENDANT
CHARITY MAKENA GITOBU.....	35 TH DEFENDANT

RULING

1. This Ruling is in respect to the Notice of Preliminary Objection dated 20th February, 2018 filed by the 32nd, 33rd and 35th Defendants. According to the Applicants, the suit is incompetent, incurably defective and bad in law because it does not disclose any cause of action against them; that this court does not have the requisite jurisdiction to determine a boundary dispute and that the Preliminary Objection should be allowed.
2. The Preliminary Objection proceeded by way of written submissions. The Applicants' advocate submitted that the dispute as captured in the Plaintiff is in respect of the position of boundaries between the Plaintiff's parcel of land known as Mavoko Town Block 3/5575 vis-a-viz The Defendants' respective parcels of land; that pursuant to the provision of Section 18(2) of the Land Registration Act, this court lacks jurisdiction to entertain the suit and that there is nothing to show that the Machakos Land Registrar has made determination on the alleged boundary dispute.
3. The Applicants' counsel submitted that the Plaintiff has not made any specific allegations as against the 32nd, 33rd and 35th Defendants and that the fixing of the boundary does not require the attendance of the Defendants.
4. The Plaintiff's advocate submitted that there are correspondence showing that the Plaintiff sought the help of the Land Registrar in resolving the boundary dispute; that the Defendants willingly refused to appear before the Land Registrar; that the court can only determine that issue upon receiving evidence and that the Plaintiff's allegations as against the Applicants is that they have encroached on the suit land.
5. The suit was commenced by way of a Plaintiff dated 19th January, 2016. In the Plaintiff, the Plaintiff alleged that the thirty one (31) Defendants had deliberately and illegally moved the boundaries of their parcels of land thereby encroaching on its land. The Plaintiff sought for an order compelling the Defendants to appear before the Machakos County Land Registrar with a view of repositioning the boundaries.
6. By way of an Application dated 4th May, 2017, the Plaintiff sought to enjoin the Applicants in the suit, which Application was allowed. In the said Application, the Plaintiff had alleged that the Applicants had also move their boundary and encroached on its parcel of land.
7. The Applicants filed their Defence dated 20th February, 2018. In the said Defence, the Applicants blamed the Land Registrar to having failed to turn up on several occasions for the purpose of fixing boundaries between the Plaintiff's land and their land.
8. It is true, as submitted by the Applicants' counsel, that under Section 18(2) of the Land Registration Act, the court is prohibited from

entertaining any action relating to a dispute as to the boundaries of the registered land unless the boundaries have been determined in accordance with the Section. Section 18(3) of the Act provides that the Registrar may receive evidence in proceedings relating to a dispute as to boundaries.

9. The Plaintiff's suit is seeking for an order compelling the Defendants, including the Applicants, to appear before the Land Registrar with a view of actualizing the provision of Section 18(1). Indeed, the Applicants have admitted that despite numerous meetings, the Land Registrar has not been forthcoming in respect of resolving the boundary dispute between the Plaintiff and themselves.

10. The suit before this court is not to settle the boundary dispute as between the Plaintiff and the Defendants, but rather, to facilitate the settling of the said dispute pursuant to the provisions of Section 18(2) and (3). Having admitted that the Land Registrar has been uncooperative, it follows that this court has the mandate to direct the Registrar to fix the boundaries in dispute, and also to direct the rest of the Defendants to give evidence to the Registrar to enable him arrive at a just decision.

11. Consequently, this court has the requisite jurisdiction to handle this dispute. To the extent that the Applicants have admitted that they share a boundary with the Plaintiff, I find and hold that the Plaintiff's suit raises a cause of action as against them. Whether the said cause of action will succeed or not can only be ascertained after trial.

12. For those reasons, I dismiss the Notice of Preliminary Objection dated 20th February, 2018. The 32nd, 33rd and 35th Defendants to pay the costs of the Preliminary Objection.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 15TH DAY OF FEBRUARY, 2019.

O.A. ANGOTE

JUDGE