



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET**

**E & L CASE NO. 74 OF 2018**

**HON. HENRY KOSGEY.....PLAINTIFF/RESPONDENT**

**VERSUS**

**BRIAN CUTHBERT.....1<sup>ST</sup> DEFENDANT/APPLICANT**

**SAMUEL KIRWA KIPSANGA.....2<sup>ND</sup> DEFENDANT/APPLICANT**

**RULING**

On the 8<sup>th</sup> May 2018, the 1<sup>st</sup> defendant filed a preliminary objection dated 4.5.2018 alleging that the suit is premature, misconceived, vexatious and abuse of the court process.

I have considered the submissions on record and do find that the plaintiff is the proprietor of L. R. 7914/89 (original 7914/6 and nobody including defendants is seeking to take the suit land away from the plaintiff. The 1<sup>st</sup> defendant is the registered proprietor of parcels of land namely Eldoret Municipality Block 28/82 and Block 28/83. The 2<sup>nd</sup> defendant is the registered owner of Block 28/485.

The plaintiff seeks an order that he be declared the owner of the land No. L.R. 7914/89 (original L. R. 7914/6) and an order of eviction. The defendants deny any act of trespass and state that this is a boundary dispute that should be handled by the Land Registrar. This court finds that there is no issue to be determined by the court until the boundaries of L. R. 7914/89, 28/829, 28/83 and 28/485 are ascertained. This suit is purely based on a boundary dispute.

Article 162(1) of the constitution gave Parliament the power to establish Courts with the status of the High Court to hear and determine disputes relating to Employment and Labour Relations, the Environment and the use and occupation of, and title to land and Parliament was to determine the jurisdiction of these courts. Parliament enacted the Environment and Land Court Act and gave jurisdiction to the Environment and Land Court as follows:

***Jurisdiction of the Court***

***The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2)(b) of the Constitution and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.***

***(2) In exercise of its jurisdiction under Article 162(2)(b) of the Constitution, the Court shall have power to hear and determine disputes—***

***(a) relating to environmental planning and protection, climate issues, land use planning, title,***

*tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;*

*(b) relating to compulsory acquisition of land;*

*(c) relating to land administration and management;*

*(d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and*

*(e) any other dispute relating to environment and land.*

Though the jurisdiction of this court includes determination of boundary disputes the said should be considered in view of the Land Registration Act. Section 18(2) of the Land Registration Act provides;

**18. Boundaries**

*(1) Except where, in accordance with section 20, it is noted in the register that the boundaries of a parcel have been fixed, the cadastral map and any filed plan shall be deemed to indicate the approximate boundaries and the approximate situation only of the parcel.*

*(2) The court shall not entertain any action or other proceedings relating to a dispute as to the boundaries of registered land unless the boundaries have been determined in accordance with this section.*

*(3) Except where, it is noted in the register that the boundaries of a parcel have been fixed, the Registrar may, in any proceedings concerning the parcel, receive such evidence as to its boundaries and situation as may be necessary:*

*Provided that where all the boundaries are defined under section 19(3), the determination of the position of any uncertain boundary shall be done as stipulated in the Survey Act, (Cap 299).*

Unless a boundary is determined by the Land Registrar, it is premature for a party to come to this court to ascertain its rights to the land. I do find that the plaintiff has moved to this court prematurely and therefore, the suit herein is stayed pending determination of the boundaries by the County Land Registrar Uasin Gishu. It is hereby ordered that that the County Land Registrar and County Land Surveyor Uasin Gishu to visit the suit lands and place or replace or confirm the beacons on the suit lands namely **L. R. 7914/89 (original 7914/6)** and Eldoret Municipality Block **28/829**, and Eldoret Municipality Block **28/83** and Eldoret Municipality Block **28/485** within the next 15 days. The parties to share survey costs on *pro rata* basis. Orders accordingly.

**Dated and delivered at Eldoret this 3<sup>rd</sup> April, 2019.**

**A. OMBWAYO**

**JUDGE**