



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT ELDORET

ELC NO. 299 OF 2012

ELIUD NJUGUNA MWANGI.....1ST PLAINTIFF

MICHAEL K KAMAU.....2ND PLAINTIFF

VERSUS

KIMOROK FARM LIMITED.....DEFENDANT

RULING

This ruling is in respect of an application dated 18th July 2018 brought by way of notice of motion by the plaintiff/applicants for orders:

- a. Spent
- b. That there be a temporary stay of execution of the orders given on 12th July 2018 pending the hearing and determination of this application inter partes.
- c. That the court be pleased to set aside or vary or review the orders made on 12th July 2018 adopting a County survey report dated 31st July 2017.
- d. That this Honourable Court be pleased to adopt the survey report dated 22nd February 2016, and or in the alternative, and order be given that an independent survey report be prepared and adopted by the parties herein.
- e. That the judgment given on 15th October 2014 by this Honourable Court be implemented to the fullest and the defendant be allowed to excise only 5.5 acres of land parcel No. KARUNA/SOSIANI BLOCK 2 (PROGRESSIVE/289).
- f. That the Surveyor be summoned to explain the discrepancies in the two reports.
- g. That costs be provided for.

This matter was finalized on 15th October 2014 when a judgment was delivered to the effect that the defendant is entitled to 5.5 acres of land parcel No. KARUNA/SOSIANI BLOCK 2 (PROGRESSIVE/289). There are two survey reports in the court file which had discrepancies in respect of two sketches that were enclosed.

The County Surveyor was summoned to court to explain the discrepancies in the two survey reports filed in court. Mr. Keitany, the County Surveyor stated that the two reports are dated 31st July 2017 and 23rd June 2017 respectively. He stated that when the 1st report dated the 23rd June 2017 was prepared, a wrong sketch map was enclosed but the body of the report is ok. He further stated that it is only the sketch map that has a problem.

Mr. Keitany, the County Surveyor stated that the first report dated 27th February 2016 indicated the ground occupation of the defendant and the sketch map indicated that the defendant occupies 5.5 acres as per the boundaries existing at that time. Further that there was a sketch map annexed which does not conform to the RIM and the mutation form.

It was the County Surveyor's evidence that there was a subsequent subdivision of this parcel number which resulted into three parcel numbers. He finally stated that the sketch plan dated 31st July 2017 conforms to the mutation form of parcel number 326 measuring 2.4 ha

which is equivalent to 6 acres.

On cross-examination by Mr. Tororei Counsel for the defendant, the County Surveyor confirmed that by the time the sketch plan dated the 31 July 2017 was prepared they had already put beacons and excised 5.5 acres and that the boundaries initially did not conform to the maps. It was his opinion that the report dated the 31st July 2017 should be adopted where the defendant will be left with 5.5 acres.

On re-examination by Ms. Kesei Counsel for the plaintiff, the County Surveyor confirmed that all the parties were present during the demarcation.

Analysis and determination

This matter had already been finalized on 15th October 2014 and a judgment delivered to the effect that the defendant is entitled to 5.5 acres of the suit land. What remained was the implementation of the judgment whereby 5.5 acres was to be excised from parcel No. KARUNA/SOSIANI BLOCK 2 (PROGRESSIVE/289). There were two survey reports that were filed in the court file which had discrepancies. This necessitated the calling of the County Surveyor to come and explain why such discrepancies and the way forward.

I will therefore adopt the expert advice by the County Surveyor that the report dated 31st July 2017 should be adopted by this court where the defendant would be left with 5.5 acres as per the judgment.

I therefore order that the report dated 31st July 2017 is hereby adopted for implementation of the judgment dated 15th October 2014. Costs in the cause.

Dated and delivered at Eldoret this 07th day of May, 2019

M.A ODENY

JUDGE

RULING read in open court in the presence of Miss.Odwa holding brief for Onyinkwa for Plaintiff and Miss.Moraa holding brief for Mr.Tororei for Defendant.

Mr. Mwelem – Court Clerk