



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAKURU

CASE No. 181 OF 2012

CATHERINE HWERE..... PLAINTIFF

VERSUS

JULIUS KIPYEGON KOECH..... 1ST DEFENDANT

WLLIAM KIPKEMOI LANGAT..... 2ND DEFENDANT

RULING

1. Parties herein recorded a consent on 19th July 2017 in the following terms:

1. The second defendant shall have land parcel number Njoro/Njoro/Block 4/890 (Belbur) subdivided.

2. The plaintiff be given 0.25 (naught decimal two five) acres out of the parcel and the 2nd defendant be given 0.5 (Naught decimal five) acres out of the parcel. The balance to go to the 1st defendant.

2. When parties went to the ground to implement the consent, complications arose which made it necessary for the court to order on 18th January 2018 that the Surveyor Nakuru County carries out a survey of land parcel number Njoro/Njoro Block 4/890 (Belbur) so as to effect the court's orders of 19th July 2017. When the surveyor went to the ground, more difficulties emerged as stated in his report dated 15th February 2018. He noted that the parcel number Njoro/Njoro Block 4/890 (Belbur) which was to be subdivided did not appear in the map held by the survey office owing to the fact that the 2nd defendant had already subdivided it. He suggested that the court orders cancellation of the survey creating the sub-divisions since they were not yet registered. Parties were generally in agreement with the way forward as suggested by the surveyor. In a ruling dated 25th May 2018, I gave orders to facilitate implementation of the surveyor's recommendations. I ordered as follows:

a) The Land Registrar Nakuru is hereby ordered not to register Mutation Form dated 27th September 2017 in respect of parcel number Njoro/Njoro Block 4/890 (Belbur). If the Mutation Form has been registered, then the registration be and is hereby cancelled.

b) The amendment of the Registry Index Map for Njoro/Njoro Block 4 (Belbur) to create parcel numbers 1890, 1891 and 1892 is hereby cancelled.

c) The District Surveyor Nakuru to comply with the orders of this court made on 19th July 2017 and on 18th January 2018.

3. The surveyor once again returned to the ground and prepared a report dated 17th July 2018 in which he yet again stated that the order of 19th July 2017 could not be implemented since although the court had by consent ordered that parcel number Njoro/Njoro/Block 4/890 (Belbur) be subdivided and that the plaintiff be given 0.25 acres out of it, the 2nd defendant be given 0.5 acres and the balance to go to the 1st defendant, the total land available to be shared by both the plaintiff and the 2nd defendant is only 0.5 acres. He added that the 2nd defendant has occupied and developed the said 0.5 acres. The surveyor therefore suggested that 2nd defendant moves out of the 0.5 acres to facilitate implementation of the order of 19th July 2017.

4. When the matter next came up in court, both the plaintiff and the 1st defendant were agreeable with the surveyor's recommendations while the 2nd defendant found them unacceptable. According to the 2nd defendant, the consent of 19th July 2017 did not state that the 2nd defendant moves out of the property. Parties therefore urged the court to make a determination on the way forward.

5. I have considered the consent order of 19th July 2017, the surveyor's report dated 17th July 2018 and positions taken by parties. The

consent was parties' attempt to solve the dispute before the court. From its wording, it did not purport to be a final judgment but was a step towards settling the dispute. If it was a final settlement, the parties would have addressed all aspects of the dispute including costs. I thus agree with the 2nd defendant that the consent cannot be the basis of ordering him to vacate. The way out is to have the suit heard and determined, unless of course parties reach a more conclusive agreement. The consent and the surveyor's reports remain on record and parties are free to make such submissions on them as they wish.

6. In the end, I order that parties set down the suit for hearing. Costs in the cause.

7. Ruling herein was to be delivered on 27th February 2019 but was delayed since I proceeded on medical leave. The delay is regretted.

Dated, signed and delivered in open court at Nakuru this 15th day of July 2019.

D. O. OHUNGO

JUDGE

In the presence of:

No appearance by counsel for the plaintiff

Plaintiff present in person

No appearance for the 1st defendant

Mr Maragia for the 2nd defendant

Court Assistants: Beatrice & Lotkomoi