



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KITALE

LAND CASE NO. 168 OF 2016

JOHN WEKESA MATAFALL.....PLAINTIFF

VERSUS

REBA KHAVERE LUTESHI.....DEFENDANT

JUDGMENT

1. The plaintiff's claim as contained in the amended plaint dated **6/3/2017** was dismissed for want of prosecution on **8/10/2019** when the plaintiff or his advocate failed to appear in court upon confirmation of hearing notice upon the plaintiff's counsel and the defendant proceeded with counterclaim on the same date.

2. In the amended defence and counterclaim the defendant in the original suit stated as follows: that she denied the plaintiff's claim; that she has never and does not intend to uproot the plaintiff's fence; that she has never received any summons from any authority for the purpose of resolution of a boundary dispute and no surveyor has ever visited her land and that of the plaintiff to ascertain any boundary; that only the relevant Land Registrar and not police officers have mandate to deal with a boundary issue; that the surveyor's report dated 5/8/2016 was unprocedurally made and against the letter and spirit of **Section 16, 17, 18, 19 and 20** of the **Land Registration Act 2012**; that the defendant being the owner plot No. **Kiminini/Matunda Block 7/149** has filed a claim on boundary regarding parcels No. **1042, 133, 134, 150, 152 and 153** for the purpose of determination of the exact size of the road reserve and the plaintiff's suit (now dismissed) was meant to usurp the powers from the Land Registrar under the Land Registration Act. In the counterclaim and based on the above facts she states that the Land Registrar and County Surveyor Trans-Nzoia county did visit the parcels of land and made a report on **22/2/2017**. She seeks an order of this court that the findings and all decision of the Land Registrar Trans-Nzoia County dated **22/2/2017** be implemented.

3. At the hearing the counterclaim on 8/10/2019 the defendant adopted her defence and counterclaim and her statement filed in court 28/11/2016 as her evidence. She also produced the Land Registrar's Report as **D. Exhibit 1** and County Surveyor's Report as **D. Exhibit 2** and prayed the court to give judgment in accordance with those reports. She also prayed for costs.

4. I have examined **D. Exhibit 1** and **D. Exhibit 2**, the reports prepared by the Land Registrar and the County Surveyor respectively. They relate to several parcels which include the defendant's land parcel. They also reflect the defendant as the complainant. Her complaint is in respect of encroachment upon the road of access by her neighbour who is the plaintiff. The recommendation evident in the Land Registrar's Report are that the trees and fence which encroach on the access road be removed to pave the way for a six metre road alignment. **D. exhibit 2** the Surveyor's Report also recommends that the six metre wide road be maintained. The road width being the main complaint of the defendant as per the contents of those reports I find no hindrance to granting her judgment as prayed in the counterclaim.

5. I therefore grant the prayers in the counterclaim and I order that the recommendations in the County Land Registrar's Report produced as **D. Exhibit 1** and those in the County Surveyor's Report produced as **D. Exhibit 2** be implemented as prayed.

Dated, signed and delivered at Kitale on this 23rd day of October, 2019.

MWANGI NJOROGE

JUDGE

23/10/2019

Coram:

Before - Mwangi Njoroge, Judge

Court Assistant - Picoty

Mr. Bisonga holding brief for Barongo for defendant

N/A for the plaintiff

COURT

Judgment read in open court.

MWANGI NJOROGE

JUDGE

23/10/2019