



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MAKUENI**

**ELC CASE NO. 32 OF 2019**

**PINNACLE FARM LIMITED..... PLAINTIFF/APPLICANT**

**VERSUS**

**THE ADMINISTRATORS ESTATE OF THE LATE PHILIP MUTUSE**

**MWENGI.....1<sup>ST</sup> DEFENDANT/RESPONDENT**

**CHIEF LAND REGISTRAR, WOTE.....2<sup>ND</sup> DEFENDANT/RESPONDENT**

**SUB-COUNTY SURVEYOR, KIBWEZI..... 3<sup>RD</sup> DEFENDANT/RESPONDENT**

**RULING**

1. On the 16<sup>th</sup> July, 2019, the Plaintiff/Applicant and the 1<sup>st</sup> Defendant/Respondent recorded a consent in the following terms: -

**1. THAT the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/Respondents be compelled to carry out survey work on Makueni/Ngulu/2892, 2893 and 2894 in the presence of the Plaintiff/Applicant and the 1<sup>st</sup> Defendant/Respondent and/or their representative to measure the actual area of the said parcels of land and file a response within 60 days from today.**

**2. The Plaintiff/Applicant to bear the cost of the survey exercise while the 1<sup>st</sup> Defendant/Respondent will bear the costs of the exercise that will touch upon his boundary.**

**3. THAT the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/Respondents to file their report in court.**

2. Pursuant to the said consent, the officers from the Ministry of Lands and Physical Planning and more particularly the sub-county Surveyor, Ranymoi H. K. Kibwezi/Makindu while in the presence of the parties herein as well as their private Surveyors visited the site where land parcels number Makueni/Ngulu/2892, 2893, 2894 are situated for purposes of carrying out survey work and to measure the actual area of the parcels in question.

3. Upon conclusion of the exercise, the said Ranymoi H. K. prepared the report dated 26<sup>th</sup> September, 2019.

4. When the matter was mentioned on 03<sup>rd</sup> October, 2019, the Plaintiff/Applicant through its Counsel, Mr. Kamiru, indicated that on the 15<sup>th</sup> August, 2019 the surveyors were not shown by the representatives of the 1<sup>st</sup> Defendant/Respondent the beacons that were on side of the parcels in question. The Counsel submitted that a representative of the Plaintiff/Applicant pointed out the beacons in question. However, the report by the subcounty surveyor does not show the actual acreage that the Plaintiff/Applicant purchased. The Plaintiff/Applicant has proposed to have the survey exercise done on one side that holds title number 2892, 2893 and 2894 as it is the area where the beacons are.

5. The Counsel for the 1<sup>st</sup> Respondent sought for time to interrogate the surveyor's report whereupon the matter was fixed for mention on 03<sup>rd</sup> October, 2019 when the 1<sup>st</sup> Defendant/Respondent filed a further affidavit sworn on 15<sup>th</sup> October, 2019 at Nairobi by Thomas Mutuse, a co-administrator of the estate of the late Philip Mwengi Mutuse. The said further affidavit is in support of the surveyor's report dated 26<sup>th</sup> September, 2019 and opposes the Plaintiff/Applicant's quest for the re-survey of the affected area.

6. It is common ground that the Plaintiff/Applicant was to bear the costs of the survey exercise while the 1<sup>st</sup> Defendant/Respondent was to bear the cost of the exercise touching upon his boundary.

7. The Plaintiff/Applicant herein states that the beacons are on the side that holds title numbers 2892, 2893 and 2894 while the 1<sup>st</sup> Defendant/Respondent states that the surveyors were indeed shown the beacons in question. That may be the case as stated by the 1<sup>st</sup> Defendant/Respondent but in my view, I see no prejudice that will be occasioned to the Respondents if the survey exercise were to be repeated to cover the area in contention and a further report prepared by the surveyor so as to identify the beacons in issue so long as the Plaintiff/Applicant meets the cost of the exercise. In the circumstances, therefore, the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents are ordered to repeat the survey exercise in line with the consent order dated 16<sup>th</sup> July, 2019 and to take into consideration the beacons said to be on the side of the parcels in question. The 2<sup>nd</sup> and the 3<sup>rd</sup> Defendants/Respondents to file their further report within the next 45 days from the date hereof.

**Signed, Dated and Delivered at Makueni this 28<sup>th</sup> day of November, 2019.**

**MBOGO C. G.,**

**JUDGE.**

**In the presence of: -**

Mr. Kamiru for the Plaintiff/Applicant

No appearance for the 1<sup>st</sup> Defendant/Respondent

Mr. Kwemboi – Court Assistant

**MBOGO C. G., JUDGE,**

**28/11/2019.**