



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT KITALE**

**LAND CASE NO. 18 OF 2019**

**PROF. MIKE AMUHAYA IRAVO.....PLAINTIFF**

**VERSUS**

**RICHARD WAWIRE.....DEFENDANT**

**JUDGMENT**

1. The plaintiff's claim is contained in the plaint dated **20/12/2019** which was filed on **21/2/2019**. In that plaint, the plaintiff prays for the following orders against the defendant:

**(a) A declaration that the defendant has encroached and interfered with the common boundary between his land parcel Trans- Nzoia/Liyavo/267 and the plaintiff's land parcel No. Trans-Nzoia/Liyavo/266.**

**(b) A permanent injunction restraining the defendant from encroaching the land parcel Trans-Nzoia/Liyavo/266 and/or interfering with the boundary features including survey beacons of the common boundary between the plaintiff's Trans-Nzoia/Liyavo/266 and the defendant's land parcel Trans-Nzoia/Liyavo/267, and an order that the structures the defendant and his family have constructed on the plaintiff's land parcel Trans-Nzoia/Liyavo/266 be demolished.**

**(d) Costs of this suit.**

**(e) Interests**

**(f) Any other or further relief(s) this court may deem it to grant.**

2. The plaintiff's case is that the two parcels **Trans-Nzoia/Liyavo/266 and 267** share a common boundary; that he owns **No. 266** while the defendant owns land parcel **No. 267**; that on **21/3/2018** the defendant's relatives acting with his knowledge or instruction wrongly removed the survey beacons along the common boundary between the two parcels and encroached on the plaintiff's land; that the said encroachment had begun on **2017** when the defendant trespassed on the plaintiff's land and erected a structure thereon; that reports were made to the Assistant Chief in the **2017** incident and to the police and the County land Registrar Trans-Nzoia in the **2018** incident for appropriate action; that the latter summoned the defendant and convened a meeting at the site to address the issue and after that meeting took place in the absence of the defendant who boycotted it and that the defendant still persists in defiance and threatens to remove any other survey beacons that may be replaced.

3. The defendant never filed any memorandum of appearance or defence despite being served with summons and plaint and other documents on **26/2/2019** as evidenced by the affidavit of service sworn by one **Godfrey Masinde** sworn on **26/2/2019**.

4. The hearing of this suit therefore proceeded *ex-parte*. The plaintiff alone testified on **3/10/2019** when this suit came up for formal proof. He reiterated the matters in the plaint. He produced a copy of title deed [**P. Exhibit 1(a)**] and a certificate of official search showing that he owns plot No. **Trans-Nzoia/Liyavo/266** [**P. Exhibit 1(b)**], summons by the Land Registrar Trans-Nzoia County directed at the defendant and copied to him and the County Surveyor, dated **13/2/2018** [**P. Exhibit 3(a) and (b)**]; the reports of the County Land Registrar dated **23/11/2018** and **14/6/2019** (**P. Exhibits 4 and 5** respectively) as well as the Report of the County Surveyor Trans-Nzoia dated **12/6/2019** (**P. Exhibit 6**).

5. In his evidence he stated that he resides on Plot No. **Trans-Nzoia/Liyavo/266** and that his neighbour had destroyed the beacons along boundary which had been fixed by the Land Registrar. He stated that the Land Registrar, the County Surveyor the Assistant Chief, the Chief and the County Commissioner had earlier supervised the beacons replacement exercise. He claimed that when the Land Registrar went to the site in **2018** the defendant became hostile and the Land Registrar put off the exercise and sought more security; that this court issued an order

and the exercise was conducted on **1/6/2019** in the presence of several officials in the local administration as well as village elders and the defendant and his family members. The conclusion by the Land Registrar was that before the first visit by the Land Registrar, both parties had been encroaching on each other's boundary. After the second visit the County Surveyor also prepared a report dated **12/6/2019**; the boundary was re-established but the defendant has encroached on the plaintiff's land by farming on a part of it. The plaintiff avers that concrete posts had been concreted on the ground on the boundary.

**6.** This suit is not opposed. I find that the boundary was re-established by the competent government officers, that is, the County Land Registrar and the County Surveyor but the defendant has continued to interfere with the common boundary between his land and the plaintiffs and has encroached on the plaintiff's land. I therefore find that the plaintiff has established his claim on a balance of probabilities and I issue the following orders:

**(a) A declaration that the defendant has encroached and interfered with the common boundary between his land parcel Trans- Nzoia/Liyavo/267 and the plaintiff's land parcel No. Trans-Nzoia/Liyavo/266.**

**(b) A permanent injunction restraining the defendant from encroaching the land parcel Trans-Nzoia/Liyavo/266 and/or interfering with the boundary features including survey beacons fixed along the common boundary between the plaintiff's Trans-Nzoia/Liyavo/266 and the defendant's land parcel Trans-Nzoia/Liyavo/267;**

**(c) An order that the structures the defendant and his family have constructed on the plaintiff's land parcel Trans-Nzoia/Liyavo/266 be demolished.**

**(d) The defendant shall bear the costs of this suit and interests thereon at court rates till settled in full.**

It is so ordered.

**Dated, signed and delivered at Kitale on this 27<sup>th</sup> day of November, 2019.**

**MWANGI NJOROGÉ**

**JUDGE**

**27/11/2019**

Coram:

Before - Mwangi Njoroge, Judge

Court Assistant - Picoty

Prof. Sifuan for Plaintiff

N/A for Defendant

**COURT**

**Judgment read in open court at 3.05 p.m.**

**MWANGI NJOROGÉ**

**JUDGE**

**27/11/2019**