



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**

**ELC. CASE NO. 231 OF 2018**

**ZELIPHAH WAKINI NJERU** (*Suing through her*

*Power of Attorney* **WILFRED NJOGU NJERU**.....**PLAINTIFF**

**VERSUS**

**GRACE MINAYO MAJANI**.....**DEFENDANT**

**RULING**

1. In the Notice of Preliminary Objection dated 4<sup>th</sup> February, 2019, the Defendant has averred that this court lacks jurisdiction to hear and determine this matter; and that the suit does not raise any cause of action and is therefore misconceived, frivolous and an abuse of the court process.
2. The Preliminary Objection proceeded by way of written submissions. In his submissions, the Defendant's advocate submitted that the Plaintiff's pleadings shows that the dispute entails the alignment of the boundary between the Plaintiff's land known as Mavoko Town Block 3/1175 and the Defendant's parcel of land number Mavoko Town Block 3/1176.
3. Counsel submitted that the Plaintiff's prayers include an order compelling the Defendant to move her beacons to slant vertically and an order directing the Defendant to move her fence which has encroached on the Plaintiff's land; that the issue regards boundaries and that under Section 18(2) of the Land Registration Act, the court is restrained from entertaining any action relating to a dispute as to boundaries of registered land.
4. In his submissions, the Plaintiff's advocate submitted that the jurisdiction of this court emanates from Article 162(2) (b) of the Constitution as read together with Section 13(2) of the Environment and Land Court Act; that Section 13 of the Environment and Land Court Act does not oust the jurisdiction of the court to determine boundary issues and that although the Land Registrar and the Surveyor visited the site pursuant to the provisions of Section 18(2) of the Land Registration Act, the Defendant failed to comply with their recommendations.
5. In his Plaint dated 6<sup>th</sup> December, 2018, the Plaintiff averred that he is the registered proprietor of land known as Mavoko Town Block 3/1175 while the Defendant is the owner of land known as Mavoko Town Block 3/1176 and that the two parcels of land are adjacent to each other.
6. The Plaintiff has pleaded that in September, 2017, the Ministry of Lands, through the District Land Surveyor, Machakos County, carried out an inspection in respect of the Plaintiff's and the Defendant's parcels of land; that the report produced revealed that a road which was intended to be constructed between the two plots had erroneously been made to pass through plot number 1178 and that further, the report showed that plot number 1179 was misaligned on the ground, which resulted in the encroachment of plot number 1178 by 1.02 Ha.
7. The Plaintiff has deponed that the Defendant's refusal to move her beacons as advised by the Surveyor has led to the reduction in size of his land and that the Defendant has proceeded to erect a fence encroaching on the Plaintiff's land.
8. It is true, as pleaded by the Defendant, that under Section 18(2) of the Land Registration Act, the court is prohibited from entertaining any action or proceeding relating to a dispute as to the boundaries of registered land unless the boundaries have been determined in accordance with the section.
9. Under the said provision of the law, the proprietors of registered land with a boundary dispute are obligated to first seek redress or resolution from the Land Registrar before escalating the dispute to this court. The court therefore does not have the original jurisdiction to determine a boundary dispute of land registered under the Registered Land Act (*repealed*) or the Land Registration Act.
10. The Plaintiff has deponed that she reported the issue of the boundary dispute in respect of parcels of land known as Mavoko Town Block 3/1175 and 1176 to the Land Registrar, Machakos, who in turn instructed the Surveyor to confirm the allegations on the ground.

11. The Plaintiff's case is that despite the Surveyor, and by extension the Land Registrar, having found that the Defendant had encroached on his land, and directed the Defendant to move his beacons, the Defendant has refused to comply.

12. The Plaintiff's case therefore shows that the Land Registrar and the Surveyor did intervene in the boundary dispute, not only as between the Plaintiff and the Defendant, but also as between the Plaintiff and the other owners of the land abutting the Plaintiff's parcel of land.

13. Indeed, in a situation where a party does not abide by the decision of the Land Registrar in respect to a boundary dispute, then the dispute may be escalated to this court. The Plaintiff in this court has demonstrated in his Plaintiff that indeed he complied with the provisions of Section 18(2) of the Land Registration Act by reporting the dispute to the Land Registrar, who in turn instructed the Surveyor to investigate the allegations.

14. Having taken up the issue with the Land Registrar and the County Surveyor, and the Surveyor having prepared a Report which stipulated how the dispute should be resolved, the Plaintiff was entitled to file this suit with a view of enforcing the decision of the Land Registrar and the Surveyor.

15. That being the case, and on the face of the Plaintiff, this court has the requisite jurisdiction to entertain the claim herein.

16. For those reasons, the Notice of Preliminary Objection dated 6<sup>th</sup> December, 2018 is dismissed with costs.

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 8<sup>TH</sup> DAY OF NOVEMBER, 2019.**

**O.A. ANGOTE**

**JUDGE**