



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MERU
ELC APPLICATION NO. 48 OF 2019
IN THE MATTER ARISING OUT IN THE MEANING OF
DISCHARGE/ACQUITTAL FROM CRIMINAL CASE NO. 3741 OF 1981
AND
IN THE MATTER ARISING FROM MARKED BOUNDARY
IN 1976 BY M'MBUGU M'MUGA (DECEASED) COMPRISED
IN L.R. NO KIIRUA/272 BEFORE SUB-DIVISIONS
IN THE MATTER OF SECTION 26C OF LIMITATION
OF ACTION ACT (CAP 22) LAW OF KENYA
JOHN GITIJE.....APPLICANT
VERSUS
ATTORNEY GENERAL.....RESPONDENT
LAWRENCE RIUNGU.....INTERESTED PARTY

RULING

1. This matter emanates from a Notice of Motion dated 11/9/2019 where the applicant seeks the following orders: *leave to file application against the respondent and Interested Party; an order of inhibition restraining the Interested Party from trespassing and developing on L. R. No. KIIRUA/272; the court to compel O.C.S Kiirua Police Station to supply to the applicant with copies of charge sheet and police abstract of Criminal Case No. 3741 of 1981; and that the district surveyor Meru to re-measure actual dimensions and fix boundaries of the said land parcel.*

2. The grounds in support of the application are on the face of the application and in the supporting affidavit of John Gitije sworn on 11/9/2019. It is contended that the Suit Land was given to the applicant in 1976 by his grandfather. That secretly and without his knowledge the Suit Land was sub-divided while he was away. Without knowing this he continued developing the land until when he was charged with trespassing in Criminal Case No. 3741 of 1981 but he was discharged to stay on the land. In spite of being discharged the Interested Party has at all times been holding the valid title being the sub-division of the Suit Land which is part of the land that was bequeathed to him. That the district surveyor should measure the actual dimensions of the land given to him and issue him with a title deed.

3. The issues for determination are:

- a) **Whether to direct the OCS Kiirua Police Station to supply the applicant with copies of the charge sheet and police abstract of Criminal Case No. 3741 of 1981.**
- b) **Whether the district surveyor ought to re-measure actual dimensions and fix boundaries of the Suit Land.**
- c) **Whether to grant the applicant leave to file an application against the respondent and Interested Party.**

4. The first issue is whether the court should direct the OCS Kiirua Police Station to supply the applicant with copies of the charge sheet and police abstract of Criminal Case No. 3741 of 1981. The applicant was allegedly charged in the said case in a criminal court for trespassing. When an accused person is charged some of the documents presented to him include the charge sheet. This is a constitutional right under **Article 50 of the Constitution of 2010** which can also be traced under **Section 77 of the Old Constitution of 1963**. The applicant seeks to retrieve documents which ought to have been in his domain. Further, i believe the first point of call is for the applicant to request the documents from the relevant offices directly. If he is not successful, then he can seek the courts assistance. That way the court will have a better understanding of his claim.

5. The second issue is whether to order the district surveyor to re-measure actual dimensions and fix boundaries of the Suit Land. **The Land Registration Act 2012** makes provisions for alteration and fixing boundaries as well as providing the procedure for dealing with land boundary disputes. **Section 16 of the Act** provides for alteration of boundaries and provides as follows:-

“(1) The office or authority responsible for the survey of land may rectify the line or position of any boundary shown on the cadastral map based on an approved subdivision plan, and such correction shall not be effected except on the instructions of the Registrar, in writing, in the prescribed form, in accordance with any law relating to subdivision, of land that is for the time being in force.

(2) Notwithstanding subsection (1), any alteration made shall be made public and whenever the boundary of a parcel is altered on the cadastral map, the parcel number shall be cancelled and the parcel shall be given a new number.

(3) The office or authority responsible for the survey of land may prepare new editions of the cadastral map or any part thereof, and may omit from the new map any matter that it considers obsolete.”

6. **Section 19 of the Act** provides for the fixing of boundaries and gives the Land Registrar power to establish and have the boundaries fixed after giving all the parties of adjoining parcels an opportunity to be heard. It stipulates that:

“(1) If the Registrar considers it desirable to indicate on a filed plan approved by the office or authority responsible for the survey of land or otherwise the survey of land or otherwise to define in the register, the precise position of the boundaries of a parcel or any part thereof, or if an interested person has made an application to the Registrar, the Registrar shall give notice to the owners and occupiers of the land adjoining the boundaries in question of the intention to ascertain and fix the boundaries.

(2) The Registrar shall, after giving all persons appearing in the register an opportunity of being heard, cause to be defined by survey, the precise position of the boundaries in question, file a plan containing the necessary particulars and make a note in the register that the boundaries have been fixed and the plan shall be deemed to accurately define the boundaries of the parcel.

(3) Where the dimensions and boundaries of a parcel are defined by reference to a plan verified by the office or authority responsible for the survey of land, a note shall be made in the register, and the parcel shall be deemed to have had its boundaries fixed under this section.”

7. The Act has provided the procedure of how boundary disputes ought to be resolved which is under the jurisdiction of the Registrar. The courts are precluded from entertaining any action or proceedings relating to a dispute as to the boundaries of registered land unless the boundaries have been fixed in accordance with the law. This is so stated under **Section 18 (2) of the Land Registration Act**. Any party aggrieved by the decision or exercise of any power by the Registrar can apply for review of the said decision. This is so stated under **Section 86 (1) of the Land Registration Act**:

“(1) If any question arises with regard to the exercise of any power or the performance of any duty conferred or imposed on the Registrar by this Act, the Registrar or any aggrieved person shall state a case for the opinion of the court and thereupon the court shall give its opinion, which shall be binding upon the parties.”

8. Accordingly, I am of the view that the court cannot order the district surveyor to re-measure actual dimensions and fix boundaries of the Suit Land as it lacks jurisdiction to deal with the matter that relates to a boundary issue which ought to be tabled before the land registrar.

9. The third issue is whether to grant the applicant leave to file an application against the respondent and Interested Party. This order that the applicant seeks is quite unclear and vague. It is uncertain what exactly the applicant seeks in terms of leave and the application he seeks to file. Before filing a judicial review matter a person seeks leave from the court first. But from the application, it cannot be deduced as to whether this is what the applicant seeks. Either way if that is what the applicant seeks he has not supplied to this court the decision of the Registrar that he seeks a review of.

10. From the foregoing, I find that the orders sought herein are not merited and the application is therefore dismissed with no orders as to costs.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 10TH DECEMBER, 2019 IN THE PRESENCE OF:-

C/A: Kananu

Applicant

HON. LUCY. N. MBUGUA

