



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT KITALE

LAND CASE NO. 86 OF 2016

EUNICE WANGARE GATHAGA

JOHN ANONO MUNDIA.....PLANTIFFS

VERSUS

JOSEPH MUREITHI.....1ST DEFENDANT

ALFRED OBAT.....2ND DEFENDANT

HELLEN ONYANGO OFINYO.....3RD DEFENDANT

RULING

1. The defendants' application dated 8/9/2016 seeks an order that pending the hearing and determination of the main suit herein, this honourable court be pleased to direct the County Surveyor Trans Nzoia County to visit survey and ascertain the actual boundaries of the plaintiffs' lands (sic) Title Numbers LR Numbers **Trans-Nzoia/Suwerwa/429 and 431**.

2. The grounds upon which the application is made are stated at its foot. In summary they are that the plaintiffs have extended their land, boundaries for Plots Nos. **429 and 431** upto the River Nzoia's banks and in the process they have included all that land known as **Trans Nzoia/Suwerwa/422** in their land yet the latter parcel was never sold to the plaintiffs. In addition, the plaintiffs are alleged to have subdivided the said land and there is danger that they may dispose of it yet Parcel No.422 still belongs to the estate of the late Eliud Habel Onyango.

3. The 2nd plaintiff, duly authorized by the 1st plaintiff has sworn a replying affidavit dated 23rd September 2016 on behalf of the 1st plaintiff and on his own behalf. He avers that as at the time of his death, the late Eliud Habel Onyango had disposed of the whole of **Trans Nzoia/Suwerwa/387** and migrated to Kisumu with his family and the 3rd defendant does not therefore have any interest in the suit land that would entitle her to a survey. It is also notable that on 7/9/16, the 1st plaintiff filed a further affidavit in "*response to the contents of the 3rd defendant's replying affidavit*". She avers that she and the 2nd plaintiff have kept to their respective plots and have not trespassed into Plot No. 422. The 1st plaintiff avers that the defendants/Respondents intend the Surveyor to alter the waterway using a map other than the 1968 map. However, the alleged 1968 map is not exhibited.

4. I have examined at the pleadings and other documents filed in this suit. In summary the issues involved include the true location of a waterway, the true extent of the boundaries of the parcels that resulted from the subdivision of the land parcel LR No.**Trans-Nzoia/Suwerwa/387** and whether the

plaintiffs have illegally extended the boundaries of plots Nos. **Trans-Nzoia/Suwerwa/431** and **Trans-Nzoia/Suwerwa/429** so as to include LR. **Trans-Nzoia/Suwerwa/422**.

5. I am alive to the fact that there is an order which was issued by this court on 24/5/2016 and which has been in the past extended from time to time. In my view it is necessary for the proper position that conforms with the official records relating to the waterway and the subdivision of Plot No. **Trans Nzoia/Suwerwa/387** to be made clear to the court to enable the determination of this matter. In that regard, it is necessary to set aside the order of this court made on 24/7/16 and extended from time to time to the extent that such setting aside will enable the position desired to be put forward clearly.

6. I therefore set aside the order of 24/7/2016 as extended from time to time and in place thereof I hereby grant the **Prayer No.1** in the application dated **8/9/2016**. Besides, the County Surveyor shall submit a report clearly showing the proper position of the waterway mentioned in this suit within 60 days of this order. Each party shall bear their own costs of the application in any event.

Dated, signed and delivered at Kitale on this **29th** day of **January, 2018**.

MWANGI NJOROGE

JUDGE

29/01/2018

Coram - before Mwangi Njoroge Judge

Court Assistant - Isabellah

COURT

Ruling read in open court in the presence of Ms. Sitati for the Plaintiffs/Respondents and in the absence of any representative for the Defendants/Applicants.

MWANGI NJOROGE

JUDGE

29/01/2018