



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ELDORET

E & L NO. 258 OF 2017

IRENE WANJIKU WAWERU.....PLAINTIFF

VERSUS

PATRICK OWUOR.....DEFENDANT

RULING

This ruling is in respect of an application dated 17th July 2017 by the plaintiff applicant seeking for orders:

- a. That the court do order that the county Surveyor and land Registrar Uasin Gishu County to visit the site and measure the said parcel of land being ELDORET MUNICIPALITY BLOCK 20 (KAPYEMIT)/124 measuring 0.26HA and ascertain its true position and acreage pending the hearing and determination of this application and the main suit.
- b. Costs of this application be in the cause.

Counsel for the plaintiff/applicant argued the application and relied on the grounds on the face of the application together with the supporting affidavit of the plaintiff. It was Counsel's submission that there are two deceased persons whom the plaintiff bought the suit land from. He stated that the plaintiff herein bought 0.26ha on paper but on the ground, she is occupying $\frac{1}{4}$ acre as the defendant had encroached on her land. That the defendant bought the land from one Clement Mambo who is deceased and the two parcels of land are adjacent to each other. Mr. Counsel therefore prayed that the court do order that the County Surveyor and the Land Registrar do visit the suit land to ascertain the actual acreage before the suit can proceed for hearing.

Mr. Tororei Counsel for the defendant opposed the application and relied on the replying affidavit filed by the defendant and the pleadings herein. Counsel submitted that the main prayer in this application is also a prayer at paragraph 10 of the plaint. It was further counsel's submission that the plaintiff wants to litigate this case through affidavits which have not been tested through cross – examination.

Counsel stated that the application is based on a wrong assumption that the dispute between the parties is a boundary dispute which is not. He urged the court to look at the pleadings and submitted that the dispute is about how the property was acquired.

Mr. Tororei Counsel for the defendant/respondent further submitted that the orders sought are not meant to preserve the suit property but to help the plaintiff in a fishing expedition. He stated that no explanation has been given to show how the orders sought will assist the court in the expeditious disposal of this case. Counsel also submitted that the application as presented is not anchored on sound principles of law. He urged the court to dismiss the application with costs to the defendant.

Analysis and determination

The main issue for determination is whether the plaintiff's application for an order that the County Surveyor and the Land Registrar to move to the suit land to measure and ascertain the actual acreage is tenable. It is evident from the pleadings before the court that this is not a boundary dispute. I will not dwell much on the issue as this will come out during the hearing of this suit.

It is also notable from the pleadings that the order sought by the plaintiff in this application is also a prayer in paragraph 10 of the plaint. Granting this order will be tantamount to deciding this case at an interlocutory stage. Further the orders sought are directed to the County Surveyor and the Land registrar who are not parties to this suit. I agree with Counsel for the defendant that this application will not assist the court in the expeditious disposal of the case as the same is a fishing expedition by the plaintiff.

The upshot is that I find that the application has no merit and the same is dismissed with costs to the defendant.

Parties to comply with order 11 within 30 days and fix the suit for hearing.

Dated and delivered at Eldoret on this 25th day of January, 2018.

M.A ODENY

JUDGE

Ruling read in open court in the presence of :

Miss Tum holding brief for Mr. Oduor for Plaintiff/Applicant

Miss Biwott holding brief for Mr. Tororei for the defendant.

Mr. Koech – Court Assistant.