



REPUBLIC OF KENYA.

IN THE ENVIRONMENT & LAND COURT OF KENYA AT BUNGOMA.

ELC. CASE NO. 107 OF 2012.

CLEOPHAS WAFULA.....PLAINTIFF

VERSUS.

ASMIN NASAMBU.....1ST DEFENDANT

DISTRICT LAND REGISTRAR BUNGOMA.....2ND DEFENDANT

JUDGMENT.

[1]. On 9th March, 2017 the advocate for the parties entered a Court Order as follows;

By Consent, Land Surveyor Bungoma

(a) To visit parcels East Bukusu W. Sang'alo 890 and the Subdivisions therefrom and identify and fix the boundaries therein and

(b) Upon so doing the surveyor to make a report, which report should include a detailed history of the land parcels East Bukusu/West Sang'alo 890 and 891.

(c) The surveyor was to file their report in 60 days.

(d) Costs of the Surveyor to be shared equally by the parties and the same be paid to respective Counsels for transmission to the Surveyor within 21 days. The case was fixed for further orders on 9/5/2017.

The Consent was adopted as the order of the Court on 9/3/2017.

[2]. The report was filed on 9/5/2017. The parties asked for time to look at it and to file submissions. The parties actually filed their submissions and asked for a date of Judgment. This report is supported by Counsel for the plaintiff and opposed by Counsel for the respondent.

This is expert evidence. I am not convinced that the same can be dismissed off hand particularly when it was solicited for by consent of the parties. Any one challenging the same must challenge the same through the processes provided by law. It was hoped that this report would settle this seven year old case and parties would be satisfied. Unfortunately, it has not done so. There is no application to set it aside in court. I will admit it as evidence in this case.

[3]. This suit shall then be fixed for hearing on merits when all issues shall be liable to be tested on cross examination. The date shall be taken on priority basis since this case is over five years old.

It is so ordered.

Judgment read in open Court in the presence of the parties.

Dated at Bungoma this 22nd day of February, 2018.

S. MUKUNYA

JUDGE

In the presence of:

Joy: Court Assistant

Nafuye for the Plaintiff

Miss Isye for Madam Nanzushi for defendant