



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC CASE NO 113 OF 2015

PAUL HIRBO ISATUPLAINTIF/APPLICANT

VERSUS

ABDIRAHMAN HAKEDEFENDANT/RESPONDENT

RULING

I find that the Plaintiff's suit is anchored on the determination made by the land registrar on 14.12.11 and implemented on 30:07:14 (going by the Plaintiff).

When he was testifying on 28:09:17, Plaintiff brought to the attention of the Court, the contents of the documents he is relying on in his case. He has filed two lists. One is that date 03:08:17. It doesn't contain any Report from the Land Registrar (from item No.1- 9).

The other list of documents is the one filed on 08:12:15. According to Plaintiff, the 7th item is the boundary report of 14:12:15 and indeed in that list of 08:12:15, item No. 7 is indicated that:

“boundary report dated 14th December, 2011 by District Land Registrar, Nairobi in respect of Parcels Marsabit/Mountain /700X1070”.

However, the report itself is dated 18:02:11 and the Ruling thereof is that:-

“I therefore rule that the boundary dispute was not heard and determined as required by Section 21 (2) of the Registered Lands Act Cap 300.....”

I believe the report that the Plaintiff had meant to form part of his documents is the one identified as annexure “PH 3” in the Plaintiff's application dated 14:04:17 as this is the report starting with the date of 14th December, However, not only is this report omitted in Plaintiff's documents relied on during the trial, but it is also not legible especially the last page.

I have therefore nothing to guide me as at now to determine the dispute.

This Court has a mandate, a Constitutional one to ensure that substantive justice is done to all parties pursuant to provisions of article 159 2(d) of the Constitution.

“Justice shall be administered without undue regard to Procedural Technicalities”.

I note that the litigation history concerning the plots in question has been turbulent, having gone through Marsabit CC No. 9 of 2009, Marsabit CC No. 15 of 2014 and the proceedings before the Land Registrar.

This court desires to give orders which would hopefully resolve the dispute once and for all.

As I have said earlier on, this is not possible with the material on record. I therefore give directions as follows:-

- 1. That the Judgment herein is put on hold for Land Registrar, Marsabit County to prepare and file a report concerning the dispute at hand.**
- 2. In the preparation of that report, the Land Registrar is to be assisted by the Marsabit District Physical Planner and Surveyor.**

3. Plaintiff is to meet costs appertaining to or incident to the preparation of the aforementioned report.

4. Plaintiff to serve the order upon the aforementioned parties and defendant.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 20th DAY OF FEBRUARY, 2018 IN THE PRESENCE OF:-

Court Clerk: Janet/Galgalo

Plaintiff Present

HON. L. N. MBUGUA

ELC JUDGE