



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KITALE**

**LAND CASE NO. 84 OF 2015**

**JOSEPH GICHINA MUHORO.....PLAINTIFF**

**VERSUS**

**DANIEL OTIENO ALARA.....1<sup>ST</sup> DEFENDANT**

**JOSEPH MBAUNI NDUGUYA.....2<sup>ND</sup> DEFENDANT**

**GERALD MARU.....3<sup>RD</sup> DEFENDANT**

**R U L I N G**

1. The Notice of Motion dated 11<sup>th</sup> December, 2017 filed by the plaintiff on 15/12/2017 seeks the following orders:-

(1) .....spent.....

(2) .....spent.....

(3) **The orders made on 6<sup>th</sup> December, 2017 directing the County Surveyor to proceed to the disputed area and carry out a survey and remit a report to the court within 60 days be set (sic) reviewed and set aside.**

(4) **The costs of this application be provided for.**

2. The grounds the application is based on are that the dispute in this case is not a mere boundary dispute and that the County Surveyor is likely not to be fair to the plaintiff. The plaintiff avers that the orders of 6<sup>th</sup> December, 2017 amount to giving the defendants a lifetime whereas they have no defence in the matter.

3. In his sworn supporting affidavit dated 11<sup>th</sup> December, 2017, the plaintiff avers that he has been in occupation of the suit land since 1967. He avers that he was unwell at the time the orders were made and therefore he did not comprehend what was happening then.

4. I have referred to the Court of Appeal decision which sums up the plaintiff's case very well. I have also referred to the plaint in this suit. The plaintiff seeks the following orders:-

(a) **An order that the defendants their servants, agents and assigns be evicted from the portion of Land Title No. West Pokot/Keringet 'A'/44 measuring 0.12 acres which they jointly occupy.**

(b) **An order that they be permanently restrained together with their servants agents and assigns from entering the parcel more particularly described (a) above (sic) permanently.**

(c) **Costs.**

(d) **Any other relief this Honourable Court may deem fit to grant.**

5. For the court to determine if it can issue an order of eviction as prayed by the plaintiff in prayer (a) and the order of injunction as prayed in prayer (b) the court has to know the real boundaries of the plot whose ownership the plaintiff claims, that is West Pokot/Keringet/44. The court has also to establish the fact of trespass if any into that land by the defendants.

6. When the matter came up for hearing on 6/12/2017 the plaintiff testified in his case. He stated that on 29/4/2015 two people were shown

the plot next to his; On 13/5/2015, the defendants entered into the plaintiff's land with 20 others and moved the boundary between the plaintiff's plot and the neighbouring plot. The plaintiff averred that his plot is 0.69Ha. The plaintiff produced a surveyor's report dated 25/5/2015 which he stated he was opposed to as it was prepared without input from the Land Registrar.

7. At that hearing Mr. Waweru for the respondent said that the matter relates to the boundary and the County Surveyor may visit the land and identify the boundaries. The plaintiff denied that this is a boundary dispute. It was at this juncture that the court made the order sought to be reviewed.

8. In my view, the two neighbouring plots being registered parcels, their boundaries are known and must be in the records. The manner in which the plaintiff has drawn up his plaint leaves this court with no doubt that only a determination of the true boundary between the two parcels in the manner ordered by the court on 6/12/2017 will lead to a fair and just determination of the matter.

9. I also do not find there to be any good grounds for review or setting aside of those orders of 6/12/2017. I therefore find the application dated 15/12/2017 to be without merit and I hereby dismiss it with costs.

**Dated, signed and delivered at Kitale on this 8<sup>th</sup> day of March, 2018.**

**MWANGI NJOROGE**

**JUDGE**

**8/3/2018**

Coram:

Before Mwangi Njoroge - Judge

Court Assistant - Picoty

Ms. Cheloti holding brief for Waweru

Plaintiff in person present

**COURT**

Ruling read in the presence of counsel for the defendant and the plaintiff in person.

**MWANGI NJOROGE**

**JUDGE**

**8/3/2018**