



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ELDORET

ELC NO. 116 A OF 2016

JOHN CHEBOIWO CHELAL.....PLAINTIFF

VERSUS

JOSEPH KIPYEGEN.....DEFENDANT

RULING

This ruling is in respect of an application dated 16th February 2018 brought by way of Notice of Motion by the plaintiff/applicant for orders that:

- a) Spent.
- b) The Baringo Surveyor together with the Land Registrar visit the disputed parcels of land herein BARINGO/KEWAMOI "A270 and BARINGO/KEWAMOI "A 2450 to establish the boundaries and compile a report of the same.
- c) The Surveyor's fees to be shared equally between the parties.
- d) Costs be in the cause.

This application came up for hearing on 15/3/18 when Counsel for the plaintiff /applicant argued the application. He relied on the grounds on the face of the record and the supporting affidavit filed herein. Counsel submitted that the plaintiff and the defendant own adjacent parcels of land which the plaintiff claims that the defendant has encroached on.

Counsel further submitted that he believes that if the Surveyor and the Land Registrar visits the parcels of land then it would settle this matter. Counsel stated that he had seen an annexed report by the Surveyor which he is a stranger to as the client has also never seen it. He doubted the authenticity of the document as it does not have a signature and a stamp from the Surveyor's office. He urged the court to allow the application as prayed.

Mrs. Chesaro for the defendant/respondent opposed the application and relied on the replying affidavit by the defendant. She submitted that this dispute had already been settled by the District Land Registrar by a ruling dated 24th October 2012 which ruling she stated that the applicant has completely failed to disclose to the court.

It was Counsel's submission that this matter was coming up for hearing on 6/12/17 when Counsel for the applicant made an oral application similar to this one but the court overruled after the defendant clarified the position. Counsel also stated that the ruling by the Baringo Land Registrar was signed and the applicant has never appealed or opposed the ruling. It was Counsel's submission that it is the plaintiff who brought the Registrar to the suit parcel of land and referring back the matter to the Registrar would be an exercise in futility. Counsel urged the court to dismiss the application as there is nothing new the Surveyor and the Registrar are going to do.

Analysis and Determination

This is an application asking the court to grant an order that the Surveyor and the Land Registrar do visit the suit parcels of land and come up with a report. In case of boundary disputes the court can be guided by the reports by the Surveyors and the Land Registrars. In such cases the court can make such orders on its own motion without the application of the parties if it deems fit for the effective administration of justice.

In this particular case and from the evidence on record, I do not find this as an appropriate case to send to the Surveyor and the Registrar as the same had already been adjudicated upon by the District Land Registrar as per the report annexed dated 24/10/12. The applicant has not stated a good reason why this matter should be sent back to the Registrar. The parties are registered owners of the suit parcels of land and the issue of trespass can be adjudicated upon by hearing the evidence in court.

The upshot is that I find that the application lacks merit and is therefore dismissed with costs. Parties to fix the matter for hearing and determination.

Dated and delivered at Eldoret this 17th April, 2018.

M.A ODENY

JUDGE

Ruling read in open court in the presence of Mrs Chesoo for the Defendant/Respondent and in the absence of the Plaintiff/Applicant and his Counsel.

Mr. Koech – Court Assistant.