



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

JUDICIAL REVIEW NO. 9 OF 2015

REPUBLIC.....APPLICANT

VERSUS

DIRECTOR OF SURVEYS.....1ST RESPONDENT

COUNTY SURVEYOR.....2ND RESPONDENT

DISTRICT LAND REGISTRAR.....3RD RESPONDENT

DAVID N CHEGE

WILSON NGANGA

ANTHONY KANYARI.....INTERESTED PARTIES

EX-PARTE

NDEFFO COMPANY LIMITED

JUDGMENT

(Suit for orders of mandamus to compel a survey of certain land; application for mandamus allowed)

1. The motion before me is the motion dated 28 March 2015, and amended on 26 June 2017. The primary order sought in the amended motion is an order of mandamus to compel the respondents herein, that is the Director of Surveys, the County Surveyor and the District Land Registrar, Nakuru, to visit the parcel of land known as LR No. 445/3 (also known as LR No. 9970) and establish the original beacons between the said parcel of land and the parcels of land known as LR No. 445/1 and LR No. 5286.

2. The motion is based on grounds inter alia that the ex-parte applicant is the lawful owner of the land LR No. 445/3 (also known as LR No. 9970) and that in the year 2000, a boundary dispute arose on the said land, which was reported to the District Land Registrar, Nakuru. It is contended that the respondents have a duty to resolve boundary disputes.

3. The supporting affidavit is sworn by Charles Rong'o Mbugua, a director of the ex-parte applicant. He has deposed inter alia that the boundary dispute arose in the year 1999, and that the company has written several letters to the District Surveyor, requesting him to resolve the same. Several letters were exchanged, but no survey has ever been done to resolve the matter, despite the ex-parte applicant paying the survey fees. There was however an attempted survey on 19 January 2010, but this was not successful, as the surveyor could not identify the beacons, for reasons that he did not carry the required equipment.

4. The 1st respondent filed Grounds of Opposition to the motion, but Ms. Cheruiyot, learned counsel for the 1st respondent, on the day of the hearing of the motion, declared that if the interested parties have no objection to the motion, she on her part will have no reason to oppose it. The interested parties on their part averred that they have no objection to the motion.

5. What is before me is what I would consider as a simple motion for mandamus to compel the Director of Surveys, the County Surveyor, and the District Land Registrar, to point out the boundaries of the land parcel LR No. 445/3 (also known as LR No. 9970) which land belongs to the ex-parte applicant. It has been mentioned that this land has been subdivided, although this is not very clear to me, as I do not have any record of subdivision or any resultant titles, if at all there was a subdivision. Be that as it may, what the ex-parte applicant wants is

for the original beacons to the land parcel LR No. 445/3 (also known as LR No. 9970) to be pointed out and also the boundary of this land, and the parcels No.445/1 and 5286, to be determined.

6. From what I can discern from the record before me, the ex-parte applicant through its advocates on record, has tried to write numerous letters requesting for survey to be done, but the ex-parte applicant complains that no substantive survey has been done. I have however seen what is described as a "ruling" to a boundary dispute, dated 22 March 2011, done by one Mr. D.K Nyantika, the then District Land Registrar, Nakuru, where he was of opinion that the issue was more of a land dispute, rather than boundary dispute. On this ruling, the ex-parte applicant has averred that it was made without the original beacons being pointed out.

7. Upon considering the matter, I really do not see what harm any person will suffer if the ex-parte applicant is shown the original beacons of the land LR No. 443/1 (also known as LR No.9970). If there is any issue arising after these beacons have been pointed out, that can be the subject of other substantive litigation, but no person stands to be prejudiced by the mere pointing out of the original boundaries of the said land. Indeed, the interested parties, who own neighbouring parcels of land, have no problem with this exercise.

8. I therefore have no reason to deny the ex-parte applicant the prayers that it seeks. The only issue I have is that I do not see the place of the County Surveyor, Nakuru, and I believe that the said prayer ought to have been directed to the District Surveyor Nakuru.

9. I therefore make the following orders :-

(i) That the Director of Survey, the District Land Surveyor of Nakuru, and the District Land Registrar Nakuru, do proceed and point out and/or establish/re-establish the original beacons of the land parcel LR No. 445/3 (also known as LR No. 9970) and also point out and establish and or re-establish the beacons of the land parcels LR No. 445/1 and LR No. 5286 within 30 days from the date of this judgment.

(ii) That the costs of the exercise be shouldered by the ex-parte applicant.

(iii) That in my discretion, I make no orders as to the costs of this motion.

10. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 11th day of April 2018.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU

In presence of: -

Ms. Barbara Wangari for the ex-parte applicant.

No appearance for the respondents.

1st interested party present acting in person.

2nd & 3rd interested parties: absent.

Court Assistant: Nelima Janepher

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU