



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAKURU

CASE No. 181 OF 2012

CATHERINE HWERE.....PLAINTIFF

VERSUS

JULIUS KIPYEGON KOECH.....1ST DEFENDANT

WILLIAM KIPKEMOI LANGAT.....2ND DEFENDANT

RULING

1. Pursuant to consent reached between the parties, this court made the following orders on 19th July 2017:

- 1. The second defendant shall have land parcel number Njoro/Njoro/Block 4/890 (Belbur) subdivided.***
- 2. The plaintiff be given 0.25 (naught decimal two five) acres out of the parcel and the 2nd defendant be given 0.5 (Naught decimal five) acres out of the parcel. The balance to go to the 1st defendant.***

2. When the matter next came up in court again, parties reported that the order had not been complied with owing to the fact that the 2nd defendant had subdivided the suit property into three portions though no titles had as yet been issued in respect of the subdivisions. Accordingly, parties agreed that the District Surveyor Nakuru proceeds to the ground so as to effect the orders of 19th July 2017. The court therefore made the following orders on 18th January 2018:

- 1. The County Surveyor Nakuru County to carry out a survey of land parcel number Njoro/Njoro Block 4/890 (Belbur) so as to effect the court's orders of 19th July 2017.***
- 2. The survey to be done in the presence of all the parties.***
- 3. The parties to proportionately share the costs of the survey exercise.***
- 4. Mention on 20th March 2018 to confirm compliance and for further directions.***

3. When the matter next came up on 20th March 2018, counsel for the plaintiff informed the court that the Surveyor had not complied with the Orders of 19th July 2017 and 18th January 2018. The court therefore issued summons to the surveyor to attend court on 15th May 2018 to show cause why the orders had not been complied with.

4. Mr. S. M. Mwangi, the District Surveyor Nakuru attended court on 15th May 2018 and explained that upon being served with the orders, he looked at the maps and noted that the parcel number Njoro/Njoro Block 4/890 (Belbur) which was to be subdivided did not appear in the map held by the survey office owing to the fact that the 2nd defendant had already subdivided it. He suggested that the court orders cancellation of the survey creating the sub-divisions since they were not yet registered. He submitted to the court his report dated 15th February 2018, Registry Index Map for Njoro/Njoro Block 4 (Belbur) issued by the Provincial Survey Records Office on 25th April 2018, Mutation Form dated 27th September 2017 and Certificate of Official Search for Njoro/Njoro Block 4/890 (Belbur) as at 1st February 2018. Counsel for the plaintiff, the 1st defendant who was present in court in person and counsel for the 2nd defendant were all in agreement with the surveyor's proposal.

5. I have read the surveyor's aforesaid report, the Mutation Form, the Registry Index Map and the Certificate of Official Search. I note that indeed the 2nd defendant subdivided parcel number Njoro/Njoro Block 4/890 (Belbur) into three plots being parcel numbers 1890, 1891 and 1892. I further note that the Registry Index Map was amended on 18th October 2017. As is manifest from the Certificate of Official Search, the subdivisions have not been registered at the Land Registry.

6. In the circumstances, I make the following orders:

a) The Land Registrar Nakuru is hereby ordered not to register Mutation Form dated 27th September 2017 in respect of parcel number Njoro/Njoro Block 4/890 (Belbur). If the Mutation Form has been registered, then the registration be and is hereby cancelled.

b) The amendment of the Registry Index Map for Njoro/Njoro Block 4 (Belbur) to create parcel numbers 1890, 1891 and 1892 is hereby cancelled.

c) The District Surveyor Nakuru to comply with the orders of this court made on 19th July 2017 and on 18th January 2018.

Dated, signed and delivered in open court at Nakuru this 25th day of May 2018.

D. O. OHUNGO

JUDGE

In the presence of:

Mr. Ikua for the plaintiff

The 1st defendant present in person

No appearance for the 2nd defendant

Court Assistants: Gichaba & Lotkomoi