



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAKURU

HCC No. 233 OF 2006

MBUGUA THUO.....PLAINTIFF

VERSUS

JOSEPHAT MWANGI MUHORO.....1ST DEFENDANT

SAMUEL NJOGU MUNGAI.....2ND DEFENDANT

JOSEPH MWEMA NG'ANG'A.....3RD DEFENDANT

CHRISTOPHER KARIUKI KAMAU.....4TH DEFENDANT

JOSEPH CHEGE NGUGUGA.....5TH DEFENDANT

WANJIKU GATHORONJO.....6TH DEFENDANT

JACKSON MIRINGU KAMAU.....7TH DEFENDANT

DORIS NYAIRURI NJIRI.....8TH DEFENDANT

FRANCIS NGUGI MUNGAI9TH DEFENDANT

**DELIVERANCE CHURCH (sued through its
registered trustees).....10TH DEFENDANT**

TAYARI FARMERS CO. LTD.....11TH DEFENDANT

JOSEPH KIRAGU MURAYA.....12TH DEFENDANT

MARY MUTHONI KARIUKI.....13TH DEFENDANT

ESTHER WANGARE NDEGWA14TH DEFENDANT

CHARITY NJERI MWANGI.....15TH DEFENDANT

MICHAEL WAWERU MWANGI.....16TH DEFENDANT

THE REGISTERED TRUSTEES,

MOLO STREET CHILDREN PROJECT17TH DEFENDANT

RULING

1. This ruling is in respect of plaintiff's Notice of Motion dated 11th September 2017. The following orders are sought in the application:

1. Spent.

2. That this honourable court be pleased to order the District Land Registrar and District Surveyor to proceed to the ground and identify to the parties parcel No's Mau Summit/Molo Block 7/1595, 1596, 1597, 1598, 1599, 1600, 1601, 1602, 1603, 1160 and 1403 and parcel No's 625 and 626 Tayari.

3. That this honourable court be pleased to order for the officers to establish and/or re-establish the boundaries of these parcels of land.

4. That this honourable court be pleased to order for the officers to make a report accompanied by concise clear sketch stating whether either proprietor has encroached into the land parcel of the other proprietor and if so to what extent of such encroachment.

5. That the costs to be shared equally by the parties herein.

6. That having been filed in court the Deputy Registrar be pleased to issue a mention date on priority basis considering the age of the matter.

7. That in the meantime status quo be maintained.

8. That the court be pleased to order the 6th, 13th, 14th defendants/respondents be served by substituted service with a newspaper with nationwide circulations.

2. The application is supported by an affidavit sworn by the plaintiff. It is deposed in the affidavit that the plaintiff was allocated plot numbers 625 and 626 in 1984 after he bought shares. Later on following to change in directors, new parcels were excised and superimposed upon members' parcels. As a result, the plaintiff's parcels were affected. He therefore urges the court to grant the orders sought so as to ascertain if any party has encroached into another' parcel and if so, to what extent.

3. The application is opposed by the 1st to 5th defendants and 8th to 16th defendants through a replying affidavit sworn by the 4th defendant. Counsel for the 17th defendant informed the court that his client does not oppose the application. It was deposed in the replying affidavit of the 4th defendant that the application is aimed at delaying the matter and that similar sentiments were expressed by S.C. Ondeyo J. in a ruling delivered on 14th June 2012.

4. Parties relied entirely on the affidavits on record and did not make any submissions. I have considered the application and the affidavits filed. From the onset, I note that though the applicant has pursuant to prayer 8 of the application sought leave to serve the 6th, 13th and 14th defendants by substituted service, on 29th June 2017 Munyao Sila J. granted orders allowing service upon the 6th defendant by advertisement. On that occasion, the judge also noted that the 13th and 14th defendants are already represented in court by Mr. Karanja. For these reasons, prayer 8 of Notice of Motion dated 11th September 2017 is dismissed.

5. Regarding the other prayers in the application, I note from the "Further Further Amended plaint" filed

herein by the plaintiff that he avers that he is a shareholder of Tayari Farmers Co. Ltd, the 11th defendant herein. As such member, he balloted and was allocated plot number 625 and 626 and that sometime around the year 1994 the 11th defendant subdivided his two said plots into 34 smaller plots, some of which include some of the plots listed at prayer 2 of the Notice of Motion. Accordingly, he prays in the said plaint that the new titles be cancelled.

6. The 1st to 5th and 8th to 16th defendants have argued that the present application is aimed at causing delay in this matter. They have referred to a ruling delivered by S. C. Ondeyo J. on 14th June 2002 in Nakuru HCCC No. 478 of 1994. No explanation is offered in the replying affidavit as to the nexus between Nakuru HCCC No. 478 of 1994 and this matter. I didn't see any such nexus.

7. Part of the arguments advanced by the applicant is that new parcels were superimposed over his parcels. Upon considering the matter in its totality, I see nothing wrong with the District Land Registrar and District Surveyor going to the site and preparing a report that will assist the court. At the end of the day, the mission of the court is to do justice as between the parties.

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

- a) The District Land Registrar Nakuru and the District Surveyor Nakuru to jointly proceed to the ground, identify parcels numbers Mau Summit/Molo Block 7/1595, 1596, 1597, 1598, 1599, 1600, 1601, 1602, 1603, 1160 and 1403 and parcel numbers 625 and 626 Tayari.
- b) The District Land Registrar Nakuru and the District Surveyor Nakuru to prepare a detailed joint report identifying the boundaries of the aforesaid parcels and the extent of encroachment, if any. The report to be filed in this court within 60 (sixty) days from the date of delivery of this ruling.
- c) The costs of the exercise to be shared equally by the parties.
- d) Costs of Notice of Motion dated 11th September 2017 shall be in the cause.

9. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 15th day of May 2018.

D. O. OHUNGO

JUDGE

In the presence of:

No appearance for the plaintiff/applicant.

Mr. Karanja for 1st to 5th & 7th to 16th defendant/respondents.

No appearance for 17th defendant.

Court Assistant: Gichaba