



**REPUBLIC OF KENYA**

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

**ELC. JUDICIAL REVIEW MISC. APPLN. NO. 1 OF 2017**

**REPUBLIC.....APPLICANT**

**VERSUS**

**COUNTY SURVEYOR, MACHAKOS.....1<sup>ST</sup> RESPONDENT**

**DIRECTOR OF SURVEYS.....2<sup>ND</sup> RESPONDENT**

**ATTORNEY GENERAL.....3<sup>RD</sup> RESPONDENT**

**AND**

**PETER MUEMA MUMO.....INTERESTED PARTY**

**AND**

**AMOS MULEE MUTISYA .....EX-PARTE APPLICANT**

**JUDGMENT**

1. In the Notice of Motion dated 3<sup>rd</sup> October, 2017, the Applicant is seeking for the following orders:

***a. That an order of certiorari do issue to quash the decision of the County Surveyor, Machakos County and Director of Surveys amending the legal boundary between the parcels of land known as Iveti/Kaewa/2853 and Iveti/Kaewa/1979 made on the 18<sup>th</sup> day of July, 2016 and communicated vide letter dated 19<sup>th</sup> August, 2016.***

***b. That an order of prohibition do issue to prohibit the County Surveyor, Machakos County and Director of Surveys from amending the legal boundary again between the parcels of land known as Iveti/Kaewa/2853 and Iveti/Kaewa/1979.***

***c. That costs of this Application be paid by the Respondents.***

2. In his Supporting Affidavit, the Applicant deponed that parcels of land known as Iveti/Kaewa/2853 forms part of a larger parcel of land being number 2790 registered in his name and that of his late father, Mutisya Mutiso; that his late father challenged the decision of the Adjudication Committee which amended the boundary between parcels of land number 2790 and 1979 in favour of the Interested Party and that the Appeal to the Arbitration Board by his father was allowed.

3. It is the Applicant's case that the Interested Party's Appeal was dismissed; that instead of filing an Appeal with the Minister, the Interested Party filed Machakos HCCC No. 29 of 2007 and that he later on withdrew the suit. According to the Applicant, the Interested Party filed an Appeal with the Minister which appeal was dismissed; that he again filed HCCC No. 84 of 2011 which was dismissed by the court and that the Interested Party has misled the Respondent into believing that the boundary for parcel number 1979 was amended.

4. It is the Applicant's case that the Respondents have since amended the boundary line between parcel number 2853 and 1979 and that the Application should be allowed.

5. Although the Respondents and the Interested Party were served with the Notice of Motion, none of them filed a response. The Notice of Motion is therefore undefended.

6. I have perused all the decisions that were made by the Land Committee, the Arbitration Board and the Minister in respect to the two suit

properties. Indeed, the decision of the Arbitration Board has never been overturned by the Minister or by this court. According to the decision of the Arbitration Board, the existing “*foot path*” was to be the boundary between parcel numbers 2790 and 1979. That should be the position.

7. Considering that the Respondents and the Interested Party have not disputed the fact that the decision of the Arbitration Board still stands, they should abide by the decision while undertaking the exercise of fixing boundaries between the two properties.

8. For those reasons, I allow the Notice of Motion dated 3<sup>rd</sup> October, 2017 as prayed.

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 11<sup>TH</sup> DAY OF MAY, 2018.**

**O.A. ANGOTE**

**JUDGE**