



**REPUBLIC OF KENYA**

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

**ELC. MISC. APPLN NO. 116 OF 2015**

**BRINE AGENCIES LTD .....APPLICANT**

**VERSUS**

**DISTRICT LAND REGISTRAR, MACHAKOS .....RESPONDENT**

**JUDGMENT**

1. In the Notice of Motion dated 29<sup>th</sup> April, 2016, the Applicant is seeking for the following orders of Judicial Review:

*a. That this Honourable Court do issue an order of Judicial Review for an order of mandamus directed to the District Land Registrar, Machakos ordering him to resolve and determine the boundary dispute with respect to those parcels of land known as Title Number Donyo Sabuk/Komarock Block 1/38940 and Title Number Donyo Sabuk/Komarock Block 1/29199 in accordance with Section 19 of the Land Registration Act.*

*b. That the cost of this Application be provided for.*

2. The Motion is supported by the Statutory Statement of Facts in which the Applicant has deponed that there exists a boundary dispute between the proprietors of land known as Donyo Sabuk/Komarock Block 1/38940 and 29199; that the Applicant requested that the boundary dispute in respect of those two parcels of land be resolved by the District Land Registrar in accordance with Section 19 of the Land Registration Act and that the Respondent has a statutory duty to hear and determine the dispute.

3. The Applicant's advocate submitted that the Land Registrar has a statutory duty to determine the position of a boundary; that an order of mandamus is the appropriate remedy where there is a clear breach of duty by a public duty and that the Application should be allowed. Counsel relied on several authorities which I have considered.

4. The counsel for the Respondent submitted that the Respondent did not fail to carry out his statutory duty in determining the boundary dispute; that the reason as to why the Respondent failed to proceed with the boundary dispute is because the proprietor of the neighbouring land objected to the exercise on the ground that a suit was pending in this court and that Judicial Review orders are discretionary in nature.

5. The evidence annexed on the Applicant's Verifying Affidavit shows that after the Applicant informed the Respondent about the boundary dispute it had with Charles Mulei Matiku, the Respondent informed the two disputants to appear before him on 9<sup>th</sup> April, 2015 to enable him determine the dispute.

6. However, the advocate of Charles Mulei informed the Respondent that he could not resolve the boundary dispute because of the pending matter being HCCC No. 251 of 2014. It is on that basis that the Respondent did not proceed with the exercise.

7. Although the boundary dispute in respect to the two suits is between the Applicant and one Charles Mulei Matiku, the Applicant did not join the said Charles in this suit as an Interested Party. It is obvious from the claim before the court that an order of this court might affect the proprietary interests of Charles, who is a party in HCCC No. 251 of 2014. The failure to join in the said Charles as an Interested Party in this matter makes the suit incompetent.

8. In any event, according to the Applicant's letter of 15<sup>th</sup> April, 2015, the Respondent informed the Applicant that he could not proceed with his statutory mandate of fixing the boundary between his land and that of Charles because of the pending case. The Applicant has not denied that HCCC No. 251 of 2014 indeed exists. The Applicant has not also denied that HCCC no. 251 of 2014 is in respect to the two suit properties. Consequently, the Registrar was entitled to hold his horses until HCCC No. 251 of 2014 is determined or until the court in that matter refers the dispute to him.

9. For those reasons, and in view of the existence of HCCC No. 251 of 2014, I find that the present suit was prematurely filed. I therefore strike out the Notice of Motion dated 29<sup>th</sup> April, 2016 with costs.

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 4<sup>TH</sup> DAY OF MAY, 2018.**

**O.A. ANGOTE**

**JUDGE**