



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT ELDORET**

**E&L CAUSE NO. 133 OF 2016**

**SHADRACK KIPSOIMO TRIPPO.....PLAINTIFF**

**VERSUS**

**PHILEMON MAGUT.....1<sup>ST</sup> DEFENDANT**

**ELIUD MAGUT.....2<sup>ND</sup> DEFENDANT**

**JULIUS MAGUT.....3<sup>RD</sup> DEFENDANT**

**DAVID MAGUT.....4<sup>TH</sup> DEFENDANT**

**RULING**

This ruling is in respect of an application dated 21<sup>st</sup> October 2016 brought by way of Notice of Motion by the defendant/applicant for orders that:

1. Spent
2. The Honourable Court be pleased to order the identification, survey demarcation, fixing of boundaries of the suit properties NANDI/KAMOYWO/520 and NANDI/KAMOYWO/805, the subject matters of these proceedings.
3. In the alternative the Honourable court be pleased to order the determination of the acreages of the suit properties NANDI/KAMOYWO/520 and NANDI/KAMOYWO/805 with a view of ascertaining their common boundaries
4. That the costs of this application be provided for.

Parties filed their respective affidavits and urged the court to determine the application based on the affidavits on record. The defendant filed grounds in support of the application together with the supporting affidavit which he relied on. The plaintiff/ respondent also filed a replying affidavit in opposition to the application.

It was the defendant's averment that there is a boundary dispute between the suit properties mentioned above and urged the court to order an identification, survey, demarcation and fixing of common boundaries. He stated that he is the administrator of the estate of his late father who owned parcel No. NANDI/KAMOYWO/520 which has a boundary dispute with plot no. 805. He also averred that the survey and demarcation will resolve this dispute. He urged the court to allow the application as prayed.

In opposing the application the plaintiff filed a replying affidavit and stated that the application is frivolous as he is the registered proprietor of land parcel No NANDI/KAMOYWO/805 situated at Kamoywo location Nandi County whereby he annexed a copy of his said title. He also stated that there has never been any boundary dispute ever since he bought the suit land in 1965 when the survey was done.

The plaintiff also averred that he had bought additional 7 <sup>1/2</sup> acres of land which was consolidated in 1965 and that the defendants encroached on his land in 2015. He therefore urged the court to dismiss the application as it has no merit.

**Analysis and Determination**

The issue for determination by the court is whether this is a boundary dispute which requires a survey and demarcation of the suit land. From

the pleadings, it is clear that this is not a boundary dispute. The plaintiff has annexed a copy of a title to his suit land and a search certificate. The orders sought for are for a permanent injunction stopping the defendant from interfering with the suit land in any way.

If the defendants feel that they need the intervention of a surveyor, then they can call him/her as an expert witness in the matter. It would not be just to order for the survey of a registered owner's land without his consent unless it is done by consent of all the parties. Furthermore the order of survey and demarcation would not determine this suit. The applicant has also not stated who will meet the costs of what is to be undertaken by the surveyor.

Having said that I do not find that this is a case where the court would grant orders of survey and demarcation. The application dated 21<sup>st</sup> October 2016 is hereby dismissed with costs to the plaintiff. This order shall apply to Eldoret Environment and land Court Case No. 298 of 2017.

**Dated and delivered at Eldoret this 19<sup>th</sup> day of June 2018**

**M.A ODENY**

**JUDGE**

Ruling read in open court in the presence of Mr. Chepkwony for Plaintiff/Respondents and in the absence of Mr. Choge for defendant/Applicant. Application dismissed.

Mr. Koech – Court Assistant.