



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NYERI

ELC NO. 34 OF 2014

IBRAHIM MUTURUHIU KIMAMO.....PLAINTIFF

-VERSUS-

NDIRITU KINGATHIA.....DEFENDANT

JUDGMENT

1. On **7th March, 2014** the plaintiff herein, Ibrahim Muturuhiu Kimamo filed this suit seeking judgment against the defendant, Nderitu Kingathia, for:

A declaration that the defendant is unlawfully entering and occupying part of the plaintiff's land Konyu/Ichuga/2092; a permanent injunction stopping the defendant from entering and occupying the plaintiff's aforesaid land; vacant possession; damages for trespass, costs of this suit and the Land Registrar, Nyeri be ordered by this Honourable court to visit parcels in dispute, mark the boundaries and remove the restriction lodged by the defendant.

2. The plaintiff's suit is premised on the ground that he is the registered owner of LR NO. Konyu/Ichuga/2092 while the defendant occupies Konyu/Ichuga/834 registered in the name of his grandfather Ndiira s/o Kirianku. The plaintiff accuses the defendant of having unlawfully encroached and trespassed into part of his land causing him great loss and damage by cutting 85 trees at the boundary.

3. Vide his statement of defence filed on **17th March, 2014** the defendant denies the allegations leveled against him and puts the plaintiff to strict proof.

4. On **21st November, 2014** parties to this suit entered into a consent whose terms are as follows:-

“That the Land Registrar, Nyeri do visit the suit premises to ascertain the boundary between Konyu/Ichuga/2092 and Konyu/Ichuga/834 and file a report within 60 days.”

5. Pursuant to the consent order referred to in paragraph (4) above, the County Land Registrar and the District Surveyor, Nyeri, visited the suit property in the presence of both parties on **18th April, 2018** and captured their findings as follows:

FINDINGS/OBSERVATIONS

“The disputed common boundary which the plaintiff pointed to us was not marked on the ground on the upper side but on the lower side it was marked with live fence up to the middle.

The Registry Index Map (R.I.M) indicates the common boundary between the plaintiff's and the defendants land is separated by a straight line.

Since there were no visible beacons separating the two parcels on the upper side and since the parties also disputed the position of the boundary on the lower side though well marked with the live fences the boundary could only be ascertained with the help of the Registry Index Map (R.I.M).

The width of parcel number 2092 on the upper side is 32 metres and 34 metres on the lower side as per the R.I.M, while that

of parcel No. 834 is 17 metres both on the upper and lower side. These measurements were used to fix the disputed common boundary on the ground since the parties did not have dispute with neighbours of the sides of their lands.

The position of the marked boundary was put one metre towards the plaintiff's land from top to bottom of the parcels from the position the plaintiff had assumed as the common boundary and which he had pointed to us before taking measurements."

6. On 21st May 2018, the Land Registrar presented her report in court in the presence of both parties who cross examined her on the report.

Analysis and determination

7. As pointed out above, the plaintiff instituted this suit claiming that the defendant has unlawfully encroached on his parcel of land and sought the orders enumerated herein above against the defendant.

8. The defendant denied having encroached on the plaintiff's property and put him to strict proof.

9. To establish the true position concerning the dispute which is the subject matter of this suit, the parties to the dispute agreed to have the Land Registrar and Land Surveyor visit the **suit properties, determine and establish the boundaries.**

10. The report of the Land Registrar established that the defendant had not encroached into the plaintiff's parcel of land. According to the report, the plaintiff had encroached the defendant's land by 1 metre. The Land Registrar corrected the boundaries by marking one metre towards the plaintiff's land.

11. There being no other evidence contrary to the findings of the Land Registrar and the District Land Surveyor, I find and hold that the plaintiff has not made up a case to warrant the orders sought.

12. Consequently, I dismiss the plaintiff's case with costs to the defendant. I also order the plaintiff to pay back the defendant the money he paid to the Land Registrar and Land Surveyor towards their visit.

Orders accordingly.

Dated, signed and delivered in open court at Nyeri this 12th day of June, 2018.

L N WAITHAKA

JUDGE

Coram:

Ibrahim Kimamo – plaintiff

Ndiritu Kingathia – defendant

Court assistant – Esther