



**REPUBLIC OF KENYA**

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

**ELC CASE NO. 172 OF 2017**

**CHARLES LAALIA M'LINKAIBUA..... PLAINTIFF**

**VERSUS**

**JOSEPH NJILITHIA M'AKWALU.....DEFENDANT**

**JUDGMENT**

1. The plaint clearly indicates that this is a boundary dispute between parcels of land Tigania/Kitharene/1301 and 1323. The suit proceeded exparte as defendant did not participate in the proceedings despite the fact that he was served with suit documents.

2. The court had directed that the surveyor was to visit the scene and file a report there of. I have perused that report dated 9/3/2018 and it indicates that defendant's parcel No. 1323 has encroached on plaintiffs parcel No. 1301 as per the sketch map attached.

3. I have no reason to doubt that the report of the surveyor dated 9.3.2018 is helpful. The said report buttresses plaintiff's contention that defendant had embarked on destroying the common boundary. On a balance of probability, I find that plaintiff has proved his case.

**Orders**

4. (a) An order of mandatory injunction is hereby issued restraining the defendant from destroying the common boundary between land parcel NO. Tigania/Kitharene/1301 & 1323 respectively.

(b) An order is issued for the sub county surveyor Meru North to fix the actual boundary between the two parcels as per his report dated 9/3/2018.

(c) Plaintiff is to meet surveyor's costs of fixing the boundary.

(d) Defendant is condemned to pay costs of the suit.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 25<sup>TH</sup> DAY OF JULY, 2018 IN THE PRESENCE OF:-**

**Court Assistant:** Janet/Galgalo

Carlpeters Mbaabu holding brief for Joel Mutuma for plaintiff

Plaintiff

**HON. LUCY. N. MBUGUA**

**ELC JUDGE**