



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC PET NO. 15 OF 2013

REMUS CYRPRIAN BANU SAIMON MUTURI ALIAS

REMUS BANU MUTURI PETITIONER/APPLICANT

VERSUS

STEPHEN NTURIBI ITIRIKIA RESPONDENT

RULING

1. The application dated 19.2.2018 seeks the following orders:

- i. That the application be certified urgent and it be heard on priority basis.
- ii. That the petitioner/applicant be granted leave to amend his petition to reflect the suit land as a registered parcel of land, since it is no longer under the adjudication stage.
- iii. That the Deputy Registrar or the Executive Officer of this court be directed to visit the locus in quo in the presence of a government surveyor, parties and their respective counsel, to ascertain the actual location on the ground, of the subject parcels of land and a report be filed in court.
- iv. That costs of this application to abide the outcome of the petition.

2. The grounds in support of the application are:

- i. That the area map is now available for purposes of the intended scene visit.
- ii. That the dispute herein concerns encroachment into the petitioner's land by the respondent
- iii. That a scene visit report would easily assist to determine this case.
- iv. That the suit land is now registered and the title deed issued to the petitioner/applicant
- v. That there is urgent need to amend the petition and plead the suit land as registered land.
- vi. That no party shall be prejudiced by the relief sought.

3. Applicant has also sworn an affidavit dated 19.8.2018 whereby he has availed an annexure to show that the suit land is now registered under the land registration Act.

4. The application is opposed vide the replying affidavit of Stephen Nturibi Itirikia (sworn on 6.3.2018)

5. Respondent avers that the map availed by petitioner as RCB 2 is a forgery. He also avers that previously there was a scene visit conducted by the Deputy Registrar, the physical planner and surveyor which was not fruitful as petitioner had protested against the exercise.

6. Respondent also avers that the court lacks jurisdiction to adjudicate on the issues in dispute in view of the provisions of section 18 of the land registration Act.

Determination

7. I have considered all the arguments raised herein and submissions of the parties.

Whether the prayer for amendment is merited.

8. I have seen annexure "RC B1". It is a title deed in the name REMUS BANU MUTHUURI for land parcel no. Tigania West/Akithi III/1388. It was issued on 25.4.2017.

9. It follows that the legal regime under which the suit land falls under has now changed. The applicable law regarding this dispute is the land registration Act. Applicant was certainly not in control of the process of this. He cannot therefore be faulted for bringing the application at this stage. In the circumstances the court will allow the prayer for amendment.

Jurisdiction

10. Respondent contends that this court has no jurisdiction to determine the matter pursuant to section 18 of the Land Registration Act, whereas petitioner is of the view that the court has jurisdiction.

11. In paragraph 8 of the replying affidavit of the respondent (filed on 30.8.2013), respondent states as follows; "**I am consternated and it is even laughable for the applicant to state that my plot no. 30 immediately borders his plot where as that is not the case**". In his Replying affidavit dated 6.3.2018, Respondent further states that there is a common problem running in respect of titles issued in the area of Tigania and Nyambene. He also claims that the maps are forged. Isn't this a clear indication that the dispute is not a purely boundary one?. I find that the case of **Patrick Musimba versus National Land Commission & 3 others Nairobi High Court. Constitutional petition no. 613/14** is distinguishable from the present case.

12. The suit land is now registered, it would be very essential to have the input of the land registrar and any other officer with expertise in the area of dispute.

13. In the circumstances I proceed to give the following orders:

a. Applicant is granted leave to amend the petition and to file and serve the same within 7 days from date of delivery of this ruling. The Respondent is at liberty to also file and serve any Response thereof within 7 days from the date of service of the amended Petition.

b. I hereby direct that the land registrar in conjunction with the surveyor (Meru North) do visit the scene and file a joint report regarding the dispute on the suit land.

c. Each party is to bear their own cost regarding this application. However, Petitioner is to meet the costs of the scene visit.

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

Court Assistant: Janet/Galgalo

Carlpeters Mbaabu for petitioner

Miss Rimita holding brief for K. Muriuki for respondent

Petitioner

HON. LUCY. N. MBUGUA

ELC JUDGE