



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

MILIMANI LAW COURTS

ELC CASE NO.663 OF 2017

PAUL THANG'A GICHUHI.....PLAINTIFF

=VERSUS=

AFRICAN PEACE FORUM.....DEFENDANT

RULING

1. The plaintiff/applicant filed a notice of motion dated 6th December 2017 in which he sought injunctive reliefs against the Defendant/ Respondent to restrain the respondent from interfering with LR No. 209/ 6797 owned by the applicant. The respondent is the registered owner of LR No.209/6796 which is adjacent to the property owned by the applicant.
2. The applicant contends that the respondent has encroached into his land and put up an iron sheet fence and is about to start construction on part of his property. He therefore seeks injunctive orders to restrain the trespass until this suit is heard and determined.
3. The applicant's application was opposed by the respondent through a replying affidavit sworn by Josephine Ajema Odera on 26th January 2018. The respondent contends that the applicant's application is brought in bad faith. When the respondent was clearing a bush on the boundary of its land, it occurred that the fence between the two properties was not okay. The applicant and the respondent agreed to carry out a joint survey to determine the boundary. This was done and it was found that there was encroachment of the applicant's property into the respondent's property. The applicant was not agreeable to this and the parties had to seek the services of a regional surveyor who came and still found that the applicant's property had encroached into the respondent's property. Despite this finding, the applicant moved to court and filed this suit.
4. The respondent also raised a preliminary objection on the ground that the suit herein should be struck out as this court has no jurisdiction to entertain a matter involving boundary dispute before the Land Registrar has determined the boundary dispute.
5. The issue before the court is that the applicant is alleging that there has been encroachment into his land. The issue is not on the boundary. The surveyors have gone to the ground and determined where the beacons are. The land Registrar is not going to do anything different other than what the surveyors have done. The land Registrar cannot do his/her work without a surveyor . I therefore find no merit in the preliminary objection.
6. The other issue to be determined is whether the injunction sought ought to be granted. It is clear from the material presented that the applicant has not come to court with clean hands. A joint survey carried out showed that it is the applicant who has encroached on to the respondent's property. There was also a report by the regional surveyor which made similar findings. It is therefore clear that the applicant is not coming to court with clean hands. The application for injunction in the face of all these findings is clearly an abuse of the court process. I find no merit in the applicant's application which is hereby dismissed with costs to the respondent.

It is so ordered.

Dated, Signed and delivered at Nairobi on this 27th day of September 2018.

E.O.OBAGA

JUDGE

In the presence of:-

Mr Gathua for Mr Macharia for applicant

Mr Odhiambo for defendant

Court Assistant: Hilda

E.O.OBAGA

JUDGE