



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

ELC CAUSE NO. 323 OF 2017

FORMERLY KISII NO. 103 OF 2014

CHEMOIWA OLE SAYIELEL.....PLAINTIFF

VERSUS

JOSEPH SAITIAN.....DEFENDANT

RULING

This Ruling is in respect of a report by the Registrar that following an order of the court to determine the boundaries between land parcel No. Trans Mara/Ololchani/585,586 and Trans Mara/Ololchani/946 and 945.

In the report the Registrar visited the land in the presence of the parties and prepared a report which was availed to the parties and they made their respective submissions.

Counsel for the Plaintiff urged the court not to adopt the report but allow the same to be produced by him during the hearing of the suit. On the other report the Defendant's advocate initiated that the court has only to use it during the trial. He further stated that the report substantially determines the issue between the parties. He pointed out that the registrar observed that there was encroachment on the Defendant's land and it actually determines the boundaries.

I have read the report and the submissions made by the counsel for the parties and it is quite clear that the registrar and the surveyor were definite in determining the actual boundaries and they were unanimous in their finding that the Plaintiff had encroached on the defendant's land.

Pursuant to the provisions of sections 16(1) of the Land Registration Act which provide as follows:-

“The Office or authority responsible for the survey of land may rectify the line or position of any boundary shown on the cadastral map based on an approved subdivision plan, and such correction shall not be effected except on the instructions of the Registrar, in writing, in the prescribed form, and in accordance with any law relating to subdivision of land that is for the time being in force”.

It is my finding that the report substantially settles the dispute and I will therefore adopt the same as a judgement of the court in the following terms:-

1. That land parcel Trans Mara/Ololchani/585 and 586 have encroached on land parcel No. 946/945.
2. That the Registrar and the Surveyor Narok County do proceed and fix the boundaries as determined by them within the next 45 days.
3. That since the suit was determined on the report by the registrar and surveyor I order that each party bear its costs.

DATED, SIGNED and DELIVERED in open court at **NAROK** on this 27th day of **September, 2018**

Mohammed Noor Kullow

Judge

27/9/18

In the presence of:-

CA:Chuma/Kimiriny

Mr Morintat for the plaintiff

Mr Adala holding brief for Ogutu