



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAROK

PETITION NO. 14 OF 2017

FORMERLY KISII PET. NO.4 OF 2010

IN THE MATTER OF ARTICLE 22, 23(3) AND 40 OF THE CONSTITUTION, 2010

IN THE MATTER OF VIOLATION AND OR INFRINGEMENT

ON THE PROPERTY RIGHTS OF THE PETITIONER

AND

IN THE MATTER OF OLALUI REGISTRATOIN SECTION

AND

IN THE MATTER OF REGISTERED LAND ACT, CHAPTER 300 LAWS OF KENYA

AND

IN THE MATTER OF LR. NO.TRANSARA/OLALUI/15

AND

IN THE MATTER OF THE CONSTITUTION OF KENYA (SUPERVISORY

JURISDICTION AND PROTECTION OF FUNDAMENTAL RIGHTS AND

FREEDOMS OF THE INDIVIDUAL) HIGH COURT

PRACTICE AND PROCEDURE RULES, 2006

AND

IN THE MATTER OF SECTION 19(SIXTH SCHEDULE) OF THE CONSTITUTION, 2010

SAMSON OLE TINA.....PETITIONER

-VERSUS-

THE DIRECTOR OF LAND ADJUDICATION & SETTLEMENT

THE CHIEF LAND REGISTRAR

THE DISTRICT LAND REGISTRAR, TRANS-MARA

THE ATTORNEY GENERAL

DENIS KINYAMAL NAIRENKE

SIMEON LETEIPA NAIRENKE

JOSEPH NASIEKU KIMANI

SIMON R.OLE MAS

MOSES TALALA SIALO

DOMINIC KIONGA LOMANAT.....RESPONDENTS

RULING

At the conclusion of the hearing of the witnesses in the matter, the Applicant made an Application for the court to order the Land Registrar Trans Mara and Surveyor to visit the suit land and file a report in court in respect of the exact boundaries of plot No. 15 Olalui Adjudication Section and Plot No. 163 Ololchani Adjudication Section and to confirm if there is any overlapping and encroachment of each of the plot onto another and further confirm if there exists a road that cut through the aforesaid parcels of land.

The Application was opposed by counsel for the Defendants arguing that the Petitioners are on a fishing expedition and want to use the report to improve their case. The Respondents further stated that in the event that the court asks for the report, the Regional Surveyor's Office should be involved.

I have heard the submissions in the instant Application and the testimonies of the witnesses and this suit is one that relates to a boundary dispute involving the parties in respect of the two parcels of land namely Plot No. 15 Olalui Adjudication Section and plot number 163 Ololchani Adjudication Section. During their testimonies none of the parties produced any survey map or title deed in respect of the two parcels of land or was the court invited by any of the parties to visit the suit so as to have a physical view of the 2 parcels of land and in the circumstances, I find that the Application by the Petitioner is merited.

Since the Land Registrar Trans Mara and the Surveyor are the official custodian of all maps and documents in respect of the parcels of land, it is worth noting at this juncture that the provisions of section 18 and 19(1) of the Land Registration Act it is the said registrar one qualified and mandated to fix boundaries and hence his report in respect of the dispute herein will assist the court in arriving at a just and fair decision.

In view of the above, I direct that the Land Registrar Trans Mara and the Surveyor do visit the two parcels of land with a view to identifying the boundaries, confirm if a road separates the two parcels and file a report in court within 30 days. I further direct that the above exercise should be conducted under the direct supervision of the Rift Valley Regional Surveyor.

DATED, SIGNED and DELIVERED in open court at NAROK on this 26th day of October, 2018.

Mohamed N. Kullow

Judge

26/10/18

In the presence of:

Ms Adala holding brief for Ogutu for the Plaintiff

Ms Saika holding brief for O.M. Otieno for the 5th to 10th Respondent

Ms Kerubo holding brief for Mutari for the 1st to 4th Defendants

CA:Chuma