



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

ELC CAUSE NO. 495 OF 2017

ALI FARAH

(Suing as the legal adm of the estate

Of Farah Awad Gullet, Deceased).....PLAINTIFF

-VERSUS-

OLOIRIEN GROUP RANCH.....1ST DEFENDANT

JOSEPH MACHARIA NDERITU.....2ND DEFENDANT

RULING

The Application before me is the Defendant's/Applicant's Notice of Motion dated 30th May, 2018 in which the Applicant is seeking an orders of stay of proceedings pending the hearing and determination of an intended Appeal against an order of this court made on 21st May, 2018 and further an order of stay of implementation of an order issued on 21st May, 2018 to the Narok Sub-County Land Registrar and Surveyor from implementing the order of the court dated 21st May, 2018.

The Application was based on the Affidavit of Julius Ole Mokita and on the grounds set out on the Application which are that the court directed the Trans Mara /Sub-County Land Registrar and Surveyor to visit the suit land and determine the boundary or the extent of any encroachment on LR Trans Mara/Olorien/1 and 9.

That the Applicant being dissatisfied with the above have since obtained leave to Appeal and filed a Notice of Appeal and unless the stay orders are granted the said order will be implemented and render the Appeal Nugatory and the outcome of the report shall influence the outcome of the suit herein as both the Registrar and the Surveyor are parties to the suit herein and the adoption of the report shall be detrimental to the Applicant.

The Applicant further contended that it will be unjust for parties to a suit to go ahead and collect evidence and the court may be forced to rely on a report that is dubious. The Applicant further contended that the Registrar and the Surveyor have recently sneaked into another parcel of land and filed a fictitious report.

The Application was opposed by the Plaintiff/Respondent and in his Replying Affidavit he has averred that the suit between him and the defendant touches and concerns encroachment of land and after being heard in his evidence in chief and after being cross-examined and re-examined his advocate made an application to have the Land Registrar and Surveyor visit the suit land and file a report with the court.

The Respondent further avers that when the Application for visitation was made the Applicant's counsel who was present did not oppose the said Application and that report that the court asked for was to enable the court arrive at a just decision and any party who is dissatisfied with it could have the same varied.

The Respondent further averred that the allegations that have been made against him, the Registrar and the Surveyor have sneaked into another parcel of land are baseless and meant to hoodwink the court.

I have read the Application before me and the submissions made by counsel. From the Application what is there before me to decide is whether I should grant the Applicant a stay pending the hearing and determination of his appeal against the order of the court made on 21st May, 2018.

From the records even though the Applicant alleges that both the Registrar and the Surveyor are parties to the suit herein, yet they have been sued but they have never filed any pleadings or participated in the hearing of the matter.

The suit herein relates to a boundary dispute and encroachment and the provision of section 18 and 19 of Land Registration Act No. 3 of 2012 is very clear on who has jurisdiction to demarcate, determine and fix boundaries. The assertion that the Registrar and the Surveyor will prepare a report that will be favourable to the Plaintiff/Respondent is speculative and no shred of evidence has been placed before me to show the apprehension of the Applicant and in any event on the filing of the report each and every party will have the opportunity to test the veracity of the said report and the Applicant despite their misgivings will have the chance to cross-examine both the Registrar and Surveyor.

From the above it is my finding that the Application dated 30th May, 2018 is not merited and I dismiss the same with costs in the cause.

I further direct that the Registrar and Surveyor do proceed and visit the suit land and file a report within the next 30 days to determine the exact boundaries of land parcel No. TRANS MARA/OLOIRIEN/1 and 9.

DATED, SIGNED and DELIVERED in open court at NAROK on this 17th day of October, 2018.

Mohamed N. Kullow

Judge

17/10/18

In the presence of:

Mr. Yenko holding brief for O.M. Otieno for the Defendants/Applicants

Ms Adala holding brief for for Ogutu for the Plaintiff/ Respondent

CA:Chuma