



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**

**ELC. MISC. APPLN. NO. 9 OF 2018**

**STEPHEN KIMEU NGUKU.....APPLICANT**

**VERSUS**

**KIOKO MAUNDU.....1<sup>ST</sup> RESPONDENT**

**JOHNSTONE MULI MAUNDU.....2<sup>ND</sup> RESPONDENT**

**MESHACK MUTUNGA MAUNDU.....3<sup>RD</sup> RESPONDENT**

**MUSYA MAUNDU.....4<sup>TH</sup> RESPONDENT**

**KYALO MAUNDU.....5<sup>TH</sup> RESPONDENT**

**COUNTY SURVEYOR MACHAKOS.....6<sup>TH</sup> RESPONDENT**

**JUDGMENT**

1. In the Application dated 19<sup>th</sup> February, 2018, the Applicant is seeking for the following orders:

***a. That an order compelling the County Surveyor Machakos and the Respondents to restore the boundaries in the suit land known as Kalama/Katanga/629 as per the Judgment of the court of 5<sup>th</sup> April, 2006 in Misc. Case No. 20/06.***

***b. That the costs of the Application be borne by the Respondents.***

2. The Application is premised on the grounds that the Respondents are the sons of Philip Maundu Kithome who was the Plaintiff in Miscellaneous Application Number 20 of 2006; that the court adopted the decision of the Tribunal and ordered that the disputed boundaries should remain as established by the Akitondo clan and that the County Surveyor has not complied with the order of the court.

3. According to the Affidavit of the Plaintiff, the dispute in respect to the suit land started in 1972 and that the County Surveyor should be directed to visit the suit land and fix the boundaries.

4. The Respondents filed Grounds of Opposition in which they averred that the Application is *res judicata* having been dealt with by Odunga J. on 10<sup>th</sup> December, 2012; that this court does not have jurisdiction to deal with a boundary dispute and that the Respondents are not the personal Representatives of the Estate of Philip Maundu Kithome.

5. According to the Respondents, the Applicant should have filed the current Application in HC. MISC. No. 20 of 2006 and that the said boundary has been fixed on numerous occasions.

6. Neither the Applicant nor the Respondents filed submissions. They relied on their respective Affidavits.

7. The Applicant in this matter is seeking for the enforcement of the order that was made by the Minister in Land Appeal No. 88 of 1982. In the said decision, the Minister gave the following directions:

***“The District Surveyor, the LAO (the Land Adjudication Officer) and the chief should visit the disputed land and fix the boundaries on the ground to agree and correspond with the boundary on the map; and the Appellants should meet the expenses of the replacement of the boundary for it was them who uprooted the sisals planted after the objection.”***

8. The above decision emanated from the decision of the Land Adjudication Officer dated 5<sup>th</sup> November, 1976 in which the said officer agreed with the boundary as drawn by the clan. The sketch of the said boundary has been annexed on the decision of the Land Adjudication Officer.

9. The Applicant has annexed on his Affidavit the letters dated 6<sup>th</sup> January, 2016 and 23<sup>rd</sup> August, 2016 in which the County Surveyor, Machakos, informed the parties that he shall visit the land on 16<sup>th</sup> September, 2016 with a view of picking the boundary as directed by the court.

10. According to the letter dated 26<sup>th</sup> October, 2016 addressed to the Director of Surveys, the Applicant was not satisfied with the way the County Surveyor picked and fixed the disputed boundary. In the said letter, the Applicant requested for another surveyor to be sent to the ground.

11. The tone and tenure of the letter by the Applicant dated 26<sup>th</sup> October, 2016 portrays the Applicant as someone who has little regard for professionalism. Indeed, according to the letter of the Applicant, the surveyor who visited the suit land "*developed personal interest*" in the land and picked his own boundary inside Plot No. 629.

12. Other than casting aspersion on the character and integrity of the County Surveyor, the Applicant has not himself hired a private Surveyor to come up with a survey plan depicting the correct boundaries. That is what the Applicant should do instead of lamenting about the character of the County Surveyor.

13. My observation above leads me to one conclusion: the Applicant does not deserve the orders which he is seeking in the Application dated 19<sup>th</sup> February, 2018. The said Application is dismissed with no order as to costs.

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 16<sup>TH</sup> DAY OF NOVEMBER, 2018.**

**O.A. ANGOTE**

**JUDGE**