

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERICHO

E.L.C CASE NO. 44 OF 2015

GRACE MARITIM.....PLAINTIFF

VERSUS

DAVID BOR.....1ST DEFENDANT

JOEL BOR.....2ND DEFENDANT

JOSEPH BOR.....3RD DEFENDANT

HELLEN BOR.....4TH DEFENDANT

RULING

1. The plaintiff herein filed suit against the defendants claiming that the defendants had encroached on her land parcel number KERICHO/KIPCHIMCHIM/2723 which borders land parcel number KERICHO/KIPCHIMCHIM/146 which is occupied by the defendants.
2. The defendants filed a joint defence in which they stated that land parcel no. KERICHO/KIPCHIMCHIM/146 is registered in the name of their late father STEPHEN KIPLANGAT CHELOGOI and denied that they have encroached on the plaintiff's land.
3. Before the matter could be set down for hearing, both parties agreed that this was a boundary dispute that could be resolved by the District Surveyor and Land Registrar visiting the suit land to determine the boundary for purposes of establishing if there is encroachment by either party. In line with section 18 (2) and 19 of the Land Registration Act, the court ordered the Land Registrar and District Surveyor to visit the suit land in the presence of both parties , determine the boundary and prepare a report.
4. The District Surveyor visited the suit land on 27th March 2018 but before he could file his report in court the plaintiff complained about the findings of the surveyor and insisted that a second survey be conducted. This prompted the defendants to move the court on 16th April 2018 for an order to stop the District Surveyor from re-surveying the suit land before filing a report of the earlier survey.
5. Pursuant to the said application the court ordered the District Surveyor to file a report of the survey conducted on 27th March 2018. According to the survey that was conducted, land parcel number KERICHO/KIPCHIMCHIM/146 has slightly encroached on land parcel number KERICHO/KIPCHIMCHIM/2723 which has since been divided into three parcels of land namely; KEERICHO/KIPCHIMCHIM/339,6792 and 6793. The boundary between parcels no 146 and 6792 is the one in dispute. It was found that land parcel no. KEERICHO/KIPCHIMCHIM/146 had encroached onto land parcel no. KERICHO.KIPCHIMCHIM/6792 by 5 metres at the widest point and 1.6 metres at the narrowest point.
6. Even though the fact of encroachment has been established by the surveyor, it is common ground that land parcel no. KERICHO/KIPCHIMCHIM/146 still registered in the name of the defendants' late father and there is no evidence that letters of administration have been taken out. In the circumstances, the court cannot issue orders against parties who have no legal capacity to be sued.
7. Attempts to get the parties to settle this matter out of court have been unsuccessful. I therefore have no option but to strike out the plaintiff's suit against the defendants with cost to the defendants.

Dated, signed and delivered at Kericho this 13th day of November 2018.

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J.M ONYANGO

JUDGE