



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

ELC CASE NO. 113 OF 2015

PAUL HIRBO ISATU.....PLAINTIFF

VERSUS

ABDIRAHAMAN AKE.....DEFENDANT

RULING/JUDGMENT

1. Judgment in this case was scheduled to be delivered on 6.12.2017. However when I retired to write the judgment, I realized that the dispute was a boundary one. I proceeded to deliver a ruling instead on 20.8.2018 whereby I gave the following directions:

- i. That the judgment be put on hold for the Land Registrar, Marsabit County to prepare and file a report concerning the dispute at hand.
- ii. In the preparation of the report, the land registrar to be assisted by the Marsabit District Physical planner and surveyor.
- iii. Plaintiff to meet costs appertaining to or incident to the preparation of the aforementioned report.
- iv. Plaintiff to serve the order upon the aforementioned parties and defendant.

2. The report has been availed. However plaintiff has stated that he is not in agreement with the report. He avers that the Land Registrar was not sincere, that he was biased and that the report doesn't mention where the boundary is.

3. In my ruling of 20.2.2018, I had clearly indicated the difficulties I encountered in determining the dispute. This was because earlier reports from the land registrar were not helpful.

4. The plaintiff has not denied that dispute is a boundary one. The law applicable is to be found under section 18 and 19 of the land registration act. Section 18 (2) thereof provides that;

“The court shall not entertain any action or other proceedings relating to a dispute as to the boundaries of registered land unless the boundaries have been determined in accordance with this section”.

Section 19 (1) provides that:

“If the Registrar considers it desirable to indicate on a filed plan approved by the office or authority responsible for the survey of land, or otherwise to define in the register, the precise position of the boundaries of a parcel or any parts thereof, or if an interested person has made an application to the Registrar, the Registrar shall give notice to the owners and occupiers of the land adjoining the boundaries in question of the intention to ascertain and fix the boundaries”.

While section 19 (2) provides that:

“The Registrar shall, after giving all persons appearing in the register an opportunity of being heard, cause to be defined by survey, the precise position of the boundaries in question, file a plan containing the necessary particulars and make a note in the register that the boundaries have been fixed, and the plan shall be deemed to accurately define the boundaries of the parcel”.

5. In the case of Andrew Marigwa vs Josphat Ondieki Kebati ELC Kisii No. 1163 of 2016 (formerly H.C.C No. 82/2011) the Judge stated that:

“Recognizing the instant suit related to a boundary dispute which definitely the court lacked the technical ability to deal with, the court made a reference of the matter to the Land Registrar and the County Surveyor who are the persons mandated under the Act to deal with disputes relating to boundary. The Land Registrar is the custodian of the records relating to land, have the technical ability or capacity to determine, establish and fix boundaries of parcels of land as required under the Land Registration Act, 2012”. The court further stated that “From the observations and findings by the Land Registrar and the Surveyor there is in fact a need for the Registry Index Map to be amended to reflect the correct status as appears on the ground. The applicant by his application seeks an order that the Land Registrar’s and the Surveyor’s report be disregarded and the matter fixed for hearing. What would the court proceed to hear? The dispute would still remain a boundary dispute which the court cannot entertain under the provisions of Section 18(2) of the Land Registration Act, 2012. My view is that the Land Registrar’s reports have finally disposed of this matter. I hereby endorse the reports as judgment of the court and direct that the same be implemented”.

7. Likewise in the present case, the court doesn’t have the technical knowledge to determine the dispute. The drafters of the law must have had this scenario in mind hence the enactment of section 18 and 19 of the Land Registration Act.

7. It is worthy to note that the aforementioned provisions are a replica of section 21 of the repealed Registered Land Act. It follows that the resolution of boundary disputes has always been in the purview of the Land Registrar. That is why I will proceed to accept the report and also give a determination based on the report.

8. I note that according to Registrar’s Report, this is a case whereby the land on the ground is more than what is on the land records, particularly the Registry Index Maps. There are cases where the scenario is the opposite, when the land on the ground is less than in the map. Such a situation is dire and difficult to resolve, but luckily, this is not so in the present case.

9. All in all the proposed verdict in the Registrar’s report dated 23.5.2018 is adopted as a judgment of the court. **“The Registrar is to put the boundary marks whereby the excess 4 metres along the road is to be shared by the affected parties in accordance with the calibrated distances in the Registry Index Map for each parcel and the boundary line between parcel 626 and 700 is to be straightened to reflect the ground. The structures along the disputed line are to be accommodated accordingly and the Registry Index Map is to be amended to reflect the new position.**

10. Each party is to bear their own costs of the suit.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS DAY OF 8TH NOVEMBER, 2018 IN THE PRESENCE OF:-

C/A: Janet

Plaintiff

HON. LUCY. N. MBUGUA

ELC JUDGE