



REPUBLIC OF KENYA

ENVIRONMENT AND LAND COURT AT KISII

CASE NO. 365 OF 2016

JOHN MORIASI.....PLAINTIFF

VERSUS

NYAKOYE ONCHWARI.....DEFENDANT

R U L I N G

1. The plaintiff filed the instant suit vide a plaint dated 24th October 2016 seeking inter alia a declaration that he was the legal owner of land parcels **West Mugirango/Nyamaiya/2401, 3080, 3110 and 3070**; an order for the eviction of the defendant from the said parcels of land; and damages for trespass and/or conversion.
2. The defendant filed a defence denying he was in trespass on the plaintiff's said parcels of land claiming that the land parcels claimed by the plaintiff had been unlawfully and illegally subdivided from land parcel **West Mugirango/Nyamaiya/3162** which had been subdivided to create land parcels **3563 and 3564**.
3. On 25th September 2017 the parties agreed the matter involved a dispute respecting the establishment of boundaries and identification of the land parcels on the ground. The court on the date made an order with the consent of the parties for the land registrar and the surveyor to visit the dispute properties and to prepare a report. The order of reference was in the following terms:

“By consent of the parties the land registrar, Nyamira and the County Surveyor do visit land parcels West Mugirango/Nyamaiya/2401, 3010, 3080, 3110, 3079 and parcels 3563 and 3564 and establish their respective boundaries. In case any of the parcels have been subdivided the land registrar to confirm the resultant subdivisions. The land registrar to file his report within the next 90 days from today.”

The land registrar implemented the order and in his report dated 9th August 2018 filed in court on 17th September 2018 he observes as follows:-

“With the help of the surveyors, all the proprietors were shown their boundaries and the boundary features fixed.”

4. The report by the surveyor dated 30th July 2018 filed on 17th September 2018 indicates all the boundaries of parcels of land were marked and fenced by the respective owners on the same day as per the measurements on the ground. The report by the surveyor annexed a sketch plan which has highlighted land parcels **2401, 3080, 3110 and 3079** which are the plots claimed by the plaintiff. The sketch plan also highlights land parcel **3563 and 3564 (3075 and 3076)**. The boundaries of the above land parcels were established by the land registrar and the surveyor in the presence of both the plaintiff and the defendant.
5. Whereas the plaintiff on 17th October 2018 affirmed he was happy with the report filed by the land registrar and the surveyor the defendant's counsel indicated the defendant was not happy with the report. The court stood over the matter to 13th December 2018 to afford the parties an opportunity to study the report before it was adopted. On 13th December 2018 the defendant's counsel did not attend court though the defendant was in court. No party had made any application to set aside and/or vary the report filed by the land registrar and the surveyor. The plaintiff prayed that the report be adopted by the court.
6. The court has reviewed the pleadings and the documents filed by the parties together with the report by the land registrar and the surveyor. In the bundle of documents filed by the plaintiff, the abstracts of the title (copies) show that the plaintiff is the registered owner of land parcels **West Mugirango/Nyamaiya/2401, 3080, 3110 and 3079**. These are the parcels he claims to own as per the plaint. The land registrar and the surveyor as per their reports identified the same and delineated their respective boundaries physically on the ground. On the basis of the abstracts (green cards) and the search certificates, the plaintiff is the duly registered owner of the suit properties and in terms of Sections 24, 25 and 26 of the Land Registration Act, he holds absolute title to the parcels of land and the titles can only be challenged under the provisions of Section 26(1) (a) and (b) of the Land Registration Act, 2012 on grounds of fraud or misrepresentation or if it is demonstrated the title was obtained illegally or through a corrupt scheme.

7. The defendant by his defence merely denies being in trespass and does not challenge the titles held by the plaintiff. The defendant has made no counterclaim and on the face of the evidence the plaintiff's ownership of the suit properties is incontestable. In the premises, I find and hold that the plaintiff is the owner of the suit premises.

8. The land registrar and the surveyor in compliance with the court order delineated the boundaries of the plaintiff's parcels of land and parcels **3564 (3075 and 3076)** and **3563**. The parties were shown their respective boundaries and the boundaries appropriately marked. None of the parties has challenged the report by the land registrar and the surveyor and as they conform with the order of reference, I adopt the same as judgment of this court and direct the implementation of the same.

9. The upshot is that the report by the land registrar/surveyor disposes of this suit and accordingly the plaintiff is declared as the legal owner of land parcels **West Mugirango/Nyamaiya/2401, 3080, 3110 and 3079**. The land registrar/surveyor's report as relates to the identification and delineation of the parcel boundaries to be implemented. A permanent injunction is issued against the defendant by himself, his servants and/or agents restraining him/them from entering, trespassing onto, cultivating or in any manner interfering with the plaintiff's said parcels of land.

10. Each party shall bear their own costs of the suit. The suit to be marked as finalized and the file closed accordingly.

11. Orders accordingly.

RULING DATED, SIGNED and DELIVERED at KISII this 20TH DAY of DECEMBER 2018.

J. M. MUTUNGI

JUDGE

In the presence of:

Ms. Moguche for the plaintiff

Mr. Mongare for the defendant

Ruth Court assistant

J. M. MUTUNGI

JUDGE