



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAKURU

CASE NO. 74 OF 2012

FRANCIS KARIUKI THUKU.....PLAINTIFF

VERSUS

NANCY WANJIKU KAMAU.....1ST DEFENDANT

MATHEW WARUINGU KAMAU.....2ND DEFENDANT

NAKURU LAND REGISTRAR.....3RD DEFENDANT

JUDGMENT

1. By amended plaint filed in court on 22nd July 2014, the plaintiff averred that he is the registered proprietor of a parcel of land known as Subukia/Subukia Block 8/103 (Edgewood) while the 1st defendant owns Subukia/Subukia Block 8/312 (Edgewood) and the 2nd defendant owns Subukia/Subukia Block 8/313 (Edgewood). The plaintiff's aforesaid plot shares common boundaries with the 1st and 2nd defendants' aforesaid plots. The plaintiff averred that the 1st and 2nd defendants had crossed over the shared boundaries and had trespassed onto the plaintiff's land. Despite the dispute being registered with the third defendant, the 3rd defendant had failed to properly fix the boundaries. The plaintiff therefore sought judgment against the defendants jointly and severally for:

a) An order directing the County Land Registrar to establish the boundary between land parcels No. Subukia/Subukia Block 8/103 (Edgewood), Subukia/Subukia Block 8/312 (Edgewood), and Subukia/Subukia Block 8/313 (Edgewood) as per the parties respective title deeds and the area map.

b) Costs of the suit and interests.

c) Any other and or further relief that this honourable court may deem fit and just to grant.

2. Despite being served, none of the defendants entered any appearance or filed defence. The defendants did not also attend the hearing.

3. At the hearing, the plaintiff testified as the sole witness in support of his case. He told the court that he is the registered proprietor of land parcel number Subukia/Subukia Block 8/103 (Edgewood) while the 1st defendant is the registered proprietor of land parcel number Subukia/Subukia Block 8/312 (Edgewood) and the 2nd defendant is the registered proprietor of land parcel number Subukia/Subukia Block 8/313 (Edgewood). She produced copies of certificates of search for the plots and added that the defendants had crossed the shared borderline between the plots. Despite writing demand letters to both defendants to vacate or cease trespassing, they ignored. He therefore urged the court to grant him judgment as prayed in the amended plaint.

4. With that, both the plaintiff's and defence cases were closed. In submissions, the plaintiff urged the court to enter judgment as prayed in the amended plaint.

5. I have carefully considered the pleadings filed herein as well as the evidence tendered. The plaintiff's case is not challenged in any way. From the certificates of search which have been tendered in evidence, I am satisfied that the plaintiff is the owner of the parcel of land known as Subukia/Subukia Block 8/103 (Edgewood) while the 1st and 2nd defendants own the adjoining parcels being Subukia/Subukia Block 8/312 (Edgewood) and Subukia/Subukia Block 8/313 (Edgewood) respectively. I am further satisfied that the 1st and 2nd defendants have crossed over their respective borders with the plaintiff and have trespassed onto the plaintiff's land. Equally, I am satisfied that the 3rd defendant has failed to fix the boundaries between the three parcels of land.

6. In view of the foregoing, I am satisfied that the plaintiff has established his case on a balance of probabilities. I therefore enter judgment against the defendants jointly and severally and make the following orders:

a) The Land Registrar Nakuru County is hereby ordered to establish the boundary between land parcels numbers Subukia/Subukia Block 8/103 (Edgewood), Subukia/Subukia Block 8/312 (Edgewood), and Subukia/Subukia Block 8/313 (Edgewood) as per the respective title deeds and the registered index map.

b) Costs of the suit are awarded to the plaintiff.

7. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 4th day of December 2018.

D. O. OHUNGO

JUDGE

In the presence of:

Plaintiff present in person

No appearance for the defendants

Court Assistants: Gichaba & Lotkomoi