



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KISUMU**  
**ELC CASE NO.123 OF 2014**

**MARICUS OTIENO OKWAYO.....PLAINTIFF**

**VERSUS**

**GEORGE OWENGE ALUOCH .....DEFENDANT**

**RULING**

1. The Plaintiff, **Maricus Otieno Okwayo**, commenced this suit through the plaint dated 22<sup>nd</sup> April 2016 averring that the defendant, **George Owange Aluoch**, had trespassed onto his land north **Ugenya/Yenga/49** and as a result he has suffered special damages of Kshs.49230/= which he prays for. He also prays for injunction restraining the Defendant from trespassing and interfering with the land and a declaration that the said land belongs to him. The Plaintiff also filed a notice of motion dated 3<sup>rd</sup> June 2016 seeking for implementation of Land Surveyor/Registrars determination in 14 days, restraining order against the Defendant pending the hearing and determination of the application among others.
2. The Defendant filed a notice to raise a preliminary objection dated 30<sup>th</sup> June 2016 on two grounds that this courts lacks jurisdiction and that the matter is one that the District Land Registrar and Surveyor can handle.
3. The Plaintiff opposed the preliminary objection through the grounds of opposition dated 4<sup>th</sup> August 2016.
4. The preliminary objection came up for hearing on the 2<sup>nd</sup> November 2016 when Mr. Kowinoh, learned counsel for the Defendant, and the Plaintiff in person made their oral rival submissions.
5. The following are the issues for the court's determination;
  - a) Whether the suit filed by the Plaintiff is based on a boundary dispute.
  - b) Whether the boundary has been determined by the Land Registrar.
  - c) Whether the court has jurisdiction to deal with the matter in view of the provisions of **Section 18** of the Land Registration Act No.3 of 2012.
  - d) What orders to make.
6. The court has carefully considered the grounds in the notice of preliminary objection, and grounds of

objection, the oral rival submissions, the pleading so far filed and come to the following findings:

a) That the averments in paragraph 4, 5 and 6 of the Plaint clearly shows that the suit filed by the Plaintiff against the Defendant is based on a boundary dispute over land parcel **North Ugenya/Yenga/49**. The Plaintiff accuses the Defendant of trespassing onto the land and stopping the ongoing fencing work and as a result of which he suffered damages which he has particularized at paragraph 7 of the plaint.

b) That the Defendant's preliminary objection is that the Plaintiff's suit is prematurely filed in court because the Land Registrar has not determined the boundary as required under **Section 18** of the Land Registration Act. The Plaintiff has countered that by stating that he had reported the dispute first to the Assistant Chief, who then did a letter dated 24<sup>th</sup> June 2014 to the District Surveyor and another dated 25<sup>th</sup> June 2014 to the Land Registrar. The Plaintiff referred the court to a report dated 25<sup>th</sup> August 2014 by the District Survey office and copied to the District Land Registrar, Ugenya among others and submitted that it satisfies the requirement of a boundary determination by the Land Registrar.

c) That the court has considered the rival submissions as summarized in (b) above and the provisions of **Section 18 (2)** of the Land Registration Act and it is clear that no evidence has been availed to show that the boundary in respect of land parcel North **Ugenya/Yenga/49** has ever been demarcated or settled by the Land Registrar before the filing of this suit.

d) That as this matter is essentially about the boundary relating to land parcel **North Ugenya/Yenga/49**, the same was prematurely filed in court before the boundary could be determined by the Land Registrar, contrary to the requirement of the Law.

e) That the exercise by the Land Surveyor and the report thereof cannot be a substitute for the boundary demarcation and report thereof by the Land Registrar as the Plaintiff appeared to believe. The office of the Land Registrar and that of the Surveyor are two different offices each with its own legal and administrative mandates.

7. That in view of the foregoing the Defendant's preliminary objection is hereby upheld. The suit commenced vide the plaint dated 22<sup>nd</sup> April 2016 and the notice of motion dated 3<sup>rd</sup> June 2016 are hereby struck out with costs for being filed in court prematurely.

It is so ordered.

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**DATED AND DELIVERED THIS 15<sup>TH</sup> DAY OF FEBRUARY 2017**

In presence of;

Plaintiff Present

Defendant Absent

Counsel None

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**15/2/2017**

15/2/2017

S.M. Kibunja Judge

Oyugi court assistant

Plaintiff present

Court: Ruling dated and delivered in open court in presence of the Plaintiff only.

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**15/2/2017**