



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC MISC. APPL. NO. 73 OF 2010

TELESIA KAMBUA KINYILI.....PLAINTIFF

VERSUS

MAKUENI DISTRICT LAND DISPUTES TRIBUNAL.....1ST RESPONDENT

THE PRINCIPAL MAGISTRATE'S COURT AT MAKUENI.....2ND RESPONDENT

THE LAND REGISTRAR MAKUENI DISTRICT.....3RD RESPONDENT

AND

BENJAMIN MANTHI KITHEKA.....INTERESTED PARTY

JUDGMENT

1. By an Award dated 16th October, 2007, the Land Disputes Tribunal via case No. 135/2006 directed the boundary dispute between the Applicant and the Interested Party be marked by planting cobobia trees “(ndau)(13) marks” to separate the claimant’s and the Objector’s land. A decree thereafter was extracted in Makueni SRM’S LDT NO. 76/07.

2. The Interested Party sought via a Chamber Summons dated 15th June, 2009 an order to the effect that he be registered as the owner of $\frac{3}{4}$ of land known as Kathonzweni/Kimundi/2278 in place of the Objectors’ names, Ellena Matanu Mutua and Mbithe Munya and the boundaries be marked accordingly.

3. The court granted the aforesaid prayer provoking the instant Motion which seeks;

a. To quash the ruling of the 1st Respondent of 8th December, 2009 in LDT No. 76/07.

b. To prohibit the 1st Respondent and the Interested Party from implementing the decision of 8th December, 2009.

c. To prohibit the 2nd Respondent from implementing the decision dated 8th December, 2009.

4. The Application is supported by the statement of facts dated 10th March, 2010 and the Affidavits of Telesia Kambua Kinyili sworn on 19th March, 2010.

5. The Application is opposed by the Interested Party who filed and swore an Affidavit on 25th October, 2013.

6. Respondent No. 1 and 2 did not file any reply to oppose the Application.
7. The parties agreed to canvass the Motion by way of written submissions which were only filed and exchanged among the Applicant and the Interested Party.
8. The Applicant's case is that the Interested Party bought land from her, her sisters and mother.
9. A dispute then arose over boundaries of the land between the Applicant and the Interested Party and the same was heard by the Land Disputes Tribunal, Makueni, which made an Award. A decree was thereafter issued in SRM LTD No. 176/07.
10. The Interested Party thereafter made an Application to be registered as the owner of $\frac{3}{4}$ of Kathonzweni/Kimundi/2278 in place of the Applicant, her two sisters and mother. The court allowed the Application thus provoking this matter.
11. The complaint by the Applicant is that the Decree and the Award exceeds the content of the Award which was made by the Tribunal.
12. The Applicant submitted that the words in the decree to the effect that "*awarded the interested party herein land in dispute by planting trees*" were not part of the Award. According to the Applicant, the Ruling also went further to order the Interested Party to be registered as the owner of $\frac{3}{4}$ of the suit land Kathonzweni/Kimundi/2278.
13. The Applicant submitted that the Decree and the Ruling are a nullity for having added words that were not in the Award.
14. The Interested Party in a rejoinder submitted that the Application is fatally defective, incompetent and bad in law.
15. The proceedings herein were lodged pursuant to the provisions of Order 53 Rules 1, 2, and 3 of the Civil Procedure Rules which required then a notice to the Registrar to be lodged together with the statement of facts and a Verifying Affidavit not later than a day before the lodging of the Chamber Summons for leave.
16. The evidence before me shows that after hearing the dispute, the Tribunal held that "*after visiting the boundary in dispute there is need the boundary be replaced in order for peace and order to be maintained.*"
17. The Tribunal made a determination of the dispute and decreed that "*the claimant's claim has been awarded by planting cocobia trees (ndau) (13) marks to separate the claimant and the objector.*"
18. There was nowhere in the Award that mentioned that $\frac{3}{4}$ of the land be registered in favour of the Interested Party. If a survey and rectification of the maps is to be done to effect the changes of the boundary, and for the respective portions to be registered, it is for the Registrar of Lands or the Environment and Land Court to make such an order.
19. For those reasons, the Application dated 29th March, 2010 is allowed as prayed.

DATED AND DELIVERED AT MACHAKOS THIS 10TH DAY OF MARCH, 2017.

OSCAR A. ANGOTE

JUDGE