



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT AT KITALE

ELC CASE NO. 169 OF 2007

MARY MUTHONI MBUGUA.....PLAINTIFF

=VERSUS=

LILIAN W.MBUGUA & 2 OTHERSDEFENDANTS

RULING.

1. This is a ruling in respect of Notice of Motion dated 29th August 2016. The application seeks orders of injunction against the third Respondent ***Emily Jepkemboi Mutwol*** restraining her from interfering with ***LR No. Chepsiro/Kibuswa Block 1/Kelchinet/200***, which was formerly part of ***LR No. Chepsiro/Kibuswa Block 1/Kelchinet/136***.
2. The initial dispute in this matter was between the present applicant and her sister ***Lilian Wangare Mbugua*** who was the registered owner of ***LR No. Chepsiro /Kibuswa Block 1/ Kelchinet/137***. The applicant was the registered owner of ***LR No. Chepsiro/ Kibuswa Block 1/ Kelchinet/136***.
3. ***LR No. Chepsiro/Kibuswa Block 1/Kelchinet/137*** has since been transferred to two persons at different times. The first transferee was ***Sarah Jeptepeny Busieni*** who later sold it to ***Emily Jepkemboi Muwtol*** who is the current owner. When ***LR No. Chepsiro/Kibuswa Block 1/Kelchinet /137*** changed ownership to ***Sarah Jeptepeny***, the Plaint was amended and brought her in as second defendant.
4. However, when ownership of ***LR No.Chepsiro/Kibuswa/Kelchinet/137*** changed to ***Emily Jepkemboi Mutwol***, there was no amendment made to bring her on board. She came into those proceeding as an aggrieved party who sought review of orders of the court adopting a survey report which would have adversely affected her.
5. The advocate for the applicant and the aggrieved party entered into a consent allowing the Provincial Surveyor Nakuru to carry out fresh survey to determine the boundary. The provincial surveyor however referred back to the ***District Surveyor Uasin Gishu***. The record shows that the Surveyor Uasin Gishu summoned the parties for a second survey report that has never been filed in Court.
6. The delay in finalizing this matter which was just a boundary dispute between siblings appears to be taking a different dimension. ***LR No. Chepsiro/Kibuswa Block 1/Kelchinet/136*** has since been subdivided and has yielded ***LR Nos. Chepsiro/Kibuswa Block1/Kelchinet/198,199 and 200***.
7. ***LR No. Chepsiro/Kibuswa Block 1/Kelchinet/200*** is now the one which borders ***LR No. Chepsiro/Kibuswa Block 1/Kelchinet/137*** owned by the aggrieved Party/Respondent. The property was sub-divided during the pendency of the suit.

APPLICANT'S CONTENTION

8. The applicant still maintains that the aggrieved party/Respondent has encroached on to **LR No. Chepsiro/Kibuwa Block 1/Kelchinet /200** by about 10 acres. It is on this basis that she prays for a permanent injunction restraining the Respondent from interfering with her 10 acres or thereabouts.

RESPONDENT'S CONTENTION

9. The applicant's application is opposed by the aggrieved Party/Respondent who contends that the application is misconceived as it is seeking final orders at interlocutory stage. That this matter can only be determined if evidence is adduced in a full trial.

10. I have considered the applicant's application as well as the opposition to the same by the aggrieved Party/Respondent. To begin with, the applicant is seeking an order of permanent injunction against the Respondent. There is no prayer in the Plaint for a permanent injunction. There is therefore no basis upon which such an order can be granted. The only prayer in the Plaint is for the Land Registrar and District surveyor to Visit **LR .No.Chepsiro/ Kibuswa Block 1/Kelchinet/ 136 and 137** and determine the boundary.

11. The records in this file show that the two sisters were each given 50 acres from the estate of their deceased parent. The applicant has since subdivided her portion into three parcels. There is no evidence as to the total acreage of the three parcels which resulted from **LR No. Chepsiro/Kibuswa Block 1/Kelchinet/136**. The applicant is now the owner of **LR No. Chepsiro/Kibuswa Block 1 /Kelchinet /200**. There is no evidence that her portion is less than what it ought to be .

CONCLUSION

12. I find that the applicants' application lacks merit. The same is hereby dismissed with costs to the aggrieved Party/Respondent.

It is so ordered.

Signed at **Nairobi**.

E.O.OBAGA

JUDGE

Dated, and delivered at **Kitale** on this **8th** day of **March 2017**.

F. M. NJOROGE

JUDGE

In the presence of ;-

M/s Kiplangat for M/s Kipsei for third Respondent

No appearance for Plaintiff/Respondent

Court Assistant : Isabella

F. M. NJOROGE

JUDGE