



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 57 OF 2016

JOSPHAT MUEMA MUIA.....PLAINTIFF

VERSUS

NZINGA KISESE.....1ST DEFENDANT

MUENI MUSEMBI.....2ND DEFENDANT

RULING

1. The Application before me is the one dated 27th July, 2016. In the Application, the Applicant is seeking for the following reliefs:

a. That the Respondents by themselves or their agents be restrained from constructing new structures, cultivating or using in a destructive manner parcel No. Nzaiu/Mumbuni/214 pending the hearing and determination of the main suit.

b. That this Honourable Court do issue an order directing County Surveyor Makueni County to determine the boundary between parcel No. Nzaiu/ Mumbuni/ 214 and parcel No. Nzaiu/Kilili/610 and file a report thereto pending the hearing and determination of the main suit.

2. The Application is supported by the Affidavit of the Plaintiff who has deponed that he is the legal representative of the Estate of **Muia** Ngenyeke; that Muia Ngenyeke is the registered proprietor of parcel of land number Nzaiu/Mumbuni/214 and that the Defendants have trespassed on the suit land and are carrying out acts of waste and destruction.

3. According to the Plaintiff, the Defendants have insisted that they are occupying their land which is parcel of land number Nzaiu/Kilili/610 and not plot number 214.

4. The Plaintiff's prayer is that it is only fair that a Surveyor be sent to determine the boundaries.

5. In response, the 1st Defendant deponed that the Application is bad in law and should be struck out in limine; that the Respondents have always been in possession of parcel of land known as Nzaiu/Kilili/610 and that they have not encroached on the land as claimed by the Plaintiff.

6. The Plaintiff's and the Defendants' advocates filed brief submissions which I have considered.

7. The Plaintiff has annexed on his Affidavit the Grant of Letters of Administration Intestate. The said Grant shows that the Plaintiff is the legal representative of the Estate of Muia Ngenyeke. Muia (*Muya*)

Ngenyeke is the registered proprietor of parcel of land known as Nzai/Mumbuni/214.

8. The Defendants' claim is that they are occupying plot number 610 and not 214. It would appear that what is before the court is a boundary dispute, or a case in which one party is not aware where his land is, which, according to the provisions of Section 18 of the Land Registration Act should be resolved by the District Land Registrar.

9. In the circumstances, this court makes the following orders:

a) The Makueni District Land Registrar and the Surveyor to visit parcels of land numbers Nzai/Mumbuni/214 and Nzai/Kilili/610 and locate the position of each land viz-a-viz each

b) other.

c) The Makueni District Land Registrar and the Surveyor to file their report in this court within sixty (60) days from the date of this Ruling.

d) The status quo prevailing now to be maintained pending the hearing of the suit or further orders of this court.

DATED AND DELIVERED AT MACHAKOS THIS 3RD DAY OF MARCH, 2017.

OSCAR A. ANGOTE

JUDGE