



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 26 OF 2016

PETER MUTHAMA KIVAIPLAINTIFF

VERSUS

DAVID WAMBUA1ST DEFENDANT

JOSEPH MWANTHA KILUVA2ND DEFENDANT

PATRICIA KILUVA3RD DEFENDANT

RULING

1. On 11th May, 2016, the Plaintiff filed an Application dated 11th May, 2016 in which he sought for the following reliefs

a. A permanent injunction be issued restraining the 1st, 2nd and 3rd Defendants/Respondents, by themselves, servants, agents or otherwise howsoever from trespassing, disposing, selling, constructing or in any other manner whatsoever interfering with all the parcel of land described as Ndithini/Mananja Block 1/235 measuring approximately 9.100Ha or thereabout belonging to the Plaintiff/Applicant pending the determination for the main suit.

b. The OCS Mananja police station do supervise compliance of this court Order.

c. That costs be in the cause.

2. The Application is premised on the grounds that the Plaintiff is the registered proprietor of parcel of land known as Ndithini/Mananja Block 1/235 measuring approximately 9.1Ha (*the suit property*); that the Defendants have been trespassing on the suit property and that the Defendants proceeded to cut down trees.

3. In response, the 2nd Defendant deponed that he is the son of the late Jackson Kiluva Nzioka, the registered proprietor of parcel of land number Ndithini/Mananja 1 /236; that it is true the Plaintiff is the proprietor of the suit property and that the Applicant's claim involves the boundaries between the neighbouring properties, an issue which can be resolved by the County Surveyor.

4. The 3rd Defendant deponed that she is the daughter of the late Nguli Mbuvi who is the registered proprietor of L.R No. Ndithini/Mananja Block 1/842; that she has not trespassed on the suit property and that the Application should be dismissed.

5. On 22nd September, 2016, the Defendants filed their own Application in which they sought for injunctive orders in respect to their portions of land being Ndithini/Mananja Block 1/841, 236 and 842 respectively.
6. According to the Defendants, after filing this suit, the Plaintiff has trespassed on that suit property and that the Plaintiff has fixed new beacons and cut down trees standing on their parcels of land.
7. This suit is in respect of four (4) properties owned by the Plaintiff and the Defendants. It would appear that the four (4) properties abutt each other.
8. The complaint by both the Plaintiff and the Defendants is that each has encroached on the others property.
9. From the Affidavit evidence before me, it is obvious that the dispute herein is in respect of the boundaries which have not been fixed.

Section 18 of the **Land Registration Act** provides as follows:

“18. Boundaries

(1) Except where, in accordance with section 20, it is noted in the register that the boundaries of a parcel have been fixed, the cadastral map and any filed plan shall be deemed to indicate the approximate boundaries and the approximate situation only of the parcel.

(2) The court shall not entertain any action or other proceedings relating to a dispute as to the boundaries of registered land unless the boundaries have been determined in accordance with this section.

(3) Except where, it is noted in the register that the boundaries of a parcel have been fixed, the Registrar may, in any proceedings concerning the parcel, receive such evidence as to its boundaries and situation as may be necessary:

Provided that where all the boundaries are defined under section 19(3), the determination of the position of any uncertain boundary shall be done as stipulated in the Survey Act, (Cap. 299).”

10. In view of the above provisions of the law, this suit should not have been filed in the first place.

11. However, having filed the suit, and for tranquility to prevail, I shall make the following orders:

a) The Machakos Land Registrar and the Machakos District Surveyor to visit parcels of land known as Ndithini/Mananja Block 1/841, 235, 236 and 842 and prepare a report in respect to the boundaries of the said four (4) parcels of land within sixty (60) days.

b) The Machakos Land Registrar and the Machakos District Surveyor to fix the boundaries of the above four (4) parcels of land within sixty (60) days.

c) Each party is at liberty to appoint a Private Licensed Surveyor to accompany the District Surveyor and the Land Registrar during the fixing of the boundaries of the said four (4) parcels of land.

d) The parties to share the costs of fixing the said boundaries.

e) In the meantime, and pending the hearing and determination of the suit, the status quo prevailing now to be maintained, meaning that none of the parties should cut down trees on the

four (4) parcels of land or fix the boundaries other than as ordered above.

f) Each party to bear his or her own costs.

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

OSCAR A. ANGOTE

JUDGE