



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MILIMANI

ELC CIVIL APPEAL NO. 722 OF 2006

SERAH WATHITU MBUGUA.....APPELLANT

=VERSUS=

CATHERINE WANJIRU NJOROGE.....1ST DEFENDANT

MARGARET GATHONI NGENE.....2ND RESPONDENT

DISTRICT LAND REGISTRAR KIAMBU.....3RD RESPONDENT

(AN APPEAL FROM THE DECISION OF KIAMBU DISTRICT LAND REGISTRAR DATED 26TH SEPTEMBER 2006)

JUDGEMENT

1. The appellant is the registered owner of *LR No. Karai/Lusigetti/T 408*. The first Respondent is the registered owner of *LR No. Karai/Lusigetti/T.410*. The second Respondent was the registered owner of *LR No. Karai/Lusigetti/T.409*. The second Respondent is said to have died in or around December 2014. The third Respondent is the District Land Registrar, Kiambu.

2. The appellant and the first Respondent had a land dispute between themselves. The dispute took both Civil and Criminal angle. The first Respondent had sued the appellant in Kiambu Principal Magistrate's Court in Civil suit No. 350 of 1992 in which the first Respondent wanted the appellant evicted from *LR No. Karai/Lusigetti/T.410*. The first Respondent however lost the case. The appellant had been charged for an offence of trespass with intent to annoy at Kikuyu Law Courts but she was acquitted. The complaint was the first Respondent.

3. It is after the appellant had undergone the two cases that she decided to Petition the District Land Registrar Kiambu to come and determine a boundary dispute between her and the first Respondent. It took time for the District Land Registrar Kiambu to come and determine the boundary dispute. The dispute was determined after the appellant complained to the chief land Registrar that her dispute was taking long to determine. It is this determination by the District Land Registrar Kiambu which is the subject of this appeal.

4. What was thought to be a simple boundary dispute turned out to be an issue of parties having titles to parcels which they are not occupying on the ground. This was revealed when the court ordered for a site visit in the company of surveyors and the involvement of the county council of Kiambu. The two reports revealed that there was much more than a boundary dispute. Attempts by some advocates for the parties

to record consent to solve the controversy failed twice because not all affected parties were present to endorse the consent.

5. The parties finally agreed to have the appeal disposed of by way of written submissions. The appellants file her submissions on 30th June 2016. The first Respondent filed her submissions on 26th August 2016. I have gone through the submissions by the appellant and the first Respondent and I must say at the outset that the appellant's submissions are not in support of the memorandum of appeal. The submissions reflect what the who reports found out and how the dispute at hand will never be solved through the present appeal.

6. In the appeal filed by the appellant, the following grounds were raised:-

1. That the Registrar erred in law in not finding that the lower Court had awarded the appellant all that parcel of land known as Karai/Lusigetti/T 408 as per the judgement in Kiambu Principal Magistrate Civil case No. 350 of 1992.

2. That the District Registrar erred in law in not considering the award of Tribunal Court at Kikuyu case No. Land /16/2001 of 7th February 2001.

3. The District Registrar further erred in law and in fact in not considering the original boundary and measurements of Karai/Lusigetti/T.408 as per the title deed issued to the appellant dated 3rd September 1998.

4. That the District Land Registrar by fixing new boundaries ideally encroached into the appellant's parcel of land materially diminishing it in its dimension size and all rightful portions.

5. That the District land Registrar erred in law and in fact in issuing order dated 26th September 2006 and failed to look in totality the evidence and provisions of court pleadings in respect of the parcels Karai/Lusigetti/T.408 and Karai/Lusigetti/T.410.

6. That the District Land Registrar unlawfully and unprocedurally disposed the dispute and ordered the beacons and boundaries marked without due regard to the correct measurements dimensions and right portion of appellant parcel No.Karai/Lusigetti/T.408.

7. Before I consider the grounds of appeal raised herein, I have to deal with the issue of whether there was a competent appeal in the first place. The issue of whether there was a proper appeal in this matter was first raised by Mr Arum for the appellant on 23rd April 2007 before Justice Waweru. The Court then adjourned the matter to 30th April 2007, for this reason. On 30th April 2007, Mr Mbigi who was appearing for the second Respondent raised the issue and submitted that there was no competent appeal. He asked the court to move *suo moto* and have the appeal struck out. The Judge did not address the issue only saying that the matter was for mention. The issue was never revisited later on.

8. The District Land Registrar made his determination under the provisions of Section 21 (2) of the Registered Land Act Cap 300(Now repealed). The Section provided as follows:-

21(2) " where any uncertainty or dispute arises as to the position of any boundary, the Registrar, on application of any interested party, shall, on such evidence as the Registrar considers relevant, determine and indicate the position of the uncertain or disputed boundary".

Subsection 3 of the same section provided as follows:-

3 " where the Registrar exercises the power conferred by subsection (2) of this section , he shall make a note to that effect on the registry map and in the register and shall file such plan or description as may be necessary to record his decision". Subsection (4) of the same section provided as follows:-

(4) “ No court shall entertain any action or other proceedings relating to a dispute as to the boundaries of registered land unless the boundaries have been determined as provided in this section”.

9. Section 21 of the repealed Act did not provide for any appeal from a determination as regards boundaries. If there was any intention of any appeal from such a determination, the Act would have clearly stated so. The appellant’s counsel in his submissions says that this appeal was brought pursuant to the provisions of Section 150 of the repealed Act. This is not the correct position. The appellant had only written to the Chief Land Registrar raising her concern over the delay in determination of the boundary dispute. The appellant’s letter was not in accordance with either section 150 (1) or (2) of the repealed Act. I therefore find that there was no competent appeal filed herein. If the appellant would have shown that the Land Registrar fully complied with the provisions of Section 21 of the repealed Act, she would then bring any other proceedings in any other forum but not prefer an appeal which was not provided for.

10. Even if there was to be a competent appeal arising from the District Land Registrar’s decision, none of the grounds of appeal in the memorandum of Appeal would have succeeded. Section 21(2) of the repealed Act gave the Registrar powers to consider such evidence as is relevant in arriving at his decision. The judgement in Kiambu Principal Magistrate’s Court Civil case No. 350 of 1992 dealt with the issue of occupation and ownership. The decision would not have been relevant to the Registrar as his mandate was to determine the boundary between the disputed plots. The proceedings before Kikuyu Land Disputes Tribunal were also not relevant as the elders merely made a finding that they would not deal with matters relating to registered land and especially where courts had made determinations on the same. The District Land Registrar cannot therefore be faulted for not considering the judgement and proceedings from the elders as he was only expected to consider what was relevant for the discharge of his mandate.

11. As I said hereinabove, the grounds in the memorandum of Appeal cannot help determine the dispute herein. What is being prayed for in prayer (c) cannot assist the appellant. This explains why the appellant’s submissions are praying for something else from what is contained in the memorandum of Appeal. I proceed to dismiss the entire appeal with costs to the first Respondent.

Dated, Signed and Delivered at *Nairobi* this *19th* day of *April 2017*

E.O .OBAGA

JUDGE

In the presence of Mr Onyango for Mr Nyachoti for 1st Respondent.

Court Assistant: Hilda

E.O .OBAGA

JUDGE