



**REPUBLIC OF KENYA**

**IN THE LAND AND ENVIRONMENT COURT OF KENYA AT KAKAMEGA**

**ELC CASE NO. 94 OF 2017**

**ALEX MAJANGA KAGALI.....PLAINTIFF**

**VERSUS**

**DAVID ODANGA AMUYUNDO ..... DEFENDANT**

**THE DISTRICT LAND REGISTRAR.....INTERESTED PARTY**

**RULING**

The application is dated 17<sup>th</sup> March 2017 and is brought under order 39 of the Civil procedure rules 2010 and Sections 1A and B and 3A of the Civil Procedure Act Cap 21 Laws of Kenya, Article 159 (3) (b) of the Constitution of Kenya 2010 and Sections 86 and 101 of the Land Registration Act No. 3 of 2012 and seeks the following orders;

1. This application be certified urgent and be heard ex-parte in the 1<sup>st</sup> instance.
2. The District Land Registrar Vihiga be directed to visit the site of Lands Parcels Numbers N. MARAGOLI/LUSENGELI/1388 and N. MARAGOLI/LUSENGELI/1389 and remark the boundary and state that the respondent or any other person interferes with the land registrar remarking the boundary as ordered, that conduct will amount to contempt of court and shall render the offender to prison.
3. That once the boundary is remarked by the Land Registrar, it must remain so permanently without any interference from the respondent and or any other person who, if they interfere must be arrested and punished forthwith for contempt.
4. The O.C.S. Mudete Police Station to provide security and ensure compliance and co-operation on the part of the respondent during the said exercise.
5. The costs of this application and the Land Registrar's costs be recovered from the respondent.

The application is based on the grounds that applicant is the registered owner of Land Parcel known as N. MARAGOLI/LUSENGELI/1389. By the respondent's act of interference and trespass, land parcel N. MARAGOLI/LUSENGELI/1389 was encroached and the boundary interfered with making the acreage smaller in measurements. Following a dispute by the applicant and interference with the boundary presented to the Land Registrar Vihiga, the said Registrar held proceedings on 19<sup>th</sup> August, 2016 at the disputed site and found in favour of the applicant. In his attempt to remark the boundary, the respondent became hostile and the Registrar had to call off his work. Unless upon a successful appeal against a decision of the land Registrar, the respondent is bound by the Land Registrar's decision in matters

concerning land boundary. In the event as of the instant case where a party is not only in defiance of a land registrar's decision over a boundary but proceeds to undermine the decision through over actions, the court must, in the administration of justice and in a summary manner intervene through appropriate orders to restore law and order.

The applicant in his supporting affidavit submitted that he was the registered owner of Land Parcel known as MARAGOLI/LUSENGELI/1389 as evidenced on the copy of the official search annexed hereto and marked JAK – 1a and b respectively. That the respondent is the registered proprietor of land parcel MARAGOLI/LUSENGELI/1388 as evidenced on a copy of the official search annexed hereto and marked JAK-2. That the respondent has encroached into his land and extended the boundary thereby reducing the acreage. That he filed a complaint over the trespass and encroachment at the Land Registrar Vihiga and the Land Registrar visited the site in the presence of the surveyor and found that the respondent had indeed encroached into his land as explained in his report filed as annexure JAK-3 to this affidavit. That when the Land Registrar attempted to remark the boundary, the respondent became hostile forcing the Land Registrar to abandon his work.

The respondent opposed the application and stated that the applicant bought the land from a third party who had been sold the land by his brother Daudi Ambuga Amunyunzu. That at the time of the purchase of the land the land parcels had been clearly marked by mature blue gum trees. The said boundary was put by their clan elders a long time ago and to resurvey the land is clearly meant to deprive him of the land and that the application has no merit at all.

This court has considered both the Applicant and the Respondents submissions. It is not in dispute that applicant is the registered owner of Land Parcel known as MARAGOLI/LUSENGELI/1389 as evidenced on the copy of the official search annexed hereto and marked JAK – 1a and b respectively and the respondent is the registered proprietor of land parcel MARAGOLI/LUSENGELI/1388 as evidenced on a copy of the official search annexed hereto and marked JAK-2. The issue in dispute here is one of boundaries. I find that one cannot rely on mature blue gum trees to establish the same on the ground and the Land Registrar would be better placed to advice on the same. I therefore find this application has merit and grant it on the following terms;

1. The District Land Registrar Vihiga is directed to visit the site of Land Parcels Numbers N. MARAGOLI/LUSENGELI/1388 and N. MARAGOLI/LUSENGELI/1389 and mark the boundary and a report be presented to this court within the next 30 days.
2. The O.C.S. Mudete Police Station to provide security and ensure compliance and co-operation on the part of the respondent during the said exercise.
3. The Land Registrar's costs be shared equally between the applicant and the respondent.
4. The costs of this application be in the cause.
5. Orders accordingly.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 20<sup>TH</sup> DAY OF JUNE 2017.

N.A. MATHEKA

JUDGE