



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MIGORI

ELC NO. 278 OF 2017

(Formerly KISII ELC CASE 552 OF 2015)

ENOS ORONY OMOLLO.....PLAINTIFF/RESPONDENT

VERSUS

RICHARD OTIENO DANDE.....DEFENDANT/RESPONDENT

RULING

1. By a Notice of Motion dated 21/7/2016 the Applicant/Defendant prays for the following orders :-
 - a. **THAT** the Honourable Court be pleased to grant orders to the District Land Registrar and District Land Surveyor, Migori County to move into the Land Parcel No. **KAMAGAMBO/KABUOR/3565** to ascertain whether the Respondent is in actual occupation of the suit land;
 - b. **THAT** the Honourable court do grant Orders to the District Land Registrar and District Land Surveyor Migori County to move into the Land Parcel No. **KAMAGAMBO/KABUOR/3565** to determine and fix the original boundaries of the suit land in accordance with title deeds;
 - c. **THAT** the Honourable court do fix a duration within which the report from the District Land Surveyor, Migori County should be filed in court;
 - d. **THAT** the cost involved for the exercise be borne by the applicant herein.
 - e. **THAT** Costs of this application be in the cause.
2. The Defendants affidavit in support of the notice of Motion based on grounds 1 to 4. These grounds are:-
 1. **THAT** since the Respondent/plaintiff insists that he has been in occupation of Land Parcel No. **KAMAGAMBO/KABUOR/3565** for the a period of over 12 years and owns the same by way of adverse possession, while the applicant/defendant insists that parcel No. **KAMAGAMBO/KABUOR/3565** is vacant and if there are any houses, the same have been built outside the boundaries of the suit land. It will therefore be fair and just that the land Surveyor visit the suit parcel of land and determine who is in actual occupation of Land Number **KAMAGAMBO/KABUOR/3565**;
 2. **THAT** since the applicant claims that he is in actual occupation and possession of land parcel No. **KAMAGAMBO/KABUOR/3565**; it is just and fair that upon the District Land Surveyor

making his findings and determination, a report be made and filed before court in respect to who is in actual occupation of the suit land;

3. THAT the respondent/plaintiff has gone ahead to remove the fence erected by the applicant on Land Parcel No. **KAMAGAMBO/KABUOR/3565** and therefore it is only fair and just that the Land Surveyor visits the parcel of land and ascertain if the original boundaries of the land are still intact and if not determine and fix the boundaries;

4. THAT granting the orders sought herein to the applicant will further the just, fair and speedy determination of this suit by the Honourable court;

3. There is no objection to the Notice of Motion by Omotto for the Plaintiff/Respondent. **Sections 18, 19 and 20 of the Land Registration Act 2012** applicable. I find the Notice of Motion unchallenged and merited in the circumstances.

4. I therefore allow orders 1 to 4 sought by the respondent accordingly.

5. The duration sought in (c) above shall be 30 days from the date hereof.

DELIVERED, SIGNED and DATED in open court at MIGORI this **20th** day of July 2017.

G.M.A. ONGONDO

JUDGE

In presence of :-

Mr. Omotto counsel for the plaintiff

Mr. O. Otieno counsel for defendant

Tom – Court Assistant/Clerk

G.M.A. ONGONDO

JUDGE