



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MURANG'A

E.L.C NO. 78 OF 2017

MWANGI MBUTHIA KARUMBA.....PLAINTIFF

VS

HELLEN WANJIKU MANYEKI.....DEFENDANT

JUDGMENT

1. The facts of this case are straight forward. The Plaintiff filed suit against the Defendant on the 21/11/16 seeking the orders as hereunder;-

(a) An order directing the land Registrar Murang'a and the District Surveyor Murang'a to rectify the boundaries between the parcels NO. LOC.15/KIMATHE/165 (L.R NO 165) and LOC.15/KIMATHE/1031 (L.R NO 1031).

(b) Cost of the suit.

2. From the Pleadings it is the Plaintiff's case that he is the registered owner of Plot No. LOC.15/KIMATHE/1031 which shares a common boundary with the Defendant the registered owner of LOC.15/KIMATHE/165. His claim is based on encroachment of his parcel by the Defendant who despite efforts on the part of the Plaintiff to rectify the boundary has been uncooperative. He has annexed copies of affidavit, Searches for land parcels NOs.LOC.15/KIMATHE/1031 AND LOC.15/KIMATHE/165.

3. The Defendant in a brief response denies any encroachment of the Plaintiff's land and states that the Plaintiff as drafted does not disclose any cause of action. She persists that nothing in form of surveyors report has been presented to her to prove any need for boundary rectification.

4. At the hearing both the Plaintiff and the Defendant testified and called no witnesses.

5. In his evidence the Plaintiff claimed that he brought a Private surveyor to the common boundary but the Defendant refused to participate in the process. He then sought the help of the local chief of Kimathi location who advised him to get a Government of Kenya surveyor to survey the boundary. As it were when finally the surveyor arrived he only surveyed the lower side of the land which incidentally did not have any issue. The surveyor left without taking the measurements on the common boundary that needed to be rectified. That todate the surveyor has not given his report. He also claimed that the Defendant cut his tree which was on the part of his land. His land is 1.3 acres and estimates the part encroached by the Defendant say 30-35 meters. The Plaintiff too asserted that the Defendant wanted to bring a surveyor called Kibiru to the land but on his protest that she was doing it without his knowledge, the surveyor went back.

6. The Defendant stated that she has not encroached on the Plaintiff's land and that at no time did he

complain or demand that the boundary should be rectified. She is not aware of any boundary dispute or encroachment on the common boundary between her and the Plaintiff that calls for rectification. She averred that her land is fenced and at no time has it been assessed since consolidation. She denied that she ever called a surveyor to survey the common boundary nor was summoned by the chief in respect to this case. She however is aware that the Plaintiff did call a surveyor at some point that came to measure the part of the Plaintiffs land but not hers. And to the best of her knowledge she is not aware of any outstanding dispute between her and the plaintiff who happens to be her nephew. On the issue of cutting trees, she admitted that she did cut a mango tree which was on her land.

7. The Defendants Counsel filed written submission but the Plaintiff's counsel selected not to file any. I have considered the written submission, the evidence and the pleadings in making the determination. The issue for determination is whether the Plaintiff is entitled to the prayers in the plaint. Has the Plaintiff established a cause of action to warrant a remedy from this Court.

8. Has the Plaintiff established a cause of action? The Plaintiff's evidence is that the Defendant has encroached 30-35 meters into his land and despite his efforts to have the matter resolved by the surveyor and the local chief, it has not been done mostly due to the non-cooperation of the defendant. I therefore find that he has disclosed a cause of action.

9. As to the question whether Section 38(2) of the Land Registration Act ousts the jurisdiction of the court in dealing with the dispute, I hold that it does not. The ELC Act Section 13 mandates this Court to deal with *inter alia* boundary disputes. Section 18(2) in my view does not oust the jurisdiction of this Court. I have read the case of **Wills Ochora vs. Mary Ndege (2016) eKLR** and I find that this case is distinguishable to the facts in this case.

10. In the end I find that the Plaintiff has established a case for the Court to grant the prayers sought.

11. Judgment is therefore entered as follows;

(i) The Land Registrar, Muranga and the District Surveyor Murang'a are hereby ordered to rectify the boundaries between the parcels NO. LOC.15/KIMATHE/165 and LOC. 15/KIMATHE/1031.

(ii) Parties being relatives, each party to bear their own costs.

DELIVERED, DATED AND SIGNED AT MURANG'A THIS 28TH DAY OF SEPTEMBER 2017.

J.G. KEMEI

JUDGE