



**REPUBLIC OF KENYA**

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

**AT NAKURU**

**ELC NO. 496 OF 2013**

**NGIGI MUCHIRI MUNJUGUTI.....PLAINTIFF**

**VERSUS**

**PAUL MAINA MACHARIA .....1<sup>ST</sup> DEFENDANT**

**CECILIA WAMBUI MUNGAI.....2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

***(Dispute over boundary; no defence filed by the defendants; District Land Surveyor having demarcated the boundary; same set aside by Chief Land Registrar; on the evidence, the correct boundary is in accordance with the report of the District Land Surveyor; judgment entered for the plaintiff)***

1. This suit was commenced on 8 August 2013 by way of plaint. In his pleadings, the plaintiff has averred that he is the registered proprietor of the land parcel Subukia/Subukia Block 6/ 12 (Nguba) measuring approximately 0.6 Hectares. The 1st defendant is the owner of the land parcel Subukia/Subukia Block 6/29 (Nguba) whereas the 2nd defendant is the owner of the land parcel Subukia/Subukia Block 6/36 (Nguba). The plaintiff has pleaded that he was allocated his land in the year 1988 by the Settlement Fund Trustees, and has confined his activities within the boundaries of his land. It is pleaded that in the year 2004, the defendants started laying claim to portions of the plaintiff's land alleging that the same formed part of the land that they own. A boundary dispute was lodged with the Land Registrar Nakuru who visited the three properties accompanied by the District Land Surveyor. The two upheld the plaintiff's position but the defendants appealed to the Chief Land Registrar who upon visiting the ground, was of opinion that the Registry Index Map (RIM) does not tally with the ground position and ordered the RIM to be amended. The plaintiff is not happy with this, and in this suit, he has asked that the ruling of the Chief Land Registrar, which was made on 15 April 2013, be set aside and the boundaries of the three land parcels to remain as they appear in the RIM and on the ground. He has also asked for orders of permanent injunction to restrain the defendants from any portion of the land parcel Subukia/Subukia Block 6/12 (Nguba) which he owns.

2. Despite being served, the defendants did not enter appearance to the suit, and neither did they participate at the hearings despite being duly served.

3. In his evidence, the plaintiff more or less reiterated what is in his pleadings. He stated that the defendants claimed part of his land and he reported the matter as a boundary dispute. The surveyor attended and drew the boundaries. He stated that owing to the dispute over the boundary, he has been

charged with trespass.

4. PW-2 was one Caleb Kotut, a surveyor by profession, currently working with the County Government of Nakuru. He was previously the District Surveyor of Nakuru. He testified that together with the District Land Registrar, they did proceed to the disputed land parcels on 26 May 2011 and they took the requisite measurements. He explained that there was an error on the ground position which made the owners of the land parcels No. 29, 36 and 37, which neighbor the plaintiff's parcel No. 12, to encroach into the plaintiff's land. Their ground occupation was not in accordance with the RIM and they duly realigned the boundaries to where they were supposed to be and they advised the parties. He did testify on the Chief Land Registrar's position, which he faulted since it would disturb what is noted in the RIM.

5. I have considered the matter together with the submissions of Mr. Mathea, learned counsel for the plaintiff. The issue before me is a boundary dispute. The initial dispute was referred to the District Land Registrar who together with the District Land Surveyor, resolved it and realigned the boundaries. The defendants however sought to overturn this realignment by appealing to the Chief Land Registrar, who disturbed the findings of the District Land Registrar and District Land Surveyor. I have considered both the report of the District Land Registrar and that of the Chief Land Registrar which were placed before me by the plaintiff. I have noted that the Chief Land Registrar proceeded to more or less direct an amendment of the RIM to fit the ground positions. It is this which has led the plaintiff to come to this court.

6. PW-2 has explained to me their methodology on resolving the boundary dispute and in my view the correct position of the boundaries ought to be as prescribed by PW-2 and the District Land Registrar as noted in their report dated 26 May 2011. There was absolutely no basis for the Chief Land Registrar to set aside the findings of the District Land Registrar and District Land Surveyor since to me, the two officers did their job diligently and followed what was noted in the RIM. There was in fact no reason at all to disrupt what was in the RIM which only went to suit the defendants to the prejudice of the plaintiff. The defendants themselves have not attended court to give their version of events or to state why the decision of the Chief Land Registrar ought to be upheld.

7. I have no reason to deny the plaintiff the orders that he has sought. I set aside the decision of the Chief Land Registrar made on 15 April 2013, which disturbed the report of the District Land Surveyor made on 26 May 2011. I hereby declare that the correct boundaries between the land parcels Subukia/Subukia Block 6/12 (Nguba) and Subukia/Subukia Block 6/ 29 (Nguba) and Subukia/Subukia Block 6/36 (Nguba) is in accordance with the report of the District Land Surveyor made on 26 May 2011 which is at par with what is indicated in the RIM. I also hereby issue an order of permanent injunction, restraining the defendants from interfering with any portion of the plaintiff's land the boundaries of which are indicated in the report of the District Land Surveyor of 26 May 2011.

8. The plaintiff shall also have costs of this suit.

9. It is so ordered.

**Dated, signed and delivered in open court at Nakuru this 19<sup>th</sup> day of September 2017.**

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**

**In presence of :-**

Mrs. Muthoni Gathecha holding brief for Mr. Ndegwa for the plaintiff.

No appearance for defendant

Court Assistant: Toroitich

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**