



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NYERI**

**ELCA NO. 30 OF 2015**

***(Formerly NYERI HCCC 110 OF 2008)***

**LAWRENCE NYAMBURA KAIRU.....PLAINTIFF**

**-VERSUS-**

**MOSES KINYURU GATHOGU .....DEFENDANT**

**RULING**

1. The court of appeal on 3<sup>rd</sup> February, 2015 overturned the ruling of **Ombwayo J** delivered on 23<sup>rd</sup> September, 2014 where the Honourable Judge had ordered the Land Registrar to revisit the suit parcels in dispute and determine the boundaries according to acreage; Nyeri/Watuka/739 to measure 39 hectares and Nyeri Watuka 738 to measure 29 hectares.

2. In their judgment, the court of appeal observed that the Provincial Appeals Committee had directed the Land Registrar to visit the two parcels of land and settle the dispute between the parties which dispute was over the existing boundary. They also found that the order by the Provincial Appeals Committee did not direct the Land Registrar how to place the boundaries.

3. The Court of Appeal satisfied that **Ombwayo J** was wrong to interfere with the report by the Land Registrar in directing him how to draw the boundaries, ordered a different Land Registrar other than S.N. Mburu to visit the locus, determine the boundaries of the two parcels in dispute and file his report within 90 days.

4. Although the visit by the Land Registrar did not adhere to the timelines set by the court, it is on record that on 10<sup>th</sup> November, 2015 W. R. Ngaanyi (County Land Registrar, Nyeri) and his team visited the locus and filed a report on 9<sup>th</sup> March, 2016. In his report, the Land Registrar explained the delay to have been occasioned by the Director, Land Adjudication and Settlement who failed to provide an authenticated copy of the development map and area list on time.

5. The Land Registrar recommended that the boundaries of the two parcels in dispute remain the same as currently are, since these boundaries had been regarded as correct for over 15 years and the respondent had been caught up by time under **Section 7** of the Limitation of Actions Act (Cap 22). He further recommended that the Registry Index Map (RIM) be amended to tally with the Adjudication Diagram.

6. I have considered the affidavit sworn by the applicant on 26<sup>th</sup> April, 2016 and filed on an even date. Although I agree with the applicant that the visit and report by the Land Registrar did not comply with the timelines set by the court, I am satisfied with the explanation given by the Land Registrar about what caused the delay, which explanation I find reasonable under the circumstances. I also do not see what prejudice the respondent has suffered as a result of the delay in visiting the locus and filing the report.

7. Having found the County Land Registrar, Nyeri to have complied with the orders of the court of Appeal, I also find that this court has no jurisdiction to interfere with the report by the Land Registrar and I adopt the report by the Land Registrar dated 9<sup>th</sup> March, 2016 and filed on 14<sup>th</sup> March, 2016. I direct the Land Registrar Nyeri to recall the titles for Nyeri/Watuka/738 and Nyeri/Watuka/739 for amendment

of their respective acreages and also amend the Registry Index Map to tally with the Adjudication diagram.

**Dated, signed and delivered in open court at Nyeri this 31<sup>st</sup> day of October, 2017.**

**L N WAITHAKA**

**JUDGE**

In the presence of:

Mr. Kebuka Wachira for the appellant

Sion Kabungi Kinyuru – respondent

Court assistant - Esther