



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT KISUMU
ELC CASE NO.146 OF 2015

JOHN OUMA OLONDE.....PLAINTIFF

VERSUS

BENARD OGETA.....1ST DEFENDANT

ANGELINE ATIENO OLANGO.....2ND DEFENDANT

DISTRICT LAND REGISTRAR.....3RD DEFENDANT

RACHUONYO SOUTH & NORTH DISTRICTS.....4TH DEFENDANT

RULING

1. The notice of motion dated 10th June 2015 by **John Ouma Olonde**, the plaintiff, seeks to have an order compelling the Land Registrar and Surveyor Rachuonyo South and North District demarcate boundaries of his land parcel **East/Karachuonyo/ Kogweno Kawour/1313** with the neighbouring parcels without the registered neighbours' consent and authority. The application is based on one ground that he is the registered proprietor of the said land. It is also supported by his affidavit sworn on 10th June 2015 deponing that the 1st and 2nd Respondents, **Benard Ogeta** and **Angeline Atieno Lango**, have encroached onto his and put settlers on it and hence this application.

2. The application is opposed by the 1st and 2nd Respondents through the replying affidavit of Angeline Atieno Olango, sworn on 10th July 2015 in which she among others depones as follows:

- a. That she and her late husband settled on land parcel Central **Karachuonyo/Kogweno Kowuor/1314** in 1990 having acquired it from the late Ogeta Gaya, who is father to the 1st Respondent in 1989.
- b. That the 1st Respondent inherited Central **Karachuonyo/Kogweno Kowuor/555** from his late father.
- c. That the Plaintiff acquired his land in 2009 without establishing the boundaries. That the Plaintiff did not engage the neighbours to ascertain the boundaries of his land.
- d. That the Plaintiff intends to use the court to get land from the Respondents' parcels while his title was fraudulently obtained.

3. The application was heard on 5th October 2016 with Mr. Onsongo and Otieno, learned counsel for the Plaintiff and Respondents making their rival oral submissions.

4. The following are the issues for determination;

a. Whether the prayer sought should be granted.

b. Who pays the costs.

5. The court has carefully considered the ground on the notice of motion, the affidavit evidence, the rival oral submissions by counsel and come to the following findings;

a. That the Plaintiff has availed a copy of title deed and certificate of official search issued on 18th August 2014 over land parcel **Central Karachuonyo/Kogweno Kowuor/1313** showing that he is the registered proprietor since 18th June 2009.

b. That the Plaintiff has also annexed a report by the District Surveyor, Karachuonyo dated 9th December 2014 on an attempt to demarcate the boundary of the said land that was not successful due to various reasons, including the hostility of the neighbours and the fact that the registered proprietors of the neighbouring lands were deceased. The court takes the Surveyor's exercise to have been meant to confirm and determine the boundaries of the suit land in relation to the other parcels that neighbours it.

c. That though the lands neighbouring that of the Plaintiff are owned by persons who are reportedly deceased, their family members and heirs apparent, including the 1st and 2nd Respondents, are in possession of the said lands. That as what the Plaintiff seeks is to have the boundaries of his land determined and confirmed on the ground and not claim land from the parcels registered in the names of the deceased, that exercise would not amount to intermeddling with deceased properties.

d. That though the 2nd Respondent has suggested in her replying affidavit that the Plaintiff title to the suit land was obtained fraudulently, there is no evidence of any successful challenge over the title of the Plaintiff having been mounted and in accordance with **Section 26** of the Land Registration **Act No.3 of 2012**, this court is obligated to take the Plaintiff as the absolute and indefeasible proprietor of the suit land determined and therefore entitled to have the boundaries of his land confirmed in accordance with the law.

6. That in view of the foregoing, the court finds that the notice of motion dated 10th June 2015 has merit and is allowed in the following terms;

a. That the District Land Registrar and Surveyor Karachuonyo do visit land parcel **Central Karachuonyo/Kogweno Kowuor/1313** to determine and confirm its ground boundaries in relation to all the neighbouring parcels.

b. That the Plaintiff will meet the requisite fees.

It is so ordered.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

DATED AND DELIVERED THIS 7TH DAY OF DECEMBER 2016

In presence of;

Plaintiff Absent
Defendants Absent
Counsel M/s Otieno for Osongo for Plaintiff/Applicant
Mr otieno for 1ST AND 2ND Defendant/Respondent

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

7/12/2016

S.M. Kibunja Judge

Oyugi Court Assistant

Parties absent

Mr Oteino for 1st and 2nd Respondents

M/s Otieno for Onsongo for Plaintiff/Applicant

Court: Ruling dated and delivered in open court in presence of M/S Otieno for Onsongo for Plaintiff/Applicant and Mr. Otieno for 1st and 2nd Respondent/Defendants.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

7/12/2016