



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT & LAND COURT OF KENYA AT ELDORET**

**E&L 926 OF 2012**

**Formerly HCC 64 of 2002**

**THE CHURCH COMMISSIONER FOR KENYA .....PLAINTIFF**

**VS**

**ROSALINE SAMBU .....DEFENDANT**

***(Dispute over land; matter referred to surveyor by consent of the parties; parties having by consent agreed to abide by decision of surveyor; Defendant disputing the report of surveyor; whether in the circumstances judgment should be entered; objection having no basis; judgment entered in line with surveyor's report).***

**RULING**

This is an old case filed in 2002. In the plaint, the plaintiff sought orders against the defendant for a declaration that the plaintiff is the owner of the land parcel Eldoret Municipality/Block 24 (Kipkenyo)/38 (the suit land). The plaintiff also sought a permanent injunction against the defendant. In its plaint, the plaintiff pleaded that it owns the suit land, whereas the defendant owns an adjacent land, which is Eldoret Municipality/Block 24(Kipkenyo)/46. It was pleaded that the defendant has encroached into the plaintiff's land. In her statement of defence, the defendant admitted being the owner of land parcel Eldoret Municipality/Block 24 (Kipkenyo)/46. She otherwise denied all other claims of the plaintiff and also stated that she would raise a preliminary objection that the suit offends the provisions of the Government Proceedings Act.

Through a consent of the parties recorded in court on 15/7/2004, the parties agreed to have the District Surveyor, Uasin Gishu District, to proceed and determine the boundary between the land parcels belonging to the plaintiff and defendant. A report dated 6/4/2006 was filed, which disclosed that, the defendant was occupying 4.33 acres of the plaintiff's land. The defendant raised objection to the adoption of the report and the same was abandoned. It was then decided to have the matter proceed for hearing in court. Nothing much happened to this matter until 28/11/2012 when Mr. Ngigi for the plaintiff and Mr. Misoi for the defendant recorded the following consent:-

1. *That the District Surveyor Uasin Gishu District be and is hereby authorised to establish the boundaries between parcels numbers Eldoret Municipality/Block 24 (Kipkenyo)/ 39 – 42 and 78 – 85 and 37.*
2. *That the District surveyor Uasin Gishu District be and is hereby authorised to establish the boundaries between parcel numbers Eldoret Municipality/Block 24 (Kipkenyo)/46 and 38.*
3. *That the District Surveyor do file his report to this court within 45 days.*
4. *The costs of the exercise to be shared equally between the plaintiff and defendant.*
5. *The parties to abide by the decision of the District Land Surveyor.*

The consent was signed by both Mr. Ngigi and Mr. Misoi and I adopted it as an order of the court. A mention date was given to confirm whether the report will be on record.

The surveyor went to the ground and wrote a report dated 31/1/2014. The same was filed in court on 31/6/2014. His findings were inter alia as follows:-

***“It was established that it is the defendant (Roseline Sambu) Block 24 (Kipkenyo) 46 had encroached on the plaintiff's (The Church Commissioner's of Kenya) Eldoret Municipality Block 24 (Kipkenyo)38. The extent of encroachment is 1.713 Ha. (4.233 acres). The encroachment area is shaded with broken lines on the attached plan.”***

There was attached a sketch map of the area which showed the area that the defendant had encroached.

When the report was presented at the mention of 11/2/2014, Mr. Akenga, learned counsel for the defendant stated that his client disputed the report. He also stated that he wished to amend defence. I directed the necessary application to be filed within 21 days and if filed it be heard on 15/7/2014. Alternatively, if none was filed I directed parties to comply with pre-trials.

On 15/7/2014, it emerged that no application to amend defence was ever filed. Mr. Ngigi for the plaintiff then pointed me to order 5 of the consent of 28/11/2012 and submitted that by dint of that clause, the parties bound themselves to abide by the report of the surveyor. He submitted that there is nothing to go for hearing, and that judgment should be entered in accordance with the report, as that was the agreement of the parties. Mr. Akenga's response remained that his client is not agreeable with the report.

I have considered the submissions of counsel and I do agree with Mr. Ngigi that pursuant to clause 5 of the consent of 28 November 2012, the parties bound themselves to abide by the report of the surveyor. I have no material before me, and no application to set aside the consent.

In any event the defendant's defence is a bare denial. Neither has she any counterclaim. The report is clear that she has encroached onto 4.233 acres of the plaintiff's land. This report is strikingly similar to the report of 6th April 2006 wherein it was noted that the defendant occupies over 4 acres belonging to the plaintiff.

I think the defendant is bent on delaying this matter and indeed my predecessor, Ibrahim J (as he then was), had the same view way back on 3rd June 2008.

I have no reason not to enter Judgment for the plaintiff in accordance with the report of the surveyor, as that was the agreement of the parties vide the consent of 28 November 2012.

I therefore enter judgment for the plaintiff in the following terms:-

1. That the defendant has encroached into 4.233 acres of the plaintiff's land parcel Eldoret Municipality/Block 24 (Kipkenyo)/38.
2. That the defendant having not demonstrated any right over the land parcel Eldoret Municipality Block 24 (Kipkenyo)/38 must vacate the said land forthwith and no later than 30 days from the date hereof and in default, the plaintiff is at liberty to apply for an order of eviction.
3. The defendant is hereby permanently restrained from the land parcel Eldoret Municipality Block 24 (Kipkenyo)/38.
4. The costs of this suit shall be shouldered by the defendant.

I direct that a decree be issued in the above terms.

It is so ordered.

**DATED AND DELIVERED AT ELDORET THIS 16TH DAY OF JULY 2014**

**JUSTICE MUNYAO SILA**

**ENVIRONMENT AND LAND COURT AT ELDORET**

*Delivered in the presence of:*

*Mr. A.M. Ngigi present for plaintiff.*

*Mr. C. Akenga present for defendant.*