



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E&L 481 OF 2013

EZEKIEL KIMELI TUITOEK.....PLAINTIFF

VS

ESTHER CHESOIMO LETICH.....1ST DEFENDANT

GIDEON K. MITEI.....2ND DEFENDANT

JAPHET K. MITEI.....3RD DEFENDANT

JUDGMENT

The plaintiff instituted this suit on 11 October 2013. In the plaint, he pleaded that he is the owner of the land parcel Nandi/Kebulonik/60. His claim was that the defendants had diverted a river course to change the boundary and had encroached into his said land. He sought orders to have the defendants permanently restrained from the said land. The defendants filed Defence in which they denied the claims of the plaintiff and averred that they are in possession of their land parcel Nandi/Kebulonik/70.

On 27 November 2013, the parties agreed to have the matter referred to the County Surveyor, Nandi County, for him to determine the boundaries of the parties and also determine whether any party has encroached into the land of the other. After some bit of delay, the surveyor eventually filed his report on 21 October 2014. From his report, it would appear that the original boundary between the two parcels was river, whose course, has however been diverted over time. The surveyor thus proceeded to retrace the exact boundaries by tracing from the Registry Index Map and by use of GPS co-ordinates. He then proceeded to mark the boundaries. He noted that it is actually the plaintiff who had encroached into the land parcel No. 70. The extent of the encroachment was on the river course and on the southern boundary which had been marked by a fence. It was his view, that this southern boundary should remain as it is and instead, the RIM should be amended to accommodate the same. This position was supported by the plaintiff but opposed by the defendant.

Apart from the issue on the southern boundary, both parties are agreeable to the report being adopted by the court as the judgment of the court. They have asked that I make a determination on the southern boundary.

In my view, the boundary should remain as in the current RIM. That means that it is the plaintiff to move his boundary to conform to the RIM. On the sketch drawn by the surveyor, this means that the plaintiff needs to move the boundary from the point 8-d-7 to the point 8-9, on the southern side. On the western side, where the river course is situated, the plaintiff needs to maintain the boundaries as marked by the surveyor irrespective of the river course. Nevertheless, I would encourage the parties not to unnecessarily

alter the river course as this can cause environmental hazards and/or deny other parties access to water which is a vital resource.

Save for declining to maintain the existing ground boundary 8-d-7, for which I direct that the boundary be in accordance with the RIM, that is 8-9 in the survey sketch, I enter judgment in accordance with the survey report dated 17 October 2014. I order the plaintiff to move the boundary as directed within the next 60 days.

In my discretion, and considering that there has been co-operation from both parties, I direct that each party bears their own costs.

Judgment accordingly.

DATED AND DELIVERED AT ELDORET THIS 22ND DAY OF OCTOBER 2014

JUSTICE MUNYAO SILA

ENVIRONMENT AND LAND COURT AT ELDORET

Delivered in the presence of:

Delivered in the presence of:

Mr. J.K. Kiplagat for plaintiff.

Miss J.J. Kiptanui holding brief for Ms. E.C. Rotich for defendant.