



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI

HIGH COURT

CIVIL CASE NO. 77 OF 2012 (O.S)

ELIUD KIMANI MWANGI.....PLAINTIFF

VERSUS

DISTRICT SURVEYOR LAIKIPIA.....DEFENDANT

STANELY KIHU SAMUEL MWANGI.....INTERESTED PARTY

JUDGMENT

The applicant has filed this suit by way of originating summons. He claims to be the proprietor of land no. LAIKIPIA/NYAHURURU/375. He prays for determination of the following issues.

- a) *Has the current survey status for LAIKIPIA/NYAHURURU/375 been maintained in accordance with the existing Registry Index Map?*
- b) *If question (a) is in affirmative then do the physical boundaries for land parcels numbers LAIKIPIA/NYAHURURU/375 and 8022 reflect the status as should be in the Registry Index Map for LAIKIPIA/NYAHURURU.*
- c) *If question (a) is not in affirmative then do the physical boundaries for land parcels numbers LAIKIPIA/NYAHURURU/375 vis-a-vis the Registry Index Map?*
- d) *Does land parcel No. LAIKIPIA/NYAHURURU/375 have any recognized fixed boundaries?*
- e) *If question (d) is not in affirmative then is the Respondent under statutory duty to determine fixed boundary position and status of land parcel No. LAIKIPIA/NYAHURURU/375 in accordance with the Registry Index Map and/or through use of other qualified methods.*
- f) *Do common boundaries of land parcel NO. LAIKIPIA/NYAHURURU/8022 encroach into land parcel NO. LAIKIPIA/NYAHURURU/375 and to what extent?*
- g) *If land parcel number LAIKIPIA/NYAHURURU/8022 belonging to interested party has partly or fully encroached and/or fully swallowed land parcel No. LAIKIPIA/NYAHURURU/375 what is the statutory duty of Respondent in consonance with part II of the Registered Land Act?*
- h) *Who should shoulder costs of this summons?*

The Originating Summons is based on the grounds that the land parcel No. LAIKIPIA/NYAHURURU/8022 has encroached into land parcel No. LAIKIPIA/NYAHURURU/375. And that the land parcel No. LAIKIPIA/NYAHURURU/8022 whose proprietor is interested party has its distinct boundary positions which require to be defined in accordance with the Registry Index Map vis-a-vis LAIKIPIA/NYAHURURU/375. The spirit of part II of the Registered Land Act is to qualify size and dimensions of land parcels in accordance with the Registry Index Map of which the Respondent is the custodian and statutory delegate. That when there ambiguity as to the circumstances under which there is required direction in accordance with Registry Index Map and the ground boundary status then it is the Honourable court which can direct that such amendment and reparcelation be done. That unless an order respectively issues directing the Respondent to undertake the exercise of defining land parcel No.LAIKIPIA/NYAHURURU/375 vis-a-vis encroachment perpetrated by land parcel LAIKIPIA/NYAHURURU/8022, the applicant's inalienable rights to ownership of land parcel No.LAIKIPIA/NYAHURURU/375 shall suffer loss and extinguishment in case rectification is not done.

In his submissions the applicant states that he is the proprietor of land parcel LAIKIPIA/NYAHURURU/375, and has been in possession of the title and physical occupation. However, he argues that the adjacent parcel of land being LAIKIPIA/NYAHURURU/8022 encroaches on his land thus LAIKIPIA/NYAHURURU/375.

The applicant filed an application for determination by the Land Registrar in the year 2007 thus Nyahururu Land Registrar case No. 35 of 2007. The case was heard and a determination was made that the boundary remains as it is between land parcel No.LAIKIPIA/NYAHURURU/375 and LAIKIPIA/NYAHURURU/375 374.

The applicant did not take any further action but when parcel of land No.AIKIPIA/NYAHURURU/374 was subdivided to create No.LAIKIPIA/NYAHURURU 8022, he appointed a surveyor who found that No.LAIKIPIA/NYAHURURU 8022 encroached on NoLAIKIPIA/NYAHURURU 375 by 0.370 hectares.

The applicant seeks an order that the boundary between NoLAIKIPIA/NYAHURURU 375 and No.LAIKIPIA/NYAHURURU 8022 be redefined.

The interested party argues that the boundary dispute herein was determined by the Land Registrar pursuant to the provision of Section 21(2) of the ***R.L.A Cap 300 Laws of Kenya (repealed)***. The Land Registrar visited the boundary and upon taking evidence from the parties ordered them to maintain the status of the boundary. Both parties were satisfied with the outcome.

This court has considered the evidence in totality and does find that the applicant and the Respondent purchased the land herein from the original owner of LAIKIPIA/NYAHURURU/99. The land was subdivided into LAIKIPIA/NYAHURURU/374 and LAIKIPIA/NYAHURURU/375 in 1982. The applicant got his title deed for LAIKIPIA/NYAHURURU/375 whilst the Respondent got his title deed for LAIKIPIA/NYAHURURU/374. A boundary dispute arose between the applicant and respondent and was determined by the Registrar and both parties were satisfied. Later, land parcel No. LAIKIPIA/NYAHURURU/374 was subdivided to create land parcel No. LAIKIPIA/NYAHURURU/8022.

I agree with ***Mr. Kebuka Wachira*** that the dispute between the applicant and interested party had been determined by the Land Registrar in respect of LAIKIPIA/NYAHURURU/374 an LAIKIPIA/NYAHURURU/375, and land parcel LAIKIPIA/NYAHURURU/8022 being a resultant of subdivision of 374, the application is not tenable in law. For the application to be entertained and granted, the applicant ought to review the decision of the Land Registrar Nyahururu which none of the parties have exhibited. Allowing the application by the applicant will lead to the reopening of the old dispute between the proprietor of parcel No.LAIKIPIA/NYAHURURU/374 and parcel No.LAIKIPIA/NYAHURURU/375 which has been determined.

The upshot of the above is that the application is dismissed with costs.

DATED AND DELIVERED AT NYERI THIS 11TH DAY OF DECEMBER 2014

ANTONY OMBWAYO

JUDGE