



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT KITALE.

ENVIRONMENT & LAND COURT.

MISC. CIVIL APPLICATION NO. 15 OF 2014.

SCHOOL MANAGEMENT COMMITTEE)

CHEMATICH PRIMARY SCHOOL) ::::::::::::::: APPLICANTS.

VERSUS

EZEKIEL MARITIM)

JEREMIAH OMASIRE) :::::::::::::::RESPONDENTS.

DAVID KIPKORIR NGETICH)

RULING.

1. The applicant filed a notice of motion dated 29/1/2014 in which they sought the following prayers:-
 - (a) *That the District Land Registrar Trans Nzoia County be ordered to fix the boundaries between land Parcel No. Sinyerere/Sitatunga Block 4 (Chematich)/145 and Sinyerere/Sitatunga Block 4 (Chematich) 159, 112, 113 and 114 as per the District Surveyor report dated 6/9/2012.*
 - (b) *That the respondents their servants and or agents be restrained from interfering with the exercise to determine the boundaries between the parcels.*
 - (c) *That the OCS Cherangany Police Station be ordered to provide security during the undertaking of the exercise.*
 - (d) *That costs of the application be provided for.*
2. The applicant contends that the applicant sought the intervention of the Land Registrar Trans Nzoia to go and determine the boundary between it and the respondents. The Land Registrar accordingly moved to the ground pursuant to the provisions of the Registered land Act Cap 300 (now repealed) and determined the boundary. The Land Registrar prepared a report dated 17/9/2012 based on a survey report by the District Surveyor dated 6/9/2012.
3. When the county surveyor went to the ground to implement the Land Registrars report, the respondents refused to co-operate. It is said that the respondents mobilised armed youths who prevented the implementation of the report. It is on this basis that the applicant has come to court seeking court's intervention to enable the report of the land Registrar be implemented.
4. The application is opposed by the respondents through a replying affidavit sworn by the first

respondent on 28/2/2014. The respondents have basically attacked the competency of the application as well as the accuracy of the Land Registrar's report. On the part of competency, the respondents contend that the application is not pegged on any pleadings; that the orders sought are substantive and should only be entertained after oral evidence is tendered and that the Land Registrar was not made a party. On the part of accuracy of the report, the respondents contend that the respondents were not involved; that all parcels bordering the applicant's land were not considered, that the school land was donated and the respondents cannot donate any more land; that the respondents are not aware of any proceedings of 3/5/2012; that the respondents have already obtained their titles and that the Land Registrar had already visited the disputed boundary and beacons identified and boundaries fixed.

5. It is important to note from the beginning that in this application the court was being asked to give orders which will enable the boundaries on the ground to be implemented as per the Land Registrar's report of 17/9/2012. The issue as to the competency of this application was decided on vide ruling of this court delivered on 8/4/2014 following a preliminary objection raised by the respondents. The court in that ruling held that this was an application asking for the court's assistance to implement the Land Registrar's report and as such, there was no need to include the Land Registrar as a party or even bring a substantive suit for that purpose.
6. On the issue of accuracy or otherwise of the report, the Land Registrar has already made a determination in accordance with the provisions of the Registered Land Act Cap 300 (now repealed). The Land Registrar having determined the boundary in accordance with the provisions of the aforesaid Act, this court has jurisdiction to entertain any proceedings touching on that report including granting orders which will ensure that the Land Registrar's report is implemented. The Court of Appeal in the case of **Mwangi Muraguri vs. Kamara Rukenya Civil Appeal No. 10 of [1983] e KLR** held that the High Court has jurisdiction to entertain a matter involving a boundary dispute where the Land Registrar has already determined the boundary. In the present case, the Land Registrar received a complaint of a boundary dispute. The Land Registrar visited the disputed Land on 3/5/2012. The first and the second respondents were present. The exercise was not completed on that day. A second visit was made on 17/8/2012 when the Land Registrar concluded the visit to the ground. He went back and wrote a report of his determination dated 17/9/2012. This was after the surveyor went to the ground and prepared a report dated 6/9/2012. The respondent cannot therefore claim that they were not present. If the respondents were dissatisfied with the finding of the Land Registrar, they had 30 days within which to appeal to the Chief Land Registrar. They never did this and therefore they cannot seek to prevent the implementation of the Land Registrar's findings and determination as to the boundary dispute.
7. This court has no jurisdiction to interfere with the Land Registrar's finding as regards, the boundary in dispute. The respondent's complaints contained in the replying affidavit and submissions are therefore misplaced. In any case the issue herein was whether the court should grant the orders being sought. In prayer one the applicant is seeking an order of this court to order the Land Registrar to fix boundaries in accordance with the surveyor's report 6/9/2012. The Land Registrar cannot be ordered or directed to do his/her job. Already he has made his report of 17/9/2012. This report was made with the assistance of the surveyor who went to the ground. The Land Registrar's duty is to implement his report, which report can be implemented by the surveyors who are professionals in that area. This application would not have been necessary had the respondents not prevented the surveyor from implementing the Registrar's findings.
8. I have noticed from the respondent's affidavit that there is an averment that the third respondent was wrongly sued in this application. This could be true because the Land Registrar's report indicates that plot No. 159 was captured twice on the Registry Index Map (RIM). The Land Registrar recommended that plot No. 159 as appearing in the RIM should be erased and the same be included in parcel No. 112 as is currently on the ground. The third respondent may have been sued because he is the registered owner of plot 159 which was wrongly captured twice and had nothing to do with the boundary dispute with the applicant.
9. One of the duties of the court is to ensure that there is order when certain activities are carried out. This is achieved by courts issuing orders to the relevant authorities to assist in implementation of those activities. For instance in this case, the court has been told that the respondents are preventing the implementation of the Land Registrar's report regarding the boundary dispute. It is necessary that the police do provide security during the implementation of the Land Registrar's

report on the boundary dispute. The respondent's or their agents should not interfere with the exercise of implementing the Land Registrar's order. The sum total of this is that the applicant's application is allowed in terms of prayers (2) (3) and (4). It is hereby ordered that the costs of this application shall be borne by the first and second respondents only as the third respondent was erroneously sued.

It is so ordered.

[Dated, signed and delivered at Kitale on this 11th day of December, 2014.]

E. OBAGA.

JUDGE.

In the presence of Mr. Karani for Mr. Barongo for respondents.

Court Clerk – Isabellah.

E. OBAGA.

JUDGE.