



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISUMU

ELC CASE NO. 32 OF 2016

WILSON DANIEL OGOLA.....PLAINTIFF

VERSUS

MOURICE OUMA AGWEDO.....DEFENDANT

RULING

Wilson Daniel Ogola hereinafter referred to as the Plaintiff has come to court against Mourice Ouma Agwendo claiming that at all material times, he is and always has been the sole registered owner of whole that parcel of land known as Kisumu/Kogony/5656 measured (0.11) Ha. That the Plaintiff legally acquired the title deed from Land Registrar's Kisumu land office.

The Plaintiff avers that the defendant trespassed and illegally took possession and entered into the plaintiff's parcel of land known as Kisumu/Kogony/5656 that belong to him and illegally started to plough. The Plaintiff reported the matter to the police. The defendant was arrested both with the worker by police and later released.

The Plaintiff avers that on 16th August 2015, as he visited the said parcel of land, he was surprised to find the Defendant together with his employees/agents on his land as they brought some sand and marrum ready to illegally put a structure in his parcel of land known as Kisumu/Kogony/5656 unlawfully.

The plaintiff aggrieved by the wrongful occupation of the Defendant, he decided to report the same to the lands office and a meeting to resolve the boundary dispute was set.

The Plaintiff avers that there has been a series of meetings to try and solve the dispute but the Defendant has not been keen to cooperate and they have always been hostile.

The acts of the Defendant are unlawful, illegal and amount to trespass to property and violate the right of the plaintiff to peaceful enjoyment of the property.

The Plaintiff prays for a permanent injunction restraining the Defendant from remaining on or continuing being in occupation with the said parcel of land known as Kisumu/Kogony/5656. And General damages for trespass and destruction of property. Cost of this suit and any other relief this Honourable court may deem fit to grant.

The Defendant in reply denies allegations of trespass and destruction and putting up of structures on the plaintiff's land. He disputes that there was a meeting to resolve a boundary dispute. The Defendant field a Preliminary Objection that the suit as presented is misconceived and contagious an abuse of the due processes of law prescribed under section 18 (2) of the Land Registration Act and that the court lacks jurisdictions.

I have considered the objection and the rival submissions on the Preliminary Objection and od find that the same is underpinned on Section 8 (2) of the Land Registration act which provides:

“(2) The court shall not entertain any action or other proceedings relating to a dispute as to the boundaries of registered land unless the boundaries have been determined in accordance with this section.”

It is clear that the Land Registration only has powers to determine boundary disputes where the boundary is not fixed. In this case, the boundary is already fixed, there is a title deed issued to the Plaintiffs and there are registered maps. It is my view that the defendants counsel is confusing “determination of boundary and determination of boundary disputes. My understanding is that where a boundary has not been determined and fixed, any dispute as to boundary shall be heard by the Land Registrar. Moreover, where the boundary is determined and fixed, then in essence there would be no boundary dispute. Ay person who encroaches on a neighbour's parcel of land will be liable for trespass. The land Surveyor does not make a decision but only gives an expert report on the extent of encroachment.

I do find that there is no boundary dispute in this matter and do dismiss the Preliminary Objection with costs.

DATED AT KISUMU THIS 24th DAY OF MARCH, 2021

ANTONY OMBWAYO

JUDGE

This Ruling has been delivered to the parties by electronic mail due to measures restricting court operations due to the COVID-19 pandemic and in the light of the directions issued by his Lordship, the Chief Justice on 15th March 2019.

ANTONY OMBWAYO

JUDGE