



**Kinonge v Muriithi & another (Environment and Land Appeal
47 of 2019) [2023] KEELC 16666 (KLR) (23 March 2023) (Judgment)**

Neutral citation: [2023] KEELC 16666 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND APPEAL 47 OF 2019**

JG KEMEI, J

MARCH 23, 2023

BETWEEN

BONIFACE WATUKU KINONGE APPELLANT

AND

GEORGE KIMOTHO MURIITHI 1ST RESPONDENT

ANNE NAOMI WANGARI KIMOTHO 2ND RESPONDENT

(Arising from ELC Case No 41 of 2015 at Thika Law Courts)

JUDGMENT

1. The Appeal was filed on 6/12/2019 and amended on 12/5/2021. This appeal inter alia impugns the appreciation of the place of jurisdiction, the facts and the law by the trial Court in a dispute surrounding an encroachment of parcel 474 (2999) by parcel 475. The two parcels are adjacent to one another.
2. The Respondents' case in the trial Court is that they purchased parcel 474 from the Appellant and took possession. In the process of developing a house, they were informed by the owner of parcel 473, one Mrs. Roxana Kabuga that they had encroached on parcel No 473. By consent the Respondents and the owner of parcel 473 agreed to resolve the encroachment and with the help of the District Surveyor the boundaries were adjusted, resolving the issue between them. That seemed to have resolved that dispute between parcels 473 and 474 which were given new numbers to wit 2998 and 2999 and new titles issued.
3. It is the Respondents' case that parcels 2998, 2999 and 475 all measure 0.078Ha each. That the Appellants plot is big in size due to the illegal encroachment on the Respondents land by over 0.45Ha. The Respondents pleaded fraud on the part of the Defendant in encroaching to their land by 0.045Ha and inter alia building on the Plaintiffs land. The Respondents sought orders as follows:-



- a. An order against the Defendant to demolish all illegal structures and grant vacant possession on land parcel Thika Municipality Block 24/2999 and in default the Defendant be evicted.
 - b. Kshs 150,000/- plus interests thereon at Court rates from the date of filing this suit.
 - c. Costs and interests of the suit.
 - d. Any further relief that this Honourable Court may deem fit and just to grant.
4. The claim was opposed. The Appellant contended vide his statement of defence dated 4/2/2018 that his parcel 475 measures 0.117Ha and not 0.0788Ha. and that all the developments are legal and are within his adjudicated area. He termed the suit as a sham, an illegality and one that is an outright abuse of the Court process.
5. Upon hearing the parties the trial Court entered Judgment in favour of the Respondents as follows:-
- a. That the title over Plot No Thika Municipality Block 24/475 issued to the Defendant on the December 11, 2017 be and cancelled.
 - b. The District Surveyor, Thika do visit the site within 60 days and fix the boundaries as they are supposed to be on the cadastral map.
 - c. In the alternative to (b) above, and with the prior consent of the Plaintiffs and the Defendant, the District Surveyor do conduct a reparation of the two plot sin issue herein within 60 days in a manner that would avoid the demolition of the existing buildings.
 - d. In case option (b) above is adopted, a new title over Plot 475 do issue to the Defendant indicating the correct acreage after fixing the boundaries. The Plaintiffs shall have half the costs of this suit since their claim has succeeded in part. The parties shall equally share the costs of the Surveyor, if any. The claim for Kshs 150,000/- is dismissed as no basis was laid for the same.
6. It is this decision that has triggered this appeal. Dissatisfied with the trial Court decision, the Appellant proffered this appeal in the amended grounds set out thereto-
- a. That the trial Magistrate erred in law in entertaining a matter in which he did not have jurisdiction to entertain thereby arriving at a Judgment that is contrary to law and which ought to be reversed.
 - b. That the trial Magistrate erred in law and fact when he failed to distill from the evidence tendered in the matter that this was and continues to be a boundary dispute which has been clothed in the form of encroachment to land and allegations of fraud.
 - c. That the trial Magistrate erred in law and failed in entering Judgment against the Appellant against adduced evidence and dismissing Appellant's evidence.
 - d. That the learned trial Magistrate erred in fact when he failed to harmonize his proceedings with the Judgment and misconstrued the Plaintiff's evidence.
 - e. That the learned trial Magistrate erred in fact and in law when he disregarded Appellant's evidence and delivered a Judgment which never envisaged a balance of probabilities.
 - f. That the learned trial Magistrate erred in fact and in law when he disregarded the evidence of the Appellant but proceeded to find against the Appellant based on his own opinion and presumption. Further turning a blind eye to the Appellant's submissions.



- g. That the learned trial Magistrate erred in law and in fact giving drastic orders in total disregard of the Appellant's detriments and law of evidence.
 - h. That the learned Magistrate made a ridiculous verdict which essentially validated the problem, fraud and land grabbing which was demonstrated over Thika Municipality Block 24 by disregarding the Appellant's evidence.
 - i. That the learned Magistrate turned a blind eye to the fatal technicalities occasioned by the Plaintiff to the detriments of the Defendant.
 - j. The learned Magistrate erred in law and in fact in arriving at a decision in the absence of critical parties to the suit.
7. The Appeal seeks orders as follows:-
- a. This Appeal be allowed with cost and the Judgment of the Subordinate Court be set aside.
 - b. The Appellant's defence in ELC Case No 41 of 2015 at Thika Law Courts be allowed as prayed.
 - c. Any further relief that the Honourable Court deems fit to grant in the interest of justice.
8. On the 28/3/2022 parties agreed by consent to allow the cadastral map for LR No 7368 No 40257 be admitted as additional documents on appeal.
9. Both parties filed written submissions which I have read and considered. The Appellant's submissions were filed by the firm of Daniel Henry & Co Advocates while the firm of Kanyi Kiruchi & Co Advocates filed on behalf of the Respondents. I have read and considered the submissions. The Court would like to thank counsel for their illuminating submissions.
10. It was submitted that jurisdiction can be argued at any time including on appeal. The case of *Floriculture International Ltd v Central Kenya Ltd & 3 others* (1995) eKLR was cited in support of the proposition. That the issue before the trial Court was a boundary issue that ought to have been referred to the Land Registrar under Section 18 and 19 of the *Land Registration Act*. That the record is clear that the issue was on general boundaries and not a fixed boundary. The Appellant faulted the Respondents for submitting the matter to the Land Surveyor instead of the Land Registrar whose mandate is clearly stated by the Act. Further that the Land Registrar did not instruct the Surveyor to carry out the survey hence the actions of the Respondents were not sanctioned by the Land Registrar; thus a gross violation of the law. In sum the Appellant stated that the Respondents violated the provisions of Section 18 and 19 of *Land Registration Act* by failing to submit the dispute to the Land Registrar.
11. With regard to reparation the Appellant submitted that neither the Land Registrar nor the Surveyor took into consideration the cadastral map of the parcel of land in question. The parties did not give consent as required by the Act. That the exercise to amend the parcels 473 and 474 excluded the Appellant who is the owner of parcel 475.
12. The trial Court was faulted for granting orders not sought by the Respondents. The order of reparation was not sought by the Respondents. That the reparation exercise did not take into account the reason for the reduction of the size for parcel 474 was a road which road is shown in the cadastral map nor was the consent of the parties sought and obtained.
13. The Land Registrar was faulted for relying on the Registry Index Map to determine boundaries of a parcel of land instead of a cadastral map (refer to the Cadastral map in the Supplementary Record of Appeal). The cadastral map shows the parcel of land from which the suit land was mutated and



subdivided [7368] as well as the co-ordinates on the parcel of land. It was submitted that in the event of any subdivisions the Surveyor ought to be guided by the notes of the Surveyor on the cadastral with respect to road, river and other beacons. It was stated by the Appellant that the cadastral map was to be considered by the Surveyors as it shows a more precise and accurate ground situation as opposed to the Registry Index Map (RIM).

14. It was submitted that the orders sought by the Respondents were against the parcel belonging to the Respondents and not that of the Appellant. It was stated that a Court has no power to make an order unless by consent which is outside the pleadings. Reliance was placed on the case of *Anthony Francis Wareham & others v Kenya Post Office Savings Bank* CA 5 & 48 of 2002 (UR) as cited by the Court of Appeal in *John Kamunya & another v John Nginyi Muchiri & 3 others* [2015] eKLR for the proposition that a Court of law should not make a finding, in matters not pleaded or grant any relief which is not sought by a party in the pleadings.
15. On jurisdiction the Respondents while citing the provisions of Section 18 and 19 of the *Land Registration Act* submitted that the Land Registrar through the Surveyor visited the parcels and realigned the boundaries before the Respondents invoked the jurisdiction of the Court. The Respondents gave detailed instances when the locus quo was visited by the Surveyor and the recommendations made. The Appellant was adamant to heed to the recommendations, instead he started constructing on the land (475) when the matter was pending in Court. This forced the Respondents to seek injunctive orders to stop the construction. Further it was submitted that the Appellant altered the acreage of the suit land from 0.078 to 0.117Ha. without any authority and in the process encroaching onto the Respondents land.
16. Was there encroachment? The Respondents answered that this is in the various surveyor reports presented before Court. The reports were unanimous that indeed the Appellant had encroached onto the Respondents land by a massive 0.045Ha. hus, reducing the Respondents' portion by 50%.
17. It is submitted that the appeal is not merited.
18. The role of the appellate Court of 1st instance is set out in Section 78 of the *Civil Procedure Act* as follows-

“Powers of Appellate Court

- (1) Subject to such conditions and limitations as may be prescribed, an appellate Court shall have power-
 - (a) To determine a case finally;
 - (b) To remand a case;
 - (c) To frame issues and refer them for trial;
 - (d) To take additional evidence or to require the evidence to be taken;
 - (e) To order a new trial.
- (2) Subject as aforesaid, the appellate Court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by this Act on Courts of original jurisdiction in respect of suits instituted therein.”



19. The above mandate of the Court is further buttressed as thus;

“As a first appellate Court, this Court has a duty to examine matters of both law and facts and subject the whole of the evidence to a fresh and exhaustive scrutiny, before drawing a conclusion from that analysis. The Court has however to bear in mind the fact that it did not have an opportunity to see and hear the witnesses first hand. This duty is captured by Section 78 of the *Civil Procedure Act* which espouses the role of a first appellate Court which is to: ‘..... re-evaluate, reassess and reanalyze the extracts of the record and draw its own conclusions.’ This was buttressed by the Court of Appeal in the case of *Peter M. Kariuki v Attorney General* [2014] eKLR where it was held that:

“We have also, as we are duty bound to do as a first appellate Court, to reconsider the evidence adduced before the trial Court and reevaluate it to draw our own independent conclusions and to satisfy ourselves that the conclusions reached by the trial judge are consistent with the evidence. See *Ngui v Republic*, [1984] KLR 729 and *Susan Munyi v Keshar Shiani*, Civil Appeal No 38 of 2002 (unreported).”

20. Having read and considered the entire record of appeal, the trial file, the written submissions and all the material placed before me the Court has drawn the following issues for determination;

- a. Jurisdiction of the trial Court.
- b. Was there encroachment?
- c. Did the trial Court give orders sought for?
- d. Whether the trial Court erred in fact and in its Judgment.

21. On the first issue, it is trite that jurisdiction is the lifeline of every Court, without it the Court must down its tools and take no further step. Jurisdiction is defined in Halsbury’s Laws of England (4th Ed.) Vol. 9 as “... the authority which a Court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for decision.”

22. According to the *Black’s Law Dictionary*, 9th Edition, jurisdiction is the Court’s power to entertain, hear and determine a dispute before it.

23. The jurisdiction of the ELC flows from both the *Constitution of Kenya, 2010* (CoK) and *Environment and Land Court Act* (ELC) respectively. Article 162(2)(b) CoK establishes the Environment and Land Court and empowers it to hear and determine disputes relating to the environment and the use and occupation of, and title to, land.

24. In giving effect to the Article 162(2)(b) CoK, Parliament enacted the *Environment and Land Court Act* which provides as follows under Section 13 (2) that;

- “(2) In exercise of its jurisdiction under Article 162(2)(b) of the *Constitution*, the Court shall have power to hear and determine disputes—
- (a) relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
 - (b) relating to compulsory acquisition of land;



- (c) relating to land administration and management;
- (d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and
- (e) any other dispute relating to environment and land.”

25. In the case of *Owners of the Motor Vessel “Lilian S2 v Caltex Oil (Kenya) Ltd* [1989] KLR 1, it is trite that jurisdiction is everything and without it, a Court has to down its tools and take no more step. The issue of jurisdiction is very critical and can be raised at any stage of the proceedings. The Court of Appeal in *Jamal Salim v Yusuf Abdulabi Abdi & another* Civil Appeal No 103 of 2016 [2018] eKLR stated as follows: -

“Jurisdiction either exists or it does not. Neither can it be acquiesced or granted by consent of the parties. This much was appreciated by this Court in *Adero & Another vs. Ulinzi Sacco Society Limited* [2002] 1 KLR 577, as follows;

- 1)
- 2) The jurisdiction either exists or does not ab initio ...
- 3) Jurisdiction cannot be conferred by the consent of the parties or be assumed on the grounds that parties have acquiesced in actions which presume the existence of such jurisdiction.
- 4) Jurisdiction is such an important matter that it can be raised at any stage of the proceedings even on appeal.”

26. The Supreme Court in the case of *Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & others* [2012] eKLR stated as follows: -

“A Court’s jurisdiction flows from either the *Constitution* or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by the *Constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with counsels for the first and second Respondents in his submission that the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality, it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings ... where the *Constitution* exhaustively provides for the jurisdiction of a Court of law, the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation. Nor can Parliament confer jurisdiction upon a Court of law beyond the scope defined by the *Constitution*. Where the *Constitution* confers power upon Parliament to set the jurisdiction of a Court of law or tribunal, the legislature would be within its authority to prescribe the jurisdiction of such a Court or tribunal by statute law.”

27. The Judgement of this Court has been assailed largely on the issue of jurisdiction of the Court to hear and determine a dispute that was majorly in the province of the Land Registrar as per the *Land Registration Act*.

28. It is on record that the trial Court ordered the Land surveyor to visit the locus quo and determine whether or not there was encroachment of the suit land. In compliance with the said orders the land



surveyor visited the lands and prepared a report that was produced in Court on the 4/6/2018. This is the report that was relied heavily by the Court and also supported by the Respondents. The Appellant has impugned this mode of resolving the dispute by averring that the matter having been a boundary/encroachment issue ought to have been submitted to the Land Registrar for determination. Further the fact that it is the Land Surveyor who attended the site alone is impugned by the Appellant on the grounds that the Act does not provide for the surveyor to resolve the matter but the Land Registrar.

29. The Relevant legal provisions touching on boundary dispute are contained in the [Land Registration Act](#) (LRA) and [Survey Act](#).
30. Section 18 of the [Land Registration Act](#) No 3 of 2012 provides as follows: -

“ 18. Boundaries

- (1) Except where, in accordance with Section 20, it is noted in the register that the boundaries of a parcel have been fixed, the cadastral map and any filed plan shall be deemed to indicate the approximate boundaries and the approximate situation only of the parcel.
- (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.
- (3) Except where, it is noted in the register that the boundaries of a parcel have been fixed, the Registrar may in any proceedings concerning the parcel, receive such evidence as to its boundaries and situation as may be necessary;

Provided that where all the boundaries are defined under Section 19(3), the determination of the position of any uncertain boundary shall be done as stipulated in the [Survey Act](#).”

31. Further Section 19 LRA states;

“ 19. Fixed Boundaries

- (1) If the Registrar considers it desirable to indicate on a filed plan approved by the office or authority responsible for the survey of land, or otherwise to define in the register, the precise position of the boundaries of a parcel or any parts thereof, or if an interested person has made an application to the Registrar, the Registrar shall give notice to the owners and occupiers of the land adjoining the boundaries in question of the intention to ascertain and fix the boundaries.
- (2) The Registrar shall, after giving all persons appearing in the register an opportunity of being heard, cause to be defined by survey, the precise position of the boundaries in question, file a plan containing the necessary particulars and make a note in the register that the boundaries have been fixed, and the plan shall be deemed to accurately define the boundaries of the parcel.



- (3) Where the dimensions and boundaries of a parcel are defined by reference to a plan verified by the office or authority responsible for the survey of land, a note shall be made in the register, and the parcel shall be deemed to have had its boundaries fixed under this Section.”

32. Section 18 above specifically gives the Land Registrar the mandate to fix boundaries and the Court would not be in a position to determine boundaries as it does not have the technical expertise in surveying. The Court relies on such expertise to guide in decision making. The LRA under Sections 16 and 17 provides for maintenance of cadastral maps and guideline for approvals for further survey if need be.

33. In exercising his powers thereto, the Registrar is empowered under Section 79 (1) (c) LRA to if necessary, order for rectification of the affected parcel of land after giving notice to all interested persons.

34. If a party is aggrieved by the decision of the Registrar under the LRA, he can invoke this Court’s jurisdiction for further redress under Section 86 LRA which states;

“ 86. Review of the decision of the Registrar

- (1) If any question arises with regard to the exercise of any power or the performance of any duty conferred or imposed on the Registrar by this Act, the Registrar or any aggrieved person shall state a case for the opinion of the Court, and thereupon the Court shall give its opinion, which shall be binding upon the parties.”

35. Additionally, Sections 22 and 23 LRA outline the procedures for combinations and subdivisions and reparation of land. The provisions are set out as follows;

”22. Combinations and subdivisions.

- (1) Subject to authentication of the cadastral map, if contiguous parcels are owned by the same proprietor and are subject in all respects to the same rights and obligations, the Registrar, on application by the proprietor, may combine these parcels by closing the registers relating to them and opening a new register or registers in respect of the parcel or parcels resulting from the combination.
- (2) Upon the application of a proprietor of a parcel for the division of that parcel into two or more parcels, and authentication of the cadastral map, the Registrar shall effect the division by closing the register relating to the parcel and opening new registers in respect of the new parcels resulting from the division, and recording in the new registers all subsisting entries appearing in the closed register:

Provided that nothing shall be done under this section that would be inconsistent with the provisions of this Act or any other written law.

23. Reparation.

- (1) Subject to Section 15 and authentication of the cadastral map, on the application of the proprietors of contiguous parcels who are desirous of changing the layout of their



parcels, and with the consent in writing of all other persons in whose names any right or interest in the parcels is registered and of any cautioner, the Registrar may—

- (a) cancel the registers relating to those parcels and prepare new registers in accordance with the new edition of the cadastral map; or
- (b) Registrar considers that the proposed reparation involves substantial changes of ownership, which should be effected by transfers without invoking this section, in which case, the Registrar shall direct the proprietors accordingly.

- (2) Upon reparation, the new parcels shall vest in the persons in whose names they are registered.”

36. Further conduct of survey is governed by Part V of the [Survey Act](#), Cap 299. Section 22 of the [Act](#) states;

“22. Surveys of land to be conducted under the direction of Director

Any survey of land for the purposes of any written law for the time being in force relating to the registration of transactions in or of title to land (other than the first registration of the title to any land made in accordance with the provisions of the [Land Consolidation Act](#) (Cap. 283) or the [Land Adjudication Act](#) (Cap. 284) shall be carried out under and in accordance with the directions of the Director.”

37. I am guided and bound by the Court of Appeal decision in the case of [Azzuri Properties v Pink Properties Limited](#) [2018] eKLR, the appellate Court affirmed the trial Court Judgment which inter alia dismissed the Appellant’s suit for engaging a surveyor to determine boundary dispute instead of a Land Registrar. The Court of Appeal held that:

“...., we are in agreement with the learned Judge’s conclusion that the dispute ought to have been heard by the Land Registrar as stated in the statute. Jurisdiction is everything. It has been said many times before, that, without it a Court has no powers to make one more step, irrespective of the strength and nature of evidence in the parties’ possession... In this case, reference of the dispute to the Environment and Land Court at first instance was proscribed by statute and on that account alone, the Appellant’s case was a non-starter. Although this matter would have rested on this point of jurisdiction, we will deal with the issue of evidence purely because counsel made submissions on the same and there was a determination by the Judge.”

38. Similar sentiments were echoed by the same Court of Appeal later in the case of [Estate Sonrisa Ltd & Another v Samuel Kamau Macharia & 2 Others](#) [2020] eKLR, the Court stated thus;

“It is the [Land Registration Act](#) that makes provisions relating to the determination of boundaries. Those provisions are found in Sections 16 to 19. Specifically, for this dispute, the Registrar is empowered, after giving notice to all the affected parties, in this case, the 1st Appellant and 1st Respondent, indeed as well as any owner whose land adjoins the boundaries in question, and with the assistance of the surveyor, to ascertain and fix the disputed boundaries. Under that Act, the Registrar carries out his functions without any restrictions and may rely on any other relevant document and existing records in order to resolve any dispute between landowners. Because a title deed is only prima facie evidence of the matters shown therein, the Registrar’s investigations, of necessity must encompass all



entries in the register, rely on any other relevant document and existing records, conduct proceedings in accordance with Section 14(1) and cause a survey to be carried out and determine the dispute It is only after determining the dispute can parties move to Court to challenge it (emphasize added).

The aforementioned case law clearly indicate that the dispute relating to boundaries ought to be resolved by the Land Registrar in the first instance. The decision thereof can then be challenged in Court pursuant to the provisions of Sections 79 (3A), 80, 86 and 91 (9) of the Land Registration Act. 35. It is trite law that where the law has given a legal obligation to a department of Government, it is important for the Court to let that department proceed to meet the legal obligations. In this case the office of the Land Registrar is mandated to deal with the general boundary dispute first before the same is escalated to the Court. It is the view of this Court that the dispute is prematurely before the Court.”

39. Reiterating the relevance for pursuing and exhausting alternate dispute resolution mechanisms before invoking a Court’s jurisdiction, the Court of Appeal in *Kibos Distillers Limited & 4 Others v Benson Ambuti Adegwa & 3 Others* [2020] eKLR in allowing an appeal against the trial Court finding that it had jurisdiction over some matters that were a preserve of alternate bodies, the Court observed;

“... A party or litigant cannot be allowed to confer jurisdiction on a Court or to oust jurisdiction of a competent organ through the art and craft of drafting of pleadings. Even if a Court has original jurisdiction, the concept of original jurisdiction does not operate to oust the jurisdiction of other competent organs that have legislatively been mandated to hear and determine a dispute. Original jurisdiction is not an ouster clause that ousts the jurisdiction of other competent organs. Neither is original jurisdiction an inclusive clause that confers jurisdiction on a Court or body to hear and determine all and sundry disputes. Original jurisdiction simply means the jurisdiction to hear specifically constitutional or legislatively delineated disputes of law and fact at first instance. To this end, I reiterate and affirm the dicta that in *Speaker of the National Assembly v James Njenga Karume* [1992] eKLR where it was stated that where there is a clear procedure for the redress of any particular grievance prescribed by the Constitution or an Act of Parliament, that procedure should be strictly followed.”

40. This Honorable Court has also pronounced itself on this subject in the case of *George Kamau Macharia v Dexka Limited* [2019] eKLR where it states as;

“From the above provisions of the law, it is manifestly clear that the above Section gives the mandate to the Land Registrar to resolve boundary disputes of land with general boundaries. Registry Index Map (RIM) only indicates approximate boundaries and the approximate situation on the ground. Even if this Court was to hear and determine this matter it will still require the input of the Land Registrar. The framers of Section 18(2) of the Land Registration Act placed this matter before the Land Registrar who has the technical advice and resources of the District Surveyor to determine and ascertain the boundaries. It is trite law that where the law has given a legal obligation to a department of Government, it is important for the Court to let that department proceed to meet its legal obligations. In this case the office of the Land Registrar is mandated to deal with the general boundary dispute first before the same is escalated to the Court. It is the view of this Court that the dispute is prematurely before the Court.”



41. In the upshot the Court finds that the appeal partially succeeds in respect to the jurisdiction of the Court. I shall make the necessary orders in the end. I find no necessity to determine the rest of the issues.
42. Final orders for disposal;
- a. The appeal partially succeeds.
 - b. The Judgement of the trial Court be and is hereby set aside in its entirety.
 - c. The suit is remanded back to the trial Court under Section 78 (1) (b) – (e) of the [Civil Procedure Act](#).
 - d. The parties are directed to exhaust the dispute mechanisms provided in Section 18 and 19 of the LRA and for the avoidance of doubt submit the dispute with respect to encroachment and boundary dispute before the Land Registrar for hearing and determination.
 - e. Pursuant to order No c & d above the Land Registrar to inquire into the circumstances that led to the alteration and increment of the acreage of parcel 475 by cancelling the acreage of 0.0783Ha. to 0.117Ha. and make a report to the trial Court.
 - f. Upon conclusion of the c, d and e above the parties are at liberty to prosecute the remainder of the claims in the suit in the lower Court.
 - g. Each party shall bear their own costs of this appeal.
43. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 23RD DAY OF MARCH, 2023
VIA MICROSOFT TEAMS.**

J G KEMEI

JUDGE

Delivered online in the presence of

Ms. Njuguna HB Gachau for Appellant

Kanyi for 1st and 2nd Respondents

Court Assistants – Kevin/Lilian

