



Matundura v County Land Registrar, Kisii & another (Miscellaneous Application 3 of 2023) [2023] KEELC 16346 (KLR) (22 March 2023) (Ruling)

Neutral citation: [2023] KEELC 16346 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII
MISCELLANEOUS APPLICATION 3 OF 2023**

M SILA, J

MARCH 22, 2023

BETWEEN

LEO BLAUSIUS OBWERI MATUNDURA APPLICANT

AND

THE COUNTY LAND REGISTRAR, KISII 1ST RESPONDENT

HON. ATTORNEY GENERAL 2ND RESPONDENT

RULING

1. This is a miscellaneous application filed and dated February 2, 2023. It seeks the following orders which I copy verbatim:-
 - a. Spent (certification of urgency).
 - b. That the honourable court be pleased to direct the 1st respondent to visit the land parcels West Kitutu/Bogusero/3288, 3290, 2435, and 2819 v 10021, 10022, 5005, 7287, 1108, mark determine and fix the boundaries thereof ow owners namely George Matiabe Mangongo, Nyaribo Nyamwaya Vincent, Annah Morra Onchoke, Lawrence Omariko Onkundi, Nyagisera Onganga, Bonface Ragira Oichi, Akuma Matiabe, Richard Yobe Mose, Akuma Ogutu.
 - c. That upon the 1st respondent fixing the boundaries thereof, the same be respected and protection by the parties and with their siblings.
2. The application is based on grounds that under section 14 and 19 of the [Land Registration Act](#), 2012, the land registrar has powers to establish boundaries; that some of the registered owners of the parcels of land are deceased; that the siblings of the registered owners are not keen to file succession but keep destroying the boundaries thus necessitating the filing of the application; that the 1st respondent had invoked his powers under the [Land Registration Act](#) but could not proceed with the exercise due to



the death of some of the registered owners; that the order of this court allowing the 1st respondent to visit the land parcels and fix the boundaries will solve the boundary dispute permanently; that the chief of Bogusero North location is ready and willing to arrange for security, that the court has powers and discretion to give the orders prayed.

3. The application is supported by the affidavit of the applicant. He has averred that he seeks resolution of a boundary dispute between the parcels West Kitutu/Bogusero/ 3288, 3290, 2435, and 2819 vs 10021, 10022, 5005, 7287, 1108. He has deposed that the respondents were summoned to appear before the land officers at the disputed boundary on November 29, 2022 to determine the boundaries; that when the names of the respondents were called out, it was found that some of them are deceased and the exercise could not therefore proceed and that the land registrar mentioned that he needs a court order; that it was also discovered that some of the deceased's kindred are not keen to file succession yet they keep destroying the boundary.
4. The respondents filed grounds of opposition to oppose the motion. It is contended inter alia that the application is contrary to the provisions of section 19 (2) of the Land Registration Act; that the matter is prematurely before court as succession proceedings and status of proprietorship of the parcels of land is yet to be determined; that the orders will lead to intermeddling of the estate of deceased persons.
5. Both Mr Sagwe, learned counsel for the applicant, and Mr Wabwire, learned state counsel for the respondents, made brief oral submissions which I have taken into account.
6. As far as I am concerned, this application is a non-starter and must fail.
7. At the outset, you would expect that the applicant demonstrates proprietorship of one of the land parcels mentioned. However, he has not stated what land he owns (if at all) and has not annexed any document to show that he actually owns any of the said parcels of land. Without that demonstration, it cannot be said that the applicant has any locus to affect the parcels of land mentioned. Secondly, and tied to the foregoing, none of the searches or green cards of any of the parcels of land mentioned are attached. One therefore cannot tell whether these parcels of land actually exist in the registers or who their proprietors are. Nowhere in the application is it mentioned who owns these parcels of land and this court cannot issue orders in respect of unknown parties and unknown titles.
8. For the above two reasons, this application is fatally defective and must be dismissed. It is hereby dismissed with costs to the respondents.
9. Orders accordingly.

DATED AND DELIVERED THIS 22 DAY OF MARCH 2023

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT KISII

