



Republic v Cheloti, Senior Resident Magistrate, Kajiado Law Court & another; Muyaa (Applicant) (Judicial Review Application E006 of 2021) [2023] KEELC 17028 (KLR) (24 April 2023) (Judgment)

Neutral citation: [2023] KEELC 17028 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
JUDICIAL REVIEW APPLICATION E006 OF 2021**

MN GICHERU, J

APRIL 24, 2023

BETWEEN

REPUBLIC APPLICANT

AND

**HONOURABLE B CHELOTI, SENIOR RESIDENT MAGISTRATE, KAJIADO
LAW COURT 1ST RESPONDENT**

THE HON ATTORNEY GENERAL 2ND RESPONDENT

AND

SAMUEL SONTU MUYAA APPLICANT

JUDGMENT

1. This ruling is on the notice of motion dated September 13, 2021. The motion which is brought under Articles 2(1), 3, 10(2) (a), 19, 23, 27(1) and (2), 40, 47, 60(b), 64(a), 159(1), (2) (a) and (e) of the *the Constitution* of Kenya 2010, Sections 13 and 19 of the *Environment and Land Court Act*, Sections 3, 4, 7, 8, 9, 10, 11 and 12 of the *Fair Administrative Action Act*, Section 18 and 25 of the *Land Registration Act*, Section 1A and 1B of the *Civil Procedure Act*, Order 53, Rules 1(1), (2), (4), 2, 3 and 7 of the *Civil Procedure Act* and *Rules*, Sections 8 and 9 of the *Law Reform Act* and all other enabling provisions of the law seeks two main orders.
 - (b) An order of *certiorari* be issued to bring to this court for the purposes of being quashed proceedings relating to as well as the decision and orders emanating from the ruling delivered by Honourable B Cheloti, SRM, Sitting at Kajiado Law Court on 17/8/2021 in case No. 68 of 2019, Mariaje Holdings Limited –versus- Joshua Mapio Mpaashe, for the purposes of being quashed.



- (c) An order of prohibition be issued to prohibit the enforcement by any entity of the decision and orders in the case mentioned in (b) above.
 - (d) Costs of these proceedings be provided for.
2. The motion is supported by twenty seven grounds, a verifying affidavit and four annexures. In a nutshell, the *ex parte* applicant raises the following issues.
 3. Firstly, he is the registered owner of two parcels of land numbers Kajiado/Kaputiei North/3898 and 3899 measuring 78.1 and 44.2 hectares respectively since 27/1/2006. His land does not share a boundary with L R Kajiado/Kaputiei –North/913 belonging to the first Interested Party or L R 842 belonging to second Interested Party.
 4. Secondly, on August 17, 2021, the first Respondent delivered a ruling in which an order was made for a survey of the *ex parte* applicant’s land even though he was not a party to Kajiado Chief Magistrate’s Court ELC No 68/2019. He was therefore condemned unheard and his property rights violated.
 5. Thirdly, the Senior Resident Magistrate’s Court lacked the pecuniary jurisdiction to entertain the matter. It is for the above stated and other reasons that the *ex parte* applicant brought this suit to court.
 6. The motion is supported by the second interested party in an affidavit dated November 11, 2021. The other parties to this suit did not file any responses to the notice of motion dated September 13, 2021.
 7. Counsel for the *ex parte* applicant and the one for the second interested party filed written submissions on January 26, 2022 and March 24, 2022. They identified the following issues for determination.
 - (i) Whether the Applicant’s right to a fair hearing was infringed?
 - (ii) Whether the procedure of challenging the decision of the Land Registrar was followed?
 - (iii) Whether the Applicant’s application is merited and should be allowed as prayed?
 8. I have carefully considered the application in its entirety including the grounds, verifying affidavit, annexures, affidavit by the second interested party, the written submissions and the law cited therein. I make the following findings on the three issues raised on the submissions.
 9. On the first issue, I find that the Applicant’s right to a fair hearing was not infringed upon. The learned Magistrate did not make any determination on the Applicant’s boundary. All that she did was to refer the matter to the entity that has the jurisdiction to entertain boundary disputes. Sections 18(2) of the [Land Registration Act](#) ousts the jurisdiction of courts to deal with boundary disputes. It provides as follows;

“The court shall not entertain any action or other proceedings relating to a dispute as to boundary of registered land unless the boundaries have been determined in accordance with this section”.
 10. From the record, especially the report dated March 15, 2021, it is clear that the boundary dispute remained unresolved. The report reads in part as follows.

“Conclusion

We suspect there is an overlap in several parcels and that overlap is as a result of suspected beacon boundaries tampering/ interference. Ground boundaries /beacon as shown by proprietors during site visit cannot accommodate the registered area of that parcel of land.



Recommendation

This matter should be referred to Land Registrar to enable a comprehensive general audit of the above parcel of land and neighbouring land parcels to identify the genesis of the dispute and cure it...”

The Land Registrar has power under Sections 14, 18, 19 and 20 of the *Land Registration Act* to perform various duties and to compel land owners to comply with various orders. Such powers under Section 20(2) of the Act include the demarcation of any boundary mark. It is an offense to fail to comply with an order issued by the Land Registrar. It is also an offence under Section 21 of the *Land Registration Act* to interfere with boundary features. In this case, we are told, there was suspected tampering with boundaries.

Referring the case to the surveyor was therefore proper. It goes without saying that the Land Registrar is expected to afford the parties appearing before him/her a fair hearing as required by Article 50(1) of *the Constitution* of Kenya.

11. Regarding the second issue, my understanding of the case is that the boundary dispute remained unresolved and that is why the learned Magistrate made the referral that is the subject of this suit. The boundary determination was inconclusive because the suspected boundary interference by other parcels in the vicinity needed to be audited.
12. On whether or not the learned Senior Magistrate had jurisdiction to entertain the dispute, I find that that issue should have been raised before the trial court which had power to call for valuation reports of the property in question. In that forum all the parties would have been heard before the court could decide. It is not proper for this court to deal with the issue of the trial court’s jurisdiction without any evidence from either party on the value of the property in question.
13. On the final issue of whether the Applicant’s application is merited, I find that it is not for the reasons already given.
14. For the foregoing reasons, I dismiss the notice of motion dated September 13, 2021 with costs to the Respondents. It so ordered.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 24TH DAY OF APRIL, 2023.

M N GICHERU

JUDGE

