



**Rahman v Gichuhi & another (Environment and Land Appeal
35 of 2022) [2023] KEELC 17815 (KLR) (29 May 2023) (Judgment)**

Neutral citation: [2023] KEELC 17815 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND APPEAL 35 OF 2022**

MN GICHERU, J

MAY 29, 2023

BETWEEN

JAVED IQBAL ABDUL RAHMAN PLAINTIFF

AND

MARY NYAMBURA GICHUHI 1ST DEFENDANT

LAND REGISTRAR, KAJIADO 2ND DEFENDANT

JUDGMENT

1. This judgment relates to the Appellant's appeal against the ruling of District Land Registrar, Kajiado dated 17/6/2022. In the ruling the Land Registrar found that the Appellant's land namely Mailua/95 had encroached onto the Respondents LR No Meto/47 and ordered that the river should mark the boundary between the two parcels. In arriving at this verdict, the Land Registrar relied on the District Surveyor's report.
2. In a report dated 23/2/2022, the District Surveyor Kajiado found that the dry river defines the common boundary between the two parcels. The report explains the methodology used and the findings.
3. Dissatisfied with the verdict of the District Surveyor and the District Land Registrar the Appellant filed a memorandum of appeal dated 5/8/2022 outlining the following grounds of appeal. The District Land Registrar:-
 - ii. Erred in failing to appreciate that there will be an encroachment over the Appellant's parcel if land of the original points, G, E and F marked by angle- iron concrete are disregarded and an imaginary point F, C and E not clearly marked is adopted.
 - iii. Did not adjudicate the dispute impartially and was influenced by extraneous matters hence the erroneous decision.
 - iv. Erred in fact and in law by failing to make an unconditional finding in favour of the Appellant.



- v. Erred in fact and in law in failing to evaluate and analyze the evidence in support of the Appellant's case.
 - vi. Erred in fact and in law in failing to conduct an independent interrogation of the dispute by relying completely on the findings and proceedings of junior land officers and in failing to explain detailed findings in the report.
 - vii. Erred in law and in fact in failing to call up the parties in order to interrogate their testimony vis – a – vis the evidence and wholly relying on the surveyor's report to make a finding.
 - viii. Erred in law and especially with regard to her authority accorded by Sections 14 and 18 of the [Land Registration Act](#) by failing to interrogate the dispute personally in order to establish the truth from the testimony and evidence of the parties and instead circumventing the scope of his duty by relying on the finding of junior land officers to purport to establish a conclusive finding.
 - ix. Erred in law and in fact in failing to employ the dictates of the [Fair Administrative Action Act](#) which compels an administrator to accord affected persons with an opportunity to attend proceedings in person or in the company of an expert of his choice, to be heard and an opportunity to cross-examine persons who gave adverse evidence against them.
 - x. Erred in law and in fact by assuming that the dry river defines the boundary of the disputed parcels and disregarded clearly marked iron angle points that had been in existence for a long time.
 - xi. Erred in law and in fact by failing to acknowledge that the marked boundary had been in existence for a long time and the Respondent never indicated any issue with the boundary.
4. For the above reasons, the Appellant prays:-
- a. That the appeal be allowed.
 - b. That the Registrar's decision dated 5/7/2022 and all consequential order be set aside.
 - c. The Registrar be ordered to revisit the dispute in compliance with Sections 14 and 87 of the [Land Registration Act](#).
 - d. That the Appellant be awarded the costs of the appeal.
5. The Respondents though served, did not respond to the Appellant's appeal.
6. Counsel for the Appellant filed written submissions dated 15/2/2023 and identified two issues for determination as follows.
- i. Whether the determination was erroneous and ought to be set aside?
 - ii. Who bear the costs?
7. I have carefully considered the appeal in its entirety including the proceedings before the surveyor and before the registrar, the memorandum of appeal and the ground mentioned, the record of appeal, the submissions and the law cited therein.

I agree that a party must be given a fair hearing at any dispute resolution forum. From the record however, it is not clear as to what exactly happened when the surveyor and the Land Registrar visited the locus in quo. This is because the record is not elaborate. Unfortunately, the Appellant too has not



shed light on what transpired on the two dates. This would have made the court understand what exactly went wrong on either of the two dates.

8. Looking at the first ground of appeal, it talks of overlap. Yet I do not see that word overlap in the two reports by the Land Registrar or the surveyor.
9. On the second ground, I find that the Land Registrar did not err. Her mandate was to determine the boundary dispute. She did just that. If she found out that the Appellant's land encroached on that of first Respondent, then she was within her powers.
10. As for the third ground, no evidence has been adduced of any influence of the Land Registrar by extraneous players. The influence or impartiality is not obvious from the material filed.
11. The Land Registrar in her ruling could only find for one party but not for both. In finding in favour of the first Respondent and not the Appellant she made no error.
12. The fifth ground is the effect that the Land Registrar erred in failing to evaluate and analyse the evidence in support of the Appellant's case. No evidence was adduced at all. The only thing the registered owners did was walk along the boundaries of what they said was their land. There was no other evidence. There was therefore no evidence to analyse.
13. On ground six, there is nothing to show that the procedure adopted by the registrar was a departure from the normal procedure. Since the registrar may not be a surveyor, she had to rely on the surveyor and whether the surveyor is junior or senior to the registrar is immaterial. What is material is that he was qualified to do the work that he did. Under Regulation 40(4) of the [Land Registration \(General\) Regulations 2017](#), a Land Registrar is to be guided by the survey office.
14. Just like the previous ground, there is nothing to show that after the surveyors report, the registrar should call up parties and hear them. There is also no allegations that the Appellant requested to be heard and was not heard. There is some evidence that the surveyor asked him to go round his land.
15. The eighth ground of appeal is covered by the finding on grounds six and seven because it concerns failure to interrogate the dispute personally and relying on junior officers.
16. Regarding the ninth ground, like I said in paragraph (7) above there is inadequacy of material by the surveyor, the registrar and the Appellant on exactly what happened during the boundary demarcation exercise and more importantly, what went wrong.
17. On the penultimate ground, it was for the appellant to prove during the demarcation of the boundary that his land went beyond the river. He has not shown that he did this and it was disregarded by the Land Registrar.
18. Finally, the Appellant cannot be heard to say that the Respondent was satisfied with the boundary as it is recorded in the proceedings before the Land Registrar that she complained that the Appellant had encroached on her land. The Appellant also complained that the first Respondent had brought down a fence he had put up. This by itself is a boundary dispute and it is what the Land Registrar went to the locus in quo to resolve.
19. For the above stated reason, I find no merit in the appeal. I dismiss it. There will be no order as to costs since the Respondents did not file any response.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 29TH DAY OF MAY, 2023.

.....



M.N. GICHERU
JUDGE

