



**Kinuthia v District Land Registrar, Kiambu & 2 others (Environment and Land Case Judicial Review Application E003 of 2023) [2023] KEELC 19915 (KLR) (21 September 2023) (Ruling)**

Neutral citation: [2023] KEELC 19915 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT THIKA**  
**ENVIRONMENT AND LAND CASE JUDICIAL REVIEW APPLICATION E003 OF 2023**  
**JG KEMEI, J**  
**SEPTEMBER 21, 2023**  
**IN THE MATTER OF THE FAIR ADMINISTRATION ACTIONS ACT NO. 4 OF 2015**

**BETWEEN**

**WILSON NJUGUNA KINUTHIA ..... APPLICANT**

**AND**

**DISTRICT LAND REGISTRAR, KIAMBU ..... 1<sup>ST</sup> RESPONDENT**

**DISTRICT SURVEYOR, KIAMBU ..... 2<sup>ND</sup> RESPONDENT**

**THE HON ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. The Applicant filed a Notice of Motion dated the 24/4/2023 under Section 4, 6, 7 of the *Fair Administrative Action Act*, Rules 40 (8) and 41(2) of the *Land Registration General Regulations 2017* and Section 10 of the *Public Officers Ethics Act* and all enabling provisions of the law seeking the following orders;
  - a. Spent
  - b. That an order of mandatory injunction do issue compelling the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to ascertain and fix the boundaries of title No Ndumberi/Ndumberi/T622 measuring 0.54 acres within 14 days of the order.
  - c. Costs to be provided.
2. The application is supported by the grounds annexed thereto and the supporting affidavit of the Applicant sworn on the 24/4/2023. The Applicant deposed that he is the registered owner of the suit land and that on the November 21, 2020 he sought for the ascertainment and fixing of the boundaries of the suit land from the Director of Survey who on the 4/12/2020 directed him in writing to seek the



services of the 1<sup>st</sup> Respondent. That on the 18/3/2021 he paid for the said ascertainment services with the 1<sup>st</sup> Respondent and obtained a receipt thereof. That despite fixing the site visit for the 28/10/2021, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents have never carried out the exercise.

3. That the Respondents have failed in their statutory duties as set out in the [Land Registration Act](#) and urged the Court to compel them to so carry out their duties as set out in the Act.
4. The application is unopposed despite service of the same.
5. Despite directions having been taken to file written submissions, none of the parties complied.
6. That notwithstanding I shall determine the application based on what was placed before me.
7. It is not in dispute that the Applicant is the registered owner of the suit land having been so registered on the 14/11/94. The gist of the Applicant's case is that the Respondents ascertain and fix the boundaries of the suit land. It is his averment that despite paying for the services the 1<sup>st</sup> and 2<sup>nd</sup> Respondents have failed to carry out a statutory duty provided for by the Act.
8. Fixing and ascertainment of boundaries is provided for under Section 18 and 19 of the [Land Registration Act](#) as follows:-

“

“18.

- (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](#).

19.

- (1) if the Registrar considers it desirable to indicate on a field 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.”
9. Under Section 4 of Fair Administrative Actions Act every person has a right to administrative action which is expeditious, efficient, lawful, reasonable and procedurally fair. It is the view of the Court that the ascertaining and fixing of the boundary is the mandate of the Land Registrar in law. Once a party requests and pays for an administrative service, a Public Officer ought to provide the service in default the reasons for non-compliance must be given. Section 4(2) of Fair Administrative Actions Act states as follows:-
  - “(a) Every person has the right to be given written reasons for any administrative action that is taken against him.”
10. Under subsidiary legislation Section 40 and 41 of the *Land Registration Act* provides a detailed manner in which a request from a land owner ought to be handled by the Land Registrar who has 60 days to act on the request.
11. The provisions are set out as follows;
  - “40. Application for re-establishing a missing boundary or ascertainment of a boundary in dispute
    1. An interested person may apply to the Registrar for the ascertaining of a missing boundary or a boundary in dispute under Section 18(3) of the *Act* in Form LRA 23 set out in the Sixth Schedule.
    2. The Registrar shall issue a notice in Form LRA 24 set out in the Sixth Schedule to all persons appearing in the register that may be affected or such other persons as the Registrar may deem necessary for resolution of the dispute if a person has complied with paragraph 91).
    3. The Registrar shall notify the office responsible for survey of land of the intended hearing of a boundary dispute and require their attendance if a person has complied with paragraph (1).
    4. In determining a boundary dispute lodged in accordance with paragraph (1) the Registrar shall be guided by the recommendation of the office responsible for survey of land.



5. The Registrar shall, after giving all persons appearing for the hearing in accordance with the notifications sent under paragraphs (1) and (2) an opportunity to be heard, make a determination of the dispute and inform the parties accordingly.
6. Any party aggrieved by the decision of the Registrar made under paragraph (5) may, within thirty days of the date of notification, appeal the decision to the Court.
7. Upon expiry of thirty days, the Registrar shall-
  - a. Cause to be defined by survey the precise position of the boundaries in question;
  - b. File a plan approved by the authority responsible for survey of land containing the necessary particulars; and
  - c. Make a note in the register that the boundaries have been fixed, and thereupon the plan shall be deemed to define accurately the boundaries of the parcel
8. A dispute for determination of a boundary and or parcel shall, unless in the case of special circumstances, be completed within a period not exceeding six months from the date of filing the application.

41. Application for ascertaining and fixing boundaries

- (1) An interested person may apply to the Registrar for the ascertaining and fixing of boundaries of land under Section 19(1) of the Act, in Form LRA 23 set in the Sixth Schedule.
- (2) The notice issued by the Registrar under Section 19(1) of the Act shall be in Form LRA 24 set out in the Sixth Schedule.
- (3) When making a decision under Section 19(1) of the Act, the Registrar shall follow the procedure outlined in Regulation 40.”

12. From the above provisions of the law the Court finds that the Applicant is deserving of the orders.

13. I find that the application is un rebutted and I allow it as follows;

- a. The commendable order in the circumstances of this application is an order of *mandamus* compelling the Respondents to ascertain and fix the boundaries of the suit land within the next 60 days.
- b. I make no orders as to costs.

14. Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 21<sup>ST</sup> DAY OF SEPTEMBER, 2023 VIA MICROSOFT TEAMS.**

**J G KEMEI**



**JUDGE**

