



**Warumoge (Suing as the legal representative of the Estate of Hassan Mohamed Matan (Deceased) v County Surveyor Kajiado County & another (Environment & Land Case E104 of 2022) [2023] KEELC 20840 (KLR) (19 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 20840 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT & LAND CASE E104 OF 2022  
MN GICHERU, J  
OCTOBER 19, 2023**

**BETWEEN**

**SUBAN ABDI WARUMOGE (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF HASSAN MOHAMED MATAN (DECEASED) ..... APPLICANT**

**AND**

**THE COUNTY SURVEYOR KAJIADO COUNTY ..... 1<sup>ST</sup> RESPONDENT**

**AREA CHIEF NAMANGA LOCATION ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. This ruling is on the notice of motion dated 25/1/2023. The motion which is under section 3A of the *Civil Procedure Act*, orders 40 rule 1 and 51 rule 1 of the *Civil Procedure Rules*, articles 47(1), 48, 159(1), (2), (a) and (2) (b) of *the Constitution* of Kenya and other enabling provisions of the law seeks the following orders.
  - i. Pending the hearing and determination of the suit, the court be pleased to issue an injunction restraining the Respondents whether by themselves or through their agents, servants, employees or anyone claiming through or deriving authority from them from unlawfully intercepting, tampering, interfering, trespassing, altering the boundaries of, alienating and/ or in any manner whatsoever dealing with all that parcel of land known as L.R. Kajiado/ Meto/217, suit land measuring approximately 0.0051 hectares.
  - ii. Pending the hearing and determination of this suit, the court be pleased to issue an injunction restraining any changes touching on the suit land.
  - iii. The court makes such further orders and/or directions as it deems fit and just.



2. The motion is supported by an affidavit sworn by Suban Abdi Warumoge and eighteen (18) grounds. The affidavit has eight (8) annexures. In summary, the Plaintiff is saying that she is the wife of the late Hassan Mohamed Matan who is the registered owner of the suit land. The Respondents have on several occasions interfered with the Plaintiffs peaceful and quiet possession on allegations that the suit land has encroached on other parcels. It is this exercise of boundary demarcation that the Plaintiff seeks the court's assistance to restrain. The motion is unopposed even though it was duly served on the Respondents.
3. Upon consideration of the motion in its entirety, I find that it has no merit for the following reasons.
  1. Firstly, section 18(2) of the *Land Registration Act* ousts the jurisdiction of the court in boundary disputes of registered land unless the boundaries have been determined by the registrar. It is only after the Land Registrar has determined the boundary that the court acquires jurisdiction.
  2. Secondly, under the *Land Registration (General) Regulations*, 2017 regulation 40(4) it provided as follows.

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”.

From the deposition by the Plaintiff that the surveyor is threatening to visit the suit land, it is in fulfillment of regulation 40(4) above.
  3. Finally, the plaintiff has nothing to fear if she has not encroached onto her neighbours land parcels. She will be vindicated if there is no encroachment on her neighbours parcels.

For the above reasons, I dismiss the motion dated 25/1/2023. Costs in the cause.

**DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 19<sup>TH</sup> DAY OF OCTOBER, 2023.**

**M.N. GICHERU**

**JUDGE**

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**HON. JUSTICE M.N. GICHERU**

