



**Matini v Lagat & another (Environment & Land Case 42 of 2022)
[2023] KEELC 21156 (KLR) (18 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 21156 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ITEN
ENVIRONMENT & LAND CASE 42 OF 2022**

**L WAITHAKA, J
OCTOBER 18, 2023**

BETWEEN

LUKAH KIMALEL MATINI PLAINTIFF

AND

JAMES KIPROP LAGAT 1ST DEFENDANT

JAMES KIPKEMOI KIPROP 2ND DEFENDANT

RULING

1. The notice of motion dated 22nd June 2023 filed under Sections 1A, 1B and 3A of the [Civil Procedure Act](#), Order 12 Rule 7 and Order 51 Rule 1 of the [Civil Procedure Rules](#) seeks the following prayers;
 1. Spent.
 2. The Honourable Court be pleased to vacate and/or set aside the proceedings of the 20th of June, 2023 and any other consequential orders emanating therefrom.
 3. That the Honourable court be pleased to reinstate the Plaintiff's suit so that it may be heard and determined on a priority basis and determined on merit.
 4. Upon the grant of prayer above, the Honourable Court be pleased to transfer this matter to Kabarnet Environment & Land Court for final determination of this suit since the parcel of land falls within its jurisdiction.
 5. Costs be provided for.
2. The application is premised on the grounds on its face and is supported by the affidavit of Wilson Kigen sworn on 22nd June 2023. He deposes that the matter was coming up for mention on 20th June 2023 but he failed to log in at around 9:40 a.m. as there was a technical hitch and poor internet connection.



3. That he later visited Iten Law Courts registry and was informed that the plaintiff's suit had been dismissed for non-attendance; that failure to attend court virtually was due to circumstances beyond his control and was non-deliberate. He states that unless the prayers sought are granted, the plaintiff/applicant will suffer substantial loss as the respondents have already encroached onto substantial portions of the plaintiff's parcel of Land; that the County surveyor was to visit the suit parcels on the 27th July, 2023 and it would only be just and fair if the matter is reinstated. He prays that if the suit is reinstated, the same be transferred to Kabarnet Environment & Land Court Sub registry as the suit property is situated in Baringo.
4. The application is not opposed.
5. Order 12 Rule 7 of the [Civil Procedure Rules](#) provides;

“Where under this order judgment has been entered or the suit has been dismissed, the court, on application, may set aside or vary the judgment or order upon such terms as may be just.”
6. The plaintiff filed the instant suit on 17th April 2017. In paragraph 4 of his plaint, the plaintiff alleges that the 1st defendant who is the registered proprietor of parcel No. Sacho/Kabarnet/351, has encroached onto his land parcel Sacho/Kabarnet/352. He seeks an order of permanent jurisdiction to restrain the defendants by themselves, agents and/or servants from interfering, trespassing, intermeddling and/or in any other manner dealing with the plaintiff's use, occupation, possession and/or ownership of parcel No. Sacho/Kabarnet/352.
7. On 30th January 2019, Odeny J delivered a ruling as follows;

“I notice that this is a boundary dispute that can only be handled by a surveyor. The County Surveyor can only deal with the parcels underlined in the plaint that belongs to the plaintiff and the defendant that is Sacho/kabarak/351 and 352. Parties to agree on how the survey is to be carried out. This being a boundary dispute which falls under Section 18 and 19 of the [Land Registration Act](#) where the Court has no jurisdiction to handle. The County Surveyor is well placed to carry out the survey without the court being urged to drag other parties who are not parties to the suit. The office of the County Surveyor has mechanisms of summoning the parties for the survey to be carried out if they are of the technical view that their presence is necessary for sorting out the boundary dispute which would also be in their interest.”
8. In the above ruling, the court held that it had no jurisdiction to hear and determine the dispute and referred it to the County Surveyor. In the case of [Peter Gichuki Kingara vs Independent Electoral and Boundaries Commissions & 2 others](#) (2013) eKLR the court expressed;

“It is our considered view that passage or lapse of time does not and cannot confer jurisdiction; jurisdiction is a continuum, jurisdiction cannot lack today and by passage or lapse of time exist tomorrow. Jurisdiction is either present abinitio or absent forever”
9. In applying the above holding to the circumstances of this case, it is my considered view that this court still lacks jurisdiction to hear and determine the suit. Consequently, I find the application unmerited and I dismiss it with no orders as to costs as the application was not defended.
10. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY, AT ITEN THIS 18TH DAY OF OCTOBER 2023.



L. N. WAITHAKA
JUDGE

