



Muteru v County Land Registrar, Laikipia; James & another (Interested Parties) (Environment & Land Miscellaneous Case 1 of 2022) [2023] KEELC 21990 (KLR) (22 November 2023) (Judgment)

Neutral citation: [2023] KEELC 21990 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NANYUKI
ENVIRONMENT & LAND MISCELLANEOUS CASE 1 OF 2022
AK BOR, J
NOVEMBER 22, 2023
(FORMERLY NYERI ELC MISC E005 OF 2021)**

BETWEEN

ALICE MUGURE MUTERU APPLICANT

AND

COUNTY LAND REGISTRAR, LAIKIPIA RESPONDENT

AND

JOSEPH KIMATHI JAMES INTERESTED PARTY

DAVID MURAGURI MURIUKI INTERESTED PARTY

JUDGMENT

1. The Applicant filed the Originating Summons dated 21/5/2021 seeking to have this court give an opinion as to whether the purported exercise of power by the Land Registrar, Laikipia County, to determine the boundary dispute in respect of Nanyuki Marura/Block 3/3792 (Sweetwaters) and Nanyuki Marura/Block 3/12358 to 12365 (Sweetwaters) which was formerly Nanyuki Marura/Block 3/3791 under Section 21 (b) of the repealed *Registered Land Act* was lawful. Secondly, she sought an opinion as to whether the visit by the Land Registrar to the site on 15/4/2021 amounted to a boundary dispute determination given that the Registrar did not establish and fix the boundaries of the parcels in dispute based on the titles held by the Applicant and the Interested Parties as well as the mutation in respect of the subdivision of parcel number 1366.
2. The Applicant also sought an opinion from the court as to whether the Land Registrar's recommendation contained in her ruling to the effect that the surveyor had to carry out an investigation survey and reestablish the boundary marks which were removed to where they ought to be using the measurements in the mutation and the amended Registry Index Map (RIM) amounted to proper exercise of her powers under Sections 18 and 19 of the *Land Registration Act*. Further, she sought an



- opinion on whether the Land Registrar's recommendation for her to remove her fence amounted to a lawful order given that the Registrar failed to cause to be defined by survey the precise boundaries of the parcels in question.
3. The Applicant invited the court to set aside the Respondents ruling of 15/4/2021 and instead an order compelling the Respondent to cause to be defined by survey, the precise positions of the boundaries in respect of her land being parcel 3792 and parcel No. 3791 prior to the subdivision and creation of parcel Nos. 123858 - 12365 using the titles held by the Applicant and the interest parties as well as mutation reference no. 195655 and to file a plan containing the necessary particulars and make a note in the register that the boundaries had been fixed. In addition, the Applicant sought an order to compel the Respondent to cause boundary features to be fixed to demarcate her land and the Interested Parties' property.
 4. The suit which was filed as a miscellaneous suit was brought under Sections 18, 19, 86 and 101 of the *Land Registration Act*, Order 37 Rule 8 of the *Civil Procedure Rules* and Sections 1A, B and 3A of the *Civil Procedure Act*. The grounds on which the application is premised were set out in the face of the summons, with the main one being that the Respondent had issued a ruling requiring the Applicant to remove the fence which demarcates her parcel of land. The Applicant claimed that the Respondent purported to carry out a boundary dispute determination without causing a survey to be carried out to define the positions of the boundaries. The other ground was that the ruling of the Land Registrar did not conform to the law and that the Applicant stood to suffer irreparable loss if the application were not granted.
 5. The Applicant swore the affidavit in support of the application and annexed a copies of her title deed issued on 6/9/2005 and of the title for parcel no. 3791. She also exhibited the mutation forms for the suit land dated 7/1/2005 as well as the report prepared by the Land Registrar dated 15/4/2021.
 6. The 2nd Interested Party swore the replying affidavit in opposition to the Originating Summons. He averred that they were the registered proprietors of parcel no. 3791 which they caused to be subdivided into 8 parcels known as 12358 to 12365. He confirmed that their parcel of land and that of the Applicant resulted from the subdivision of parcel no. 1366. He averred that when carrying out the determination of the boundaries, the Land Registrar, Laikipia under the guidance of the surveyor, used the mutation which defines those subdivisions and the RIM.
 7. He went on to state that upon subdivision of their land, they created an access road bordering the Applicant's parcel of land. He denied that the boundary dispute arose following the subdivision of their land and contended that the Applicant removed the boundary marks and erected a fence encroaching onto the access road. He added that the Applicant participated in the boundary determination exercise and was at liberty to be accompanied by her private surveyor. That upon conclusion of the boundary determination exercise, they together with the Applicant were shown the common boundary between the access road and the Applicant's land.
 8. He maintained that the Land Registrar's ruling was self-explanatory. He added that the appropriate remedy for the Applicant would have been to apply to the land Registrar under Section 19 of the *Land Registration Act*. He reiterated that the Land Registrar carried out the boundaries determination exercise in conformity with Section 19 of the *Land Registration Act* and went on to add that a survey relating to freehold agricultural titles issued under the repealed Registered Land Act was not a fixed boundary but was a general survey which is why the title deed gives the approximate size.
 9. The matter was transferred from Nyeri Law Courts to the Nanyuki ELC in July 2022. The Respondent filed a replying affidavit on 16/5/2023 which was sworn by Pamela M. Mutegi, the Land Registrar, Laikipia County opposing the suit. She averred that the subdivision of parcel no. 3791 to create parcel



numbers 12358 - 12365 created a 7.5 metre access road between the parcels of land. She averred that although the road was not in use, the boundary marks had been marked on the ground but that the Applicant removed them as well as the fence between her land and the access road before extending her fence into the access road which effectively gave rise to the boundary dispute. The dispute was referred to her office by the area Chief, Marura Location. She stated that she carried out the boundary dispute determination exercise pursuant to Section 18 (3) of the [Land Registration Act](#) and exhibited the proceedings and the ruling dated 15/4/2021 to her affidavit.

10. She deponed that during the site visit on 15/4/2021, they found that there was no evidence of an existing boundary and she therefore relied on the County Surveyor's findings to establish the boundary. She stated that those findings indicated that the Applicant had encroached onto the road of access by 3.5 meters. She exhibited the letter dated 22/4/2021 prepared by the County Surveyor regarding the boundary dispute.
11. The court directed parties to file submissions which it has considered. The Applicant submitted that save for recommending that the Applicant should remove the fence marking the boundary of her land, the Respondent did not through a survey place beacons to show precisely where the boundary of her land and that of the Interested Parties should be. She added that the Respondent issued a ruling stating that the surveyor had to carry out an investigation survey and reestablish the boundary marks which were removed using the measurements in the mutation forms and the amended RIM.
12. The Applicant contended that the purported exercise of powers under Section 21 (b) of the repealed [Registered Land Act](#) by the Land Registrar was void for relying on an obsolete law. She added that the Respondent did not supply the surveyor's report despite her requests which prompted her to commission a private surveyor to carry out an investigative survey. The Applicant quoted the findings of the private surveyor extensively.
13. The Applicant relied on Section 18 (2) of the [Land Registration Act](#) which she reproduced as well as various decisions including [Willis Ochola v Mary Ndege](#) (2016) eKLR; [Reuben Kioko Mutyaene v Hellen Kiunga Miriti & 4 Others; Ntalala Eric Mutura & Another \(Interested Parties\)](#) [2021] eKLR where the court reiterated that under Section 18 (2) of the [Land Registration Act](#) a party could not come to court without first seeking redress from the Land Registrar. Further, that it was the Registrar who was empowered to ascertain and fix the disputed boundaries after giving notice to all the affected parties. That it was only after determining the dispute that parties could move the court to challenge the decision of the Registrar.
14. The Applicant argued that in this case, the Land Registrar made a determination regarding the boundary dispute and gave a ruling through which she was aggrieved and therefore moved this court to challenge that decision pursuant to Section 86 (1) of the [Land Registration Act](#). The Applicant relied on Section 19 of the [Land Registration Act](#) on the procedure the Land Registrar is required to follow when making a boundary dispute determination. The Applicant invited the court to look at the Registrar's ruling notably the bit where she indicated that the Applicant had removed the boundary marks and extended her fence into the access road without disclosing the source of that information.
15. Further, she contended that although the report indicated that one Lanet Murugi, County Surveyor was present, there was no indication in her ruling to show that she requested the surveyor to survey



the plots in question to determine and properly fix their boundaries. She adverted to the clause in the report stating that

“surveyor has to carry out an investigation survey and re-establish the boundary marks which were removed to where they ought to be using the measurement as per the mutation and the amended RIM.”

She stated that it was curious that the Land Registrar then proceeded to refer to a surveyor’s findings before ordering her to remove her fence. She added that if there was a Surveyor’s report, it would have been supplied to her when she requested the Respondent who failed to furnish her with a copy.

16. The Applicant referred to the case of [George Kamau Macharia v Dexka Limited](#) [2019] eKLR where the court observed that the mandate to resolve boundary disputes lay with the Land Registrar who had the technical advice on resources of the District Surveyor to determine and ascertain boundaries. In that case, the court directed the plaintiff to take the steps contemplated in Section 18 (2) of the [Land Registration Act](#).
17. The Applicant concluded that if the Respondent were to correctly determine the boundary between her land and that of the Interested Parties using the sizes indicated in the title deeds and the mutation, she would find that the RIM contained an error and amend it.
18. On their part, the Interested Parties submitted that the Land Registrar acted in conformity with Sections 18 and 19 of the [Land Registration Act](#) when she carried out the boundary determination exercise and found that the Applicant had removed the boundary marks between her land and the access road. They submitted that the surveyor was present during the proceedings and that it was that surveyor who carried out a survey and found that the Applicant had encroached onto the access road by 3.5 metres.
19. The Interested Parties contended that it was a principle of law that a decision made by a public officer was presumed to be regular unless the contrary was proved. They urged that the Applicant had not made out a case to warrant the court’s interference with the Land Registrar’s decision. They argued that there was no basis for doubting the joint report prepared by the Land Registrar and the County Surveyor regarding the determination of the boundary dispute relating to parcel no. 3792 and parcel numbers 12358 to 12365 which were created from parcel no. 3791.
20. They referred the court to the decision in [Francis Wanjohi Methu v David Mbutia Karogo](#) [2016] eKLR in which the court ordered that the boundaries of the suit properties would remain as fixed by the surveyor and the Registrar since there was no basis for doubting the report filed in court following the site visit by the Land Registrar and the District Surveyor.
21. The Respondent submitted that she exercised her powers under Section 18 of the [Land Registration Act](#). Regarding the information of moving the fence, the Respondent submitted that the Applicant admitted that she put up the fence in January 2021 after what she termed as encroachment on her land by the Interested Parties. That that was what prompted the Interested Parties to report the dispute to the area Chief who in turn escalated it to the Respondent.
22. The Respondent urged that it was clear from the proceedings that the County Surveyor was present during the hearing and that the Registrar’s ruling took into consideration the findings of the County Surveyor after she carried out an investigation survey to reestablish the boundary marks which had been removed by the Applicant in violation of Section 21(1) of the [Land Registration Act](#). The Respondent adverted to the findings of the County Surveyor regarding the encroachment while pointing out that in her letter the County Surveyor gave the date when she visited the disputed parcels which the



Respondent invited the court to note was the same date that the Respondent held the hearing of the dispute.

23. The main issue for determination is whether or not the court should set aside the Respondent's ruling of 15/4/2021 and issue an order compelling the Respondent to cause to be defined by survey, the precise positions of the boundaries in respect of her land and those of the Interested Parties and the access road that was created upon the subdivision of their land into 8 plots.
24. The court notes that the report prepared by the Land Registrar is dated 15/4/2021 and observes at page 4 that the surveyor

“has to carry out an investigation survey and re-establish boundary marks which were removed to where they ought to be, using the measurements as per the mutation and the amended RIM”.

The surveyor's report which the Respondent exhibited to her affidavit is dated 22/4/2021, which on the face of it appears to have been prepared a week after the Land Registrar had made her determination on the boundary dispute. The Respondent did not address the issue of her failure to supply a copy of the surveyor's report to the Applicant.

25. Section 18 of the *Land Registration Act* stipulates that except where it is noted in the register that the boundaries of a parcel of land have been fixed, the cadastral mark and any field plan should be deemed to indicate the approximate boundaries and the approximate situation of the parcel. Section 18(3) gives the Registrar the discretion to receive evidence as to the boundaries and situation where necessary in proceedings concerning the parcel.
26. Section 19 of the *Act* deals with fixed boundaries and gives the Registrar the leeway to indicate on a field plan approved by the office or authority responsible for the survey of the land or otherwise to define in the register the precise position of the boundaries of a parcel or its parts or where an interested person applies to the Registrar, the Registrar is to give notice to the owners and occupiers of the adjoining lands of the intention to ascertain and fix boundaries. That section requires the Registrar to afford all persons appearing in the register an opportunity to be heard before causing to be defined by survey the precise position of the boundaries in question. Thereafter, the Registrar is to file a plan containing the necessary particulars and make a note in the register that the boundaries have been fixed following which the plan should be deemed to accurately define the boundaries of the land.
27. That is the mandate which the Land Registrar was discharging in the boundary dispute that is the subject of these proceedings. Going by the report which the Registrar prepared and produced in this case, it is clear that the precise position of the boundaries of the parcels in question have not been defined by a survey and there is no indication that the Registrar filed a plan containing the necessary particulars or that she made a note on the register that the boundaries in dispute had been fixed.
28. The report prepared by the Registrar in this court's view does not comply with Section 19 of the *Land Registration Act*. Consequently, the court makes the following orders;
 - i) The Respondent is directed to ascertain and fix the boundaries between parcel no. 3792 belonging to the Applicant and parcel numbers 12358 to 12365 which were created from the subdivision of parcel no. 3791 within 30 days of this ruling.
 - ii) The Registrar will cause to be defined by a surveyor the precise position of the boundaries for these parcels of land and file a plan containing the necessary particulars in accordance with Section 19 of the *Land Registration Act*.



- iii) The Registrar will make a note in the register that the boundaries for these parcels of land have been fixed in conformity with the Act.
- iv) The Registrar will cause boundary features to be fixed to demarcate the actual location of parcel no. 3791 belonging to the Applicant and parcel numbers 12358 to 12365 belonging to the Interested Parties which were created from the subdivision of parcel no. 3791.

29. Each party will bear its costs.

DELIVERED VIRTUALLY AT NANYUKI THIS 22ND DAY OF NOVEMBER 2023.

K. BOR

JUDGE

In the presence of: -

Mr. Moses Kamau for the Applicant

Ms. Emily Miano for the Interested Parties

No appearance for the Respondent

