



**Kamau v Koibita (Environment & Land Case 158 of 2009)
[2023] KEELC 21767 (KLR) (21 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21767 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 158 OF 2009
LN MBUGUA, J
NOVEMBER 21, 2023**

BETWEEN

NICHOLAS RAGAE KAMAU PLAINTIFF

AND

DOMINIC NJAU KOIBITA DEFENDANT

RULING

1. The Plaintiff commenced this suit by a plaint dated 22.3.2009. He contends that he is the registered proprietor of LR Kiambaa/Karura/T.623 measuring 0.120 ha which borders the Defendant's parcel known as LR Kiambaa/Karura/T.624 and that both parcels are subdivisions of Kiambaa/Karura/T.289 pursuant to a mutation dated 6.12.2007 and registered at Kiambu District Land Registry on 1.2.2008.
2. He further contends that his parcel is trapezium in shape with dimensions of 127 meters in length and 18.5 meters wide at the base which forms the common boundary with the Defendant's parcel, while the Defendant's parcel is also trapezium in shape with dimensions of 44 meters in length 18.5 meters wide along the common boundary.
3. It is his case that in total disregard of his right to ownership of land, the Defendant has pushed the common boundary and encroached onto plaintiff's parcel by approximately 7 meters of land thereby reducing his parcel and rendering it too narrow for any meaningful construction and has further commenced construction of a permanent building on the said parcel.
4. In opposition, the Defendant filed a statement of defence dated 7.7.2009 contending that the measurements in the mutation are erroneous therefore giving erroneous acreage of the parcel No. Kiambaa/Karura/T.623 thus his construction is within his parcel, and has not encroached onto the Plaintiff's parcel.



5. On 23.5.2019, this court gave directions for the land registrar in charge of the area to make a determination and fix beacons within the framework of Section 18 of the [Land Registration Act](#). This ruling relates to the Kiambu Land Registrar's and surveyor's report dated 20.9.2023.
6. In the said report, the findings of the Kimabu Land Registrar and the surveyor concerning the Plaintiff's parcel Kiambaa/Karura/ T.623 is that;

“The ground acreage (0.095 Ha) is smaller than the registered acreage (0.12 Ha) by 0.025 Ha.”
7. On the other hand, the findings concerning the parcel known as Kiambaa/Karura/T.624 is that;

“The ground acreage (0.117Ha) exceeds its registered acreage (0.093 Ha) by 0.024 Ha.”
8. It is generally accepted that Land Registrars and Surveyors who are experts would be properly placed to determine a boundary issue. See the case of [Samuel Wangau v AG & 2 others](#) [2009] eKLR and [Arthur v Joseph Mwaura Njoroge](#) [2019] eKLR.
9. It is common ground that parcels Kiambaa/Karura/T.623 and Kiambaa/Karura/T.624's ground acreage and registered acreage differ. However, the report of the Land Registrar and the land surveyor failed to fix the boundaries as required by the law.
10. Nevertheless, there is no rocket science needed to discern that the defendant has excess acreage, while the plaintiff has less acreage of which the excess figure is more or less the same as the shortfall acreage, the same being 0.024 - 0.025 acres. Considering that the two suit parcels emanated from the same original parcel, then the court will proceed to align the acreage in the title document with the ground status. To this end, I make reference to the case of [Andrew Marigwa v Josephat Ondieki Kebati](#) [2017] eKLR where the court held that the Land Registrar's report had finally disposed off the matter.
11. To this end, the court gives orders that the report dated 20.9.2023 forms a basis for issuance of the final orders herein. The same are; That a portion of land measuring 0.024 acres is to be excised from parcel LR Kiambaa/Karura/T.624 belonging to the defendant, and the same shall be incorporated into plaintiff's parcel LR Kiambaa/Karura/T.623. The excision is to be done at the boundary of the aforementioned two parcels. The land registrar is to rectify the respective titles accordingly. Each party is to bear their own costs of the suit.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 21ST DAY OF NOVEMBER, 2023
THROUGH MICROSOFT TEAMS.**

LUCY N. MBUGUA

JUDGE

In the presence of:-

M/s Gatuhi for Plaintiff

Kanyoni Gachoka for Defendant

