



**Migwi v Migwi & another (Environment and Land Appeal  
22 of 2023) [2025] KEELC 3660 (KLR) (29 April 2025) (Judgment)**

Neutral citation: [2025] KEELC 3660 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT EMBU  
ENVIRONMENT AND LAND APPEAL 22 OF 2023**

**AK BOR, J**

**APRIL 29, 2025**

**BETWEEN**

**TARASIRA GATIRI MIGWI ..... APPELLANT**

**AND**

**NJERU M. MIGWI ..... 1<sup>ST</sup> RESPONDENT**

**SALESIO MURIUKI KIVUTI ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. Being dissatisfied with the decision of the Chief Magistrate, Honourable F. Kyambia delivered on 3/10/2023 in Embu CM ELC Case No. 5 of 2020, the Appellant lodged this appeal faulting the Learned Magistrate for accepting the land registrar's report dated 3/10/2023 which the Appellant contends did not cover the parcels of land whose boundaries were in question.
2. The Appellant averred in the Memorandum of appeal dated 1/11/2023 that the trial court summarily dismissed the suit without insisting on the execution of the orders issued for the survey to be carried out to ascertain the boundaries and the extent of the encroachment of the land known as Gaturi/Nembure/5733 onto Gaturi/Nembure/6148. The Learned Magistrate was also faulted for failing to find that a resurvey of the land mentioned in the earlier decree was essential to confirm whether there was encroachment of Gaturi/Nembure/6148 by the Respondents.
3. The issue which falls for determination in this appeal is whether the appeal has merit. The decree dated 24/8/2020 was clear that the common boundary between the land previously known as Gaturi/Nembure/6147 (which now comprises Gaturi/Nembure/5733, 11490, 12301, 12491 and 12492) and Gaturi/Nembure/6148 was to be ascertained and corrected by the Land Registrar, Embu in collaboration with surveyors appointed by each party.
4. From a perusal of the Land Registrar's report dated 2/10/2023 adopted by the trial court, it is clear that this was not the approach that the Learned Magistrate took. Instead, the report appears to be a replica



of an earlier report which the appellant had previously challenged and was the basis of her initiating CM ELC Case No. 5 of 2020.

5. The report was not prepared pursuant to a fresh exercise in terms of the court's judgement. The trial court failed to address whether the parties' surveyors participated in the exercise as ordered in the original decree. In this court's view, there is merit in the appellant's argument that the judgment of 20/8/2020 was not substantively executed.
6. The record also shows that the court adopted the report on 3/10/2023 despite the appellant stating that she had not seen the report. There is no indication that she was given an opportunity to interrogate its contents or cross examine the author before the report was adopted by the court. She was therefore condemned unheard.
7. The appeal has merit and is allowed in the following terms:
  - a. The ruling and orders of the learned Chief Magistrate dated 3/10/2023 are set aside.
  - b. The matter is remitted back to the Chief Magistrates Court for implementation of the orders of 24/08/2020.
  - c. The Land Registrar shall carry out a fresh survey to confirm the boundaries of the suit land in accordance with the law and in the presence of all the parties and their appointed surveyors and a fresh report filed.
  - d. Each party shall bear their costs of the appeal.

**DELIVERED VIRTUALLY AT EMBU THIS 29<sup>TH</sup> DAY OF APRIL 2025.**

**K. BOR**

**JUDGE**

In the presence of: -

Mr. Njeru Ithigah for the Respondent

Court Assistant- Diana Kemboi

No appearance for the Appellant

