



**REPUBLIC OF KENYA**

**High Court at Nairobi (Nairobi Law Courts)**

**Judicial Review 11 of 2010**

**IN THE MATTER OF: AN APPLICATION FOR AN ORDER OF MANDAMUS.**

**AND**

**IN THE MATTER OF: THE REGISTERED LAND ACT CAP 300 LAWS OF KENYA**

**AND**

**IN THE MATTER OF: NAIROBI/BLOCK94/78 AND NAIROBI/BLOCK 94/77**

**AND**

**IN THE MATTER OF: APPLICATION FOR JUDICIAL REVIEW**

**BETWEEN**

**REPUBLIC .....APPLICANT**

**VERSUS**

**THE DISTRICT LAND REGISTRAR .....RESPONDENT**

**EX-PARTE**

**DANIEL NJOGU NDUNG’U**

**AND**

**PATRICK KARIUKI MUIRURI.....INTERSTED PARTY**

**JUDGEMENT**

1. By a Notice of Motion dated 18<sup>th</sup> October, 2010, the *ex parte* applicant herein, **Daniel Njogu Ndung’u**, seeks the following orders:

**1 An Order of Mandamus be directed to the District Land Registrar, Nairobi (the Respondent) to hear an determine a boundary dispute between the Applicant and one Hon. Patrick Muiruri (hereinafter called (“the interested party”) herein touching on properties known as NAIROBI/BLOCK 94/78 and NAIROBI/BLOCK 94/77 respectively.**

**2 That costs be provided for.**

2. The grounds upon which the application is based as specified in the Statutory Statement are as follows:

**1 That the Respondent has a legal duty to hear and determine boundary disputes involving land registered under the Registered Land Act CAP 300 LAWS OF KENYA as power to determine such disputes vests exclusively on him by virtue of Section 21 of the Registered Land act 300 LAWS OF KENYA as read together with Section 22 of the said Act.**

**2 That the Respondent has refused to perform his said statutory duty to determine a boundary dispute between the Applicant and the interested party involving the 2 properties mentioned above.**

**3 That it is necessary for this Honourable court to issue an Order of Mandamus to compel the Respondent to perform the said duty.**

3. Similarly the facts upon which the same application is based as contained in the Statement are:

**1 The Applicant is the owner of the property known as NAIROB/BLOCK 94/78 which is adjacent to property known as NAIROBI/BLOCK 94/77 belonging to the interested party on which the interested party has erected a residential house.**

**2 Sometime during the year 2006 the Applicant decided to commence construction of a residential house on the said property.**

**3 Before the Applicant's contractor could start building the house, the Applicant had to establish the beacons on the said plot to ensure that the intended house was constructed within the same. He thus instructed a licensed private surveyor who discovered that the plot was smaller on the side which bordered or was adjacent to the interested party's plot. On taking measurements, he established that the plot had been encroached upon by the interested party who had built a wall along the common boundary which transgressed into his said property and reduced it by as much as 0.022 of a hectare or thereabout. The surveyor thereupon, on the Applicants instructions, prepared a survey report.**

**4 The applicant then approached the interested party in writing and asked him to rectify the situation but he declined to respond.**

**5 After the Interested party failed to respond, the Applicant's surveyor took the report to the director of surveys for authentication.**

**6 Upon receipt of the report of the Applicant's surveyor referred the matter to the Director of Surveys who later sent a Government surveyor to the site to verify his own findings after which he prepared his own report. The said report agrees with the one which was prepared by the applicant's surveyor.**

**7 By reason of the interested party's refusal to co-operate, the applicant had to build his house on the plot as it was. This necessitated the house being built on a slated plot.**

**8 The Applicant's house has now been completed with an incomplete compound whereas he is paying rates and all outgoings based on the assumption that he has a complete plot which is not the case. Further, the act of trespass perpetrated by the interested party reduces the value of the property and is prejudicial to the applicant.**

**9 As a result of the foregoing, the applicant instructed Messrs J. Mburu & Co Advocates (herein referred to as the advocates) to take up the matter.**

**10 Upon being instructed, the advocates wrote to the District Registrar requesting him for a hearing date of the dispute for the purpose of determining the same by virtue of powers conferred on him by Section 21 of the Registered Land Act ("the Act"). The Hearing date was set for 2<sup>nd</sup> October, 2008.**

11 On 2<sup>nd</sup> October, 2008 the matter could not proceed as the advocate for the Applicant was engaged in the High court at Mombasa.

12 After 2<sup>nd</sup> October, 2008 the advocates tried to obtain a fresh hearing date but no response was forthcoming from the Respondent.

13 On 31<sup>st</sup> July, 2009 a meeting was held between one Mrs Gicheha Assistant Commissioner of Lands, Mrs Mule and Mrs Gachathi both Registrars of Land on the one hand at the former's officer and the Applicant and his advocate, Mr John Mbau Mburu, Advocate of the Advocates firm on the other hand and it was agreed that Mrs Mule would commence proceedings with a view to determining the boundary dispute

14 Despite agreeing to commence proceedings and determine the dispute as aforesaid the "District Land Registrar reneged on his work and by a letter dated 22<sup>nd</sup> September, 2009 declined to handle the matter stating that his office was not mandated to determine boundary disputes involving "Fixed Boundaries"

15 The Applicant states that the Registrar's decision was based on wrong principles in so far as the term "Fixed Boundaries" mentioned in Section 21 of the Act refers to or envisages boundaries which have hitherto been fixed by the Registrar in the manner set out in section 22 of the Act and not fixed in any other manner, such as by as a Surveyor as in the instant case. Further, nothing regarding the description of "Fixed Boundaries" ousts the Registrar's power to determine boundary disputes and indeed, Section 21 (2) of the Act confers Jurisdiction to determine such disputes exclusively on the Registrar.

4. There was also a verifying affidavit sworn by the *ex parte* applicant on 26<sup>th</sup> February 2010 and filed with the Statement whose contents were limited to confirming the contents of the Statement and annexing copies of the documents relied upon. On 10<sup>th</sup> June 2010, the *ex parte* applicant swore a further affidavit in which he exhibited a letter from the District Land Registrar.

5. In opposition to the application the Interested Party, **Patrick Kariuki Muiruri**, on 24<sup>th</sup> January 2012 swore a replying affidavit in which he swore that he is a resident of the Nyari Estate in the Nairobi area of the Republic of Kenya on the parcel of land more particularly described as Title Number NAIROBI/BLOCK 94/77 of which he is the registered proprietor. In the said affidavit he reiterates that the present application seeks orders *inter alia* to compel the District Land Registrar to hear and determine a purported boundary dispute between **Daniel Njogu Ndung'u** and **Hon. Patrick Kariuki Muiruri** in regard to the parcels of land, Title Number NAIROBI/BLOCK 94/77 and NAIROBI/BLOCK 94/78. According to him, the present application is untenable for reasons that there is no dispute as to the boundary between the above cited parcels of land capable of being heard and determined by the District Land Registrar, Nairobi as sought by the *ex-parte* applicant. In his view, the present cause is *res judicata* and an abuse of court process in view of the decree issued on 30<sup>th</sup> July 2009 by this honourable court in **HCCC 290 of 2007 Daniel Njogu Ndung'u –vs- Patrick Kariuki Muiruri** determining a suit filed by the applicant herein seeking a variation of the boundary as between the above cited parcels of land. It is therefore contended that in the present matter the applicant seeks to re-litigate the issues arising in the above cited suit afresh which, in the Interested Party's view constitutes abuse of the processes of this honourable court.

6. It is further deposed that the applicant's Notice of Motion application dated 18<sup>th</sup> October, 2010 is incompetent and unsustainable for want of leave to file the same as required by the applicable law.

7. According to the Interested Party, his house and perimeter wall are well within the delineated boundaries of his parcel of land and there is no basis for any variation of the same as sought by the applicant. To him, exhibits 'DNN 2' and 'DNN 4' are not objective and of any probative value as they were unilaterally taken out at the instance of the *ex-parte* applicant without any notice or participation on his part.

8. In support of his case the applicants filed written submission in which apart from reiterating the contents of the affidavits filed in support of the *ex parte* applicant's case and the statement, it is submitted that there is no dispute that the applicant and the interested party are the registered proprietors of Title Number Nairobi/Block 94/78 and 77 respectively which properties are adjacent to each other and that they share common boundary along which the Interested Party has built a stone wall which it is submitted has encroached and transgressed into the applicant's property and reduced it by as much as 0.022 of an hectare which fact the applicant has established through a licensed private surveyor. This fact, it is submitted was confirmed by the report of the Government Surveyor. Despite this the Interested Party has not responded to the applicant's request to rectify the same. According to the applicant, these facts have not been challenged by the Interested Party. While disagreeing that the boundaries in question are "fixed boundaries" it is submitted that nothing regarding the description of "Fixed boundaries" ousts the Respondent's power to determine boundary disputes and that section 21(2) of the **Registered Lands Act** (hereinafter referred to as the Act) confers jurisdiction to determine such disputes exclusively on the Respondent, on application of any interested party which request the *ex parte* applicant had made but which was declined. It is submitted that there is no evidence that the boundaries of the two parcels of lands have ever been fixed. In support of the applicants submissions reliance is placed on H C Misc. Civil Application No. 920 of 2003 – **Republic vs. District Land Registrar Kiambu**, H C Misc. Civil Application No. 24 of 1999 – **Republic vs. District Land Registrar Nyeri** and H C Misc. Civil Application No. 97 of 2002 – **Republic vs. Chief of Ageng'a Location & Another**.

9. On the issues raised in the replying affidavit, it is submitted that the applicant was given leave to file the instant Motion on 29<sup>th</sup> September 2010. It is further submitted that *res judicata* does not apply since the matters in the two suits are not directly and substantially in issue in both suits, the parties in both suits are not the same since the defendant in the former case is merely an interested party herein and that the issues raised in the former suit were not heard and finally decided since the suit was struck out at an interlocutory stage.

10. It is therefore submitted that the applicant has laid down a factual and legal basis for the grant of the order of mandamus sought herein which ought to be granted with costs.

11. On behalf of the Interested Party, it is submitted that in HCCC No. 290 of 2007 aforesaid, the applicant had contended that the interested party had encroached into the applicant's land by overcrossing the boundary between the suit parcels and consequently filed an action for trespass and eviction of the Interested Party which suit was heard and a decree issued on 30<sup>th</sup> July 2009 striking out with costs the said suit and thereafter a consent was entered into closing the said file and settling the costs. In the Interested Party's view that consent settled this matter and the parties are bound by it.

12. It is submitted by the Interested Party that following a complaint by the applicant to the Respondent, the matter was addressed to the Provincial Surveyor to deal therewith upon a formal application by the applicant and a copy of Practice Notes by the Commissioner of Lands were forwarded to the applicant. However, on 29<sup>th</sup> September 2010 the applicant obtained leave to file the instant Notice of Motion. It is therefore submitted that there is no basis for the present application which is speculative and an abuse of process and ought to be dismissed with costs.

13. It is therefore submitted that since the Respondent acted upon the *ex parte* applicant's complaint there is no basis for granting the order of *mandamus* sought which order only applies where the public official concerned has failed to take action on the issue which he/she is properly seized of. These proceedings, it is submitted, is a challenge to the action taken by the Respondent and taking into account the fact that *mandamus* is not available where the applicant seeks to challenge the propriety or legality of the action taken by the public officer in issue, this is not a proper case for *mandamus*. In support of this submission the Interested Party relies on **Kenya National Examinations Council vs. Republic Ex parte Geoffrey Gathenji Njoroge & Others Civil Appeal No. 266 of 1996 [1997] eKLR** where it was held that an order of *mandamus* compels the performance of a duty imposed by statute where the person or body on whom the duty is imposed fails or refuses to perform the same but if the complaint is that the duty has been wrongfully performed i.e. that the duty has not been performed according to the law, then *mandamus* is wrong remedy to apply for because, like an order of prohibition, an order of *mandamus*

cannot quash what has already been done; that Only an order of *certiorari* can quash a decision already made and an order of *certiorari* will issue if the decision is without jurisdiction or in excess of jurisdiction, or where the rules of natural justice are not complied with or for such like reasons. Since the Respondent has acted on the applicant's complaint in the manner set out in the letter dated 22<sup>nd</sup> September 2008, it is submitted that this action is essentially an appeal from the direction made by the respondent which cannot be achieved by way of mandamus.

14. It is further submitted that a decree having been issued in the former suit striking out the suit,, the present matter is a collateral attack on the said decree and the same is clearly *res judicata* under section 7 of the ***Civil Procedure Act***. It is submitted that the applicant is simply re-litigating a decided matter masquerading it as a judicial review application and adding a party hence the present application is an abuse of the process and warrants a dismissal. In support of this submission the Interested Party relies on **Charles Mugunda Gacheru vs. Senior Resident Magistrate's Court & 2 Others [2005] eKLR** and **Edwin Thuo vs. Attorney General and Another Petition No. 212 of 2011.**

15. It is also submitted that under Rule 3 of Order 53 of the ***Civil Procedure Rules*** the substantive Motion ought to be filed within 21 days of grant of stay. It is therefore submitted that as the Motion was filed after the lapse of the 21 days of the granting of the leave, the same is fatally defective.

16. The interested Party further submit that by not joining the Interested Party initially, the applicant is acting *mala fides*.

17. Finally it is submitted that the issue of determination of the boundaries is a question of fact which cannot be determined by way of judicial review since it requires a process that affords the taking and evaluation of scientific evidence and to this extent this application is academic and speculative and should be dismissed with costs.

18. I have considered the foregoing.

19. The first issue that I wish to mention in passing is the manner in which this application is brought. The verifying affidavit herein as indicated at the beginning of this judgement was limited to confirming the contents of the Statement and annexing copies of the documents relied upon. I wish to remind parties of the decision by the Court of Appeal in **Commissioner General, Kenya Revenue Authority Through Republic vs. Silvano Anema Owaki T/A Marenga Filing Station Civil Appeal No. 45 of 2000**, in which the Court citing ***Supreme Court Practice 1976 Vol. 1 at Para. 53/1/7 & R. vs. Wandsworth JJ. ex parte Read [1942] 1 KB 281*** held that it is the verifying affidavit not the statement to be verified, which is of evidential value in an application for judicial review. Accordingly, the facts ought to have been contained in the verifying affidavit to which exhibits also ought to have been annexed. In other words, the role the Verifying Affidavit ought not to be construed as merely to verify the Statement but is the document that ought to contain the factual averments. However as in this case, the documents were exhibited in the Verifying affidavit which confirmed the contents of the Statement, I will deem the facts contained in the Statement as having been incorporated in the verifying affidavit taking into account the fact that no issue was raised in this respect.

20. The next issue I intend to deal with is the competency of the application based on the allegation that the same was not filed within 21 days of the leave to do so being granted. From the record of these proceedings, leave to commence the judicial review application was granted by **Musinga, J** (as he then was) on 29<sup>th</sup> September 2010. Pursuant to section 57(1)(a) of the ***Interpretation and General Provisions Act*** Cap 2, Laws of Kenya, in computing time for the purposes of a written law, unless the contrary intention appears a period of days from the happening of an event or the doing of an act or thing shall be deemed to be exclusive of the day on which the event happens or the act or thing is done. According to my reckoning the last day would have been 20<sup>th</sup> October 2010. From the copy of the court receipt, the Notice of Motion was filed on 19<sup>th</sup> October 2010. It follows that the Motion was filed within time and this ground of objection fails.

21. The next issue for determination is whether this matter is *res judicata*. *Res Judicata*, strictly

speaking is provided under section 7 of the *Civil Procedure Act* which in the preamble to the Act is “An Act of Parliament to make provision for procedure in civil courts”. However, it is now well settled that judicial review applications are neither criminal nor civil in nature. See **Commissioner of Lands vs. Kunste Hotels Ltd (1995-1998) 1 EA 1.**

22. In **Commissioner of Lands vs. Hotel Kunste Ltd Civil Appeal No. 234 of 1995 and Sanghani Investment Limited vs. Officer in Charge Nairobi Remand and Allocation Prison [2007] 1 EA 354** it was held that Judicial review jurisdiction is a special jurisdiction which is neither civil nor criminal and the *Civil Procedure Act* does not apply since it is governed by sections 8 and 9 of the *Law Reform Act* being the substantive law and Order 53 of the *Civil Procedure Rules* being the procedural law. Therefore strictly speaking section 7 of the *Civil Procedure Act* does not apply to judicial review proceedings. In fact in **Republic vs. Judicial Service Commission ex parte Pareno [2004] 1 KLR 203-209** it was held that *res judicata* does not apply to judicial review. See also **Re: National Hospital Insurance Fund Act and Central Organisation of Trade Unions (Kenya) Nairobi HCMA No. 1747 of 2004 [2006] 1 EA 47.**

23. This, however, does not mean that the Court is powerless where it is clear that by bringing proceedings a party is clearly abusing the court process. Whereas *res judicata* may not be invoked in judicial review the Court retains an inherent jurisdiction to terminate proceedings where the same amount to an abuse of its process. One of cardinal principles of law is that litigation must come to an end and where a court of competent jurisdiction has pronounced a final decision on a matter to bring fresh proceedings whether as judicial review proceedings or otherwise would amount to an abuse of the process of the court and would therefore not be entertained. The Court in terminating the same would be invoking its inherent jurisdiction which is not a jurisdiction conferred by section 3A of the *Civil Procedure Act* as such but merely reserved thereunder. In **Kenya Bus Services Ltd & Others vs. Attorney General and Others [2005] 1 EA 111; [2005] 1 KLR 743** it was held:

**“It is trite law that an *ex parte* order can be set aside by the judge who gave it or by any other judge. The Civil Procedure Rules provide for this. Our Constitution does assume the existence of supportive Civil Procedure regime in so far as the same is not inconsistent with the Constitution. There is nothing inconsistent with the Constitution in the act or principle of setting aside of *ex parte* orders for good reasons. If an order obtained in a Constitutional application is incompetent or improperly obtained there cannot be any valid reason why the court would not have the jurisdiction to set it aside. Setting aside would be properly justified on grounds of doing justice and fair play and good administration of justice and therefore in furtherance of public policy...Where there is no specific provision to set aside the courts power or jurisdiction would spring from the inherent powers of the court. Whereas ordinary jurisdiction stems from the Act of Parliament or statutes, the inherent powers stem from the character or the nature of the court itself – it is regarded as sufficiently empowered to do justice in all situations. The jurisdiction to exercise these powers was derived, not from statute or rule of law, but from the very nature of the court as a superior court of law, and for this reason such jurisdiction has been called “inherent”. For the essential character of a superior court of law necessarily involves that it should be invested with a power to maintain its authority and to prevent the process being obstructed and abused. Such a power is intrinsic in a superior court, its very lifeblood, its very essence, its immanent attribute. Without such a power, the court would have form but would lack substance. The jurisdiction, which is inherent in a superior court of law, is that which enables it to fulfil itself as a court of law. The judicial basis of this jurisdiction is therefore the authority of the Judiciary to uphold, to protect and to fulfil the judicial function of administering justice according to law in a regular, orderly and effective manner. The need to administer justice in accordance with the Constitution occupies an even higher level due to the supremacy of the constitution and the need to prevent the abuse of the Constitutional provisions and procedure does occupy the apex of the judicial hierarchy of values. Therefore the Court does have the inherent powers to prevent abuse of its process in declaring, securing and enforcing Constitutional rights and freedoms. It has the same power to set aside *ex parte* orders, which by their very nature are provisional.” See **The Reform of Civil Procedure Law and Other Essays in Civil Procedure (1982) By Sir Isaac J H Jacob** and **WEA Records Limited vs. Visions Channel 4 Limited & Others (1983) 2 All ER 589; R vs. Land Registrar Kajiado & 2 Others****

**Ex Parte John Kigunda HCMA No. 1183 of 2004.**

24. As was stated by **Kimaru, J** in **Stephen Somek Takwenyi & Another vs. David Mbutia Githare & 2 Others Nairobi (Milimani) HCCC No. 363 of 2009:**

**“This is a power inherent in the court, but one which should only be used in cases which bring conviction to the mind of the court that it has been deceived. The court has an inherent jurisdiction to preserve the integrity of the judicial process. When the matter is expressed in negative tenor it is said that there is inherent power to prevent abuse of the process of the court. In the civilised legal process it is the machinery used in the courts of law to vindicate a man’s rights or to enforce his duties. It can be used properly but can also be used improperly, and so abused. An instance of this is when it is diverted from its proper purpose, and is used with some ulterior motive for some collateral one or to gain some collateral advantage, which the law does not recognise as a legitimate use of the process. But the circumstances in which abuse of the process can arise are varied and incapable of exhaustive listing. Sometimes it can be shown by the very steps taken and sometimes on the extrinsic evidence only. But if and when it is shown to have happened, it would be wrong to allow the misuse of that process to continue. Rules of court may and usually do provide for its frustration in some instances. Others attract *res judicata* rule. But apart from and independent of these there is the inherent jurisdiction of every court of justice to prevent an abuse of its process and its duty to intervene and stop the proceedings, or put an end to it”.**

25. Accordingly the Court may in proper cases invoke its inherent jurisdiction to make such orders as may be necessary for the ends of justice or to prevent abuse of its process and this may be done where the principles of *res judicata* would be applicable.

26. This then leads me to the issue whether the said principles apply to this case. It is conceded that the earlier suit was struck out. A suit which is struck out cannot be said to have been heard and determined on merits. *Res judicata* only applies to situations where a matter has been heard and finally determined. In my view a matter cannot be said to have been heard and finally determined if the same was struck out since in such cases there is no “*res*” capable of being “*judicata*”. See **Ngoni-Matengo Co-Operative Marketing Union Ltd vs. Alimahomed Osman [1959] EA 577** and **Uhuru Highway Development Limited vs. Central Bank of Kenya Limited & 2 Others Civil Appeal No. 36 of 1996.**

27. Accordingly, I find that the doctrine of *res judicata* does not apply and there is no basis upon which I can find that these proceedings amount to an abuse of the process of the court.

28. It is further contended by the Interested Party that the issue of determination of the boundaries is a question of fact which cannot be determined by way of judicial review since it requires a process that affords the taking and evaluation of scientific evidence and to this extent this application is academic and speculative. It is true that where what is sought is that the court determines questions of fact which are disputed, the court in a judicial review application will be reluctant to grant the orders sought since in that case it would be necessary for the court to make a determination on the merits of the two cases and this is not within the province of a judicial review court. See **Sanghani Investment Limited vs. Officer in Charge Nairobi Remand and Allocation Prison [2007] 1 EA 354.**

29. In the instant case, however, the applicant is not seeking that the court determines the boundaries of the disputed parcels of lands but that the court issues a command to the respondent to perform its duty to do so as he is enjoined to do under the law. If there is a duty imposed upon the Respondent to determine boundary disputes and the Respondent after being requested to do so declines without any legally justifiable reason the court would compel him to do so. To compel him so to do would not amount to the court determining the issues of fact since that is a determination which will have to be made by the Respondent. Accordingly I do subscribe to this line of submission.

30. Section 21(2) of the repealed ***Registered Land Act***, Cap 300 Laws of Kenya provided:

***Where any uncertainty or dispute arises as to the position of any boundary, the Registrar, on the***

***application of any interested party, shall, on such evidence as the Registrar considers relevant, determine and indicate the position of the uncertain or disputed boundary.***

31. From the foregoing it is clear that where there is any uncertainty as to the position of any boundary, the Registrar is enjoined to determine and indicate the position of the uncertain or disputed boundary. There is no discretion in this matter and the section does not impose other conditions apart from the ones contained therein. It is however, submitted that the Respondent having acted on the complaint by referring the matter to the provincial surveyor, it is no longer open to the applicant to seek the orders sought herein. The above section clearly places the duty of ascertaining the boundary on the Registrar and no-one else. How he goes about it is another matter. However, he cannot, by delegating the duty imposed upon him by the law purport to have carried out his statutory duty. I therefore do not consider that by referring the *ex parte* applicant to the Provincial Surveyor, the Respondent had fulfilled his mandate under the aforesaid section. That the actual survey would be conducted by the said surveyor was just a mode of carrying out his mandate but does not relieve him of his duty to carry out the duty and determine and indicate the position of the uncertain or disputed boundary.

32. Accordingly, it is my view and I so hold that the Respondent failed to carry out his statutory obligation under section 21 of the said Act. With respect to the allegation that the boundaries were “fixed” there is no evidence to that effect. An order of *mandamus*, as was stated in **Republic vs. Kenya National Examinations Council ex parte Gathenji & Others Civil Appeal No. 266 of 1996**, compels the performance of a public duty which is imposed on a person or body of persons by a statute and where that person or body of persons has failed to perform the duty to the detriment of a party who has a legal right to expect the duty to be performed. It compels the performance of a duty imposed by statute where the person or body on whom the duty is imposed fails or refuses to perform the same. As the Respondent, on whom a duty to determine and indicate the position of the uncertain or disputed boundary has been imposed by the law, has failed or refused to perform the same, an order of *mandamus* will issue to compel him to do so.

33. Accordingly, an order of *mandamus* is hereby issued directed to the District Land Registrar, Nairobi (the Respondent) to hear and determine a boundary dispute between the Applicant and one **Hon. Patrick Muiruri** (hereinafter called (“the interested party”) herein touching on properties known as NAIROBI/BLOCK 94/78 and NAIROBI/BLOCK 94/77 respectively. The said determination to be made within 30 days from the date upon which the applicant will comply with the necessary requirements necessary for the said exercise to be conducted.

34. The applicant will have the costs of these proceedings.

**Dated at Nairobi this 17<sup>th</sup> day of May 2013**

**G V ODUNGA**

**JUDGE**

Delivered in the presence of Mrs Mungathya for ex parte applicant.