



**Bachu v Chief Land Registrar Kajiado; Nyamweya & 2 others (Interested Parties) (Environment and Land Judicial Review Miscellaneous Application 44 of 2018) [2022] KEELC 3059 (KLR) (17 May 2022) (Ruling)**

Neutral citation: [2022] KEELC 3059 (KLR)

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KAJIADO**

**ENVIRONMENT AND LAND JUDICIAL REVIEW  
MISCELLANEOUS APPLICATION 44 OF 2018**

**MN GICHERU, J**

**MAY 17, 2022**

**IN THE MATTER OF AN APPLICATION BY FIROZE AMIMO BACHU FOR JUDICIAL  
REVIEW ORDERS OF CERTIORARI & PROHIBITION**

**AND**

**IN THE MATTER OF LAND REGISTRATION ACT, 2012**

**AND**

**IN THE MATTER OF A DECISION BY THE CHIEF LAND REGISTRAR KAJIADO**

**DATED 23RD MAY, 2018 IN RESPECT OF BOUNDARY DISPUTE**

**KAJIADO/KITENGELA/6579 (31372) –VERSUS- KAJIADO/KITENGELA/6578,**

**KAJIADO/KITENGELA/6582, KAJIADO/KITENGELA/29748 AND**

**KAJIADO/KITENGELA 29753, KAJIADO/KITENGELA/29764,**

**KAJIADO/KITENGELA/29752, KAJIADO/KITENGELA/29761 AND**

**KAJIADO/KITENGELA/29760**

**AND**

**IN THE MATTER OF LAND TITLE DEED NO. KAJIADO/KITENGELA 22955**

**AND**

**IN THE MATTER OF LAND REGISTRATION ACT, 2012**

**AND**

**IN THE MATTER OF THE FAIR ADMINISTRATION ACT, 2015**

**AND**

**IN THE MATTER OF MATTER OF ARTICLES 10, 40, 47, 60 OF THE**



CONSTITUTION OF KENYA, 2010

BETWEEN

**FIROZE AMIMO BACHU** ..... **APPLICANT**

AND

**CHIEF LAND REGISTRAR KAJIADO** ..... **RESPONDENT**

AND

**PENUEL NYANGWESO NYAMWEYA** ..... **INTERESTED PARTY**

**PHILIP KIPKORIR MONGONY** ..... **INTERESTED PARTY**

**COLLINS OYUNGE OBIERO** ..... **INTERESTED PARTY**

RULING

1. This ruling is on the Chambers Summons dated 20<sup>th</sup> July, 2018. It is by the Applicant Firoze Amimo Bachu and it is against the Chief Land Registrar, Respondent and Penuel Nyangweso Nyamweya and Philip Kipkorir Mongony, first and second Interested Parties.
2. The summons is brought under Order 53 Rules 1 (1), (2) and (4) and (2) of the *Civil Procedure Rules* and Section 8 and 9 of the *Law Reform Act* (Cap 26) and seeks the following orders;
  - a. Certiorari to remove into this Court for the purposes of its being quashed the proceedings and resultant decision and orders of the Respondent dated 23/5/2018 in respect of boundary of Kajiado/ Kitengela/ 6579 (31372) –Versus- Kajiado/ Kitengela/ 6578, 6582, 29748, 29753, 29764, 29752, 29761, 29760 made on 23<sup>rd</sup> May, 2018 over the Applicant’s land parcel known as Kajiado/kitengela/22955 which was excised from Kajiado/kitengela/334.
  - b. Prohibition against the Respondent restraining her, her agents and/or representatives from implementing, acting upon and/or enforcing the decision and orders dated 23<sup>rd</sup> May, 2018 in any manner whatsoever depriving and/or with intention to deprive the Applicant of his right to own and enjoy quiet possession of land parcel No. Kajiado/kitengela/22955.
  - c. Prohibition against the 1<sup>st</sup> and 2<sup>nd</sup> Interested parties by themselves, their agents and/or any persons acting on their instructions from trespassing, occupying, invading and/or interfering in any manner whatsoever with the Applicant’s quiet possession of the property known as Kajiado/kitengela/22955 (excised from Kajiado/Kitengela/334) in pursuit of the orders and decision of the Respondent.
  - d. That leave so granted does operate as a stay of the decision and/or orders of Respondent-issued on 23/5/2018.
  - e. Costs of the Application be provided for.
3. The summons is supported by seven grounds and a 14 paragraph affidavit both of which can be summarized as follows;



The Applicant is the registered owner of L.R. Kajiado/Kitengela/22955 on which he has built a permanent matrimonial home. When he settled on the land, he relied on the survey maps and mutation forms duly approved by the Respondent.

On 23/5/2018, the Respondent made a decision which altered the boundaries of his land. This decision was as a result of a process where he was not involved or invited to participate in. This alteration of the boundaries and creating new access roads was an abuse of power and the Respondent acted in excess of her powers.

It is for the above reasons that the Applicant prays for the above orders.

The Respondent and the Interested Party did not file any replying affidavits or even grounds of opposition.

4. Counsel for the parties filed written submissions on 23/2/2022 and 28/4/2022 respectively. The issues raised in the submissions are as follows;
  - a. Whether the Applicant was accorded a fair hearing.
  - b. Whether the Respondent acted in excess of its powers.
  - c. Whether the Respondent acted irrationally.
  - d. Whether parcel No. Kajiado/Kitengela/334 encroached into parcel no. 6579.
5. I have carefully considered the application in its entirety including the affidavit, grounds, annexures and the submissions by learned counsel for the parties and I agree that the issues as framed by counsel will determine the suit.
6. On the first issue, I find that the Applicant was accorded a fair hearing. On his own word, he was able to talk to the Land Registrar. His mother in law was also present. The Applicant has not said anywhere in his affidavit that he asked for more time to present any document or evidence and he was refused. He is not saying that his mother in law was not able to represent him at the boundary determination exercise.
7. Regarding the second issue, I find that the Respondent did not act in excess of his powers. The dispute concerned boundaries between various parcels and the power to determine such disputes is vested in the Land Registrar by Section 18 and other provisions of the [Land Registration Act](#).
8. On the third issue, I find that the Respondent did not act irrationally. A look at the annexures FAB-4 dated 23/5/2018 and March, 2016 show a transparent exercise which was well attended and those present were given an opportunity to give their evidence.
9. Saida Yussuf representing the Applicant was afforded a hearing. The methodology, the instruments used, the datum, the recommendation are all attached for all to see. The officers present are all named and were qualified to perform the work that they did and no evidence of their acting irrationally has been adduced.
10. Finally on the issue of encroachment, the Land Registrar found that there was. The Applicant has not adduced any evidence to the contrary either in the Supporting Affidavit or the annexures. I have no reason to differ with the finding of the Registrar.
11. If the Court were to grant the orders sought by the Applicant, the result would be interfering with what seems to have been a legitimate exercise by the Respondent.



12. The Applicant has not committed himself to paying any costs that may be occasioned by such draconian orders on parties who have been found to occupy their land lawfully. The impact of the closure of the access roads that may be affected by the orders is not known.
13. For all the above reasons, I dismiss the Applicant's application with costs to the interested parties.

**DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 17<sup>TH</sup> DAY OF MAY, 2022.**

**M.N. GICHERU**

**JUDGE**

