



**Republic v District Land Registrar, Kajiado & 3 others; Saidimu
(Exparte) (Environment and Land Miscellaneous Application
95 of 2017) [2022] KEELC 2803 (KLR) (27 June 2022) (Judgment)**

Neutral citation: [2022] KEELC 2803 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION 95 OF 2017

MN GICHERU, J

JUNE 27, 2022

(FORMERLY KAJIADO HC MISC CASE NO.14 OF 2016)

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW PURSUANT TO
ORDERS 53 OF THE CIVIL PROCEDURE RULES, 2010**

AND

**IN THE MATTER OF LEAVE FOR THE ORDERS OF PROHIBITION AND
MANDAMUS PURSUANT TO ORDER 53 OF THE CIVIL PROCEDURE RULES
AND SECTIONS 8 AND 9 OF THE LAW REFORM ACT CAP 26**

BETWEEN

REPUBLIC APPLICANT

AND

DISTRICT LAND REGISTRAR, KAJIADO 1ST RESPONDENT

DISTRICT LAND SURVEYOR, KAJIADO 2ND RESPONDENT

SARINKE OLE ORIKAL 3RD RESPONDENT

ATTORNEY GENERAL 4TH RESPONDENT

AND

SEENOI KOIN SAIDIMU EXPARTE

JUDGMENT

1. This judgment is on the notice of motion dated 8th December 2016 which is by the applicant Seenoi Koin Saidimu. The said motion which is brought under order 53 Rules (1) and (2) of the Civil



Procedure Rules 2010, Sections 1,1A,3,3A and 63(e) of the Civil Procedure Act, Sections 8 and 9 of the Law Reform Act and all enabling powers and provisions of the law seeks two main orders as follows;

- a. An order of prohibition against the District Land Registrar Kajiado, first respondent, the district surveyor Kajiado, second respondent, Sarinke Ole Orikal, the third respondent and the honourable the Attorney General, the fourth respondent.
 - b. An order of mandamus compelling the first and second Respondent herein to conduct another site visit on the disputed boundary between Kajiado/Purko/624 and 625 belonging to the third respondent and the plaintiff respectively.
2. The said motion is supported by a statutory statement, a verifying affidavit and eight (8) annexures. In summary, the applicant says that she is the registered owner of L.R Kajiado/Purko/625 which measures 24.0 hectares instead of 59.3 hectares. She blames the loss of her land on the neighboring parcel no Kajiado/Purko/624 which is owned by the third respondent.
3. The notice of motion is opposed by the third respondent who has sworn a replying affidavit dated 10/2/17. The 25 paragraph affidavit has six annexures. In summary, the third respondent says that his land does not encroach, onto the applicants' land. It is No.624 and measures 50.5 hectares while the applicants measures 24.0 hectares. He adds that he acquired his title deed in 2011 while the applicant acquired hers in 2001 and for all that period she never complained until recently. He has done all he could to remain good neighbors by paying for a surveyor to demarcate the boundary between the two parcels. The exercise confirmed the boundaries as fixed earlier on.
- Finally, the third respondent urged that the official records from the area list, to the map and the register at the Kajiado Land registry confirm that the two parcels are 50.5 hectares and 24.0 hectare respectively.
4. The first respondent also swore a replying affidavit dated 10th March,2017 in which he says that the boundary between the two parcels was demarcated on 11th October,2013 and the said demarcation was based on existing beacons, the registry index map, the land register and statements recorded from the persons present.
5. It seems that in the course of these proceedings, the first respondent visited the suit land on 10/3/2017 and demarcated the boundaries yet again and filed a report dated 25/4/2017 and 26/4/2017 by the land register Kajiado, district surveyor, the counsel for the third respondent and the applicant.
6. I have carefully considered the notice of motion in its entirety including the grounds the affidavits, the annexures and the report by the first respondent. I find that the following issues arise.
- i. whether L.R. Kajiado/Purko/625 is 24.0 hectares or 59.3 hectares?
 - ii. whether L.R. Kajiado/Purko/624 encroaches on L.R.Kajiado/Purko/625?
 - iii. who should bear the costs?
7. On the first issue, I find that L.R. Kajiado/Purko/625 measures 24.0 hectares and not 59.3 hectares. No evidence has been adduced by the applicant or any other witness to prove that the suit land is bigger than 24.0 hectares. The area list, the Registry Index Map and the land register all point to the area of the suit land being 24.0 hectares.
8. On the second issue, I find that L.R 624 has not encroached onto the suit land. All the two official surveys prove that there is no encroachment. The applicant who bore the burden of proof has no better evidence than the official evidence.



Finally, I find that the land registrar is the one with jurisdiction to determine boundary disputes between parcels of registered land. This is by virtue of Section 18 of the *Land Registration Act*. This court has no jurisdiction and can only fault the land register if he is proved to have acted ultra vires. In this case, there is no such proof.

9. For the above stated reasons, I dismiss the applicant's notice of motion with costs to the respondent.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 27TH DAY OF JUNE, 2022.

M.N. GICHERU

JUDGE

