



**Omenda v Matara & 5 others (Environment & Land Case 10 of 2021)  
[2022] KEELC 12602 (KLR) (29 September 2022) (Ruling)**

Neutral citation: [2022] KEELC 12602 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA  
ENVIRONMENT & LAND CASE 10 OF 2021  
JM KAMAU, J  
SEPTEMBER 29, 2022**

**BETWEEN**

**MOSE OMENDA ..... PLAINTIFF**

**AND**

**JANE MATARA ..... 1<sup>ST</sup> DEFENDANT**

**DUKE MOGAKA ..... 2<sup>ND</sup> DEFENDANT**

**NYAUCHO NYAKUNDI ..... 3<sup>RD</sup> DEFENDANT**

**NYAUNCHO NYAKUNDI ..... 4<sup>TH</sup> DEFENDANT**

**S.D.A CHURCH (E.A) UNION LTD ..... 5<sup>TH</sup> DEFENDANT**

**ATTORNEY GENERAL ..... 6<sup>TH</sup> DEFENDANT**

**RULING**

1. According to the plaint filed in court on July 2, 2009, the plaintiff claims that he is the registered proprietor of the parcel of land known as LR No East Kitutu/bonyamondo 1/524 which shares a common boundary with LR No East Kitutu/bonyamondo 1/821 that belongs to the 5<sup>th</sup> defendant, a church organisation. The two proprietors have had a boundary dispute with one another that dates back to 2003 and 2004 which was at one time referred to the District Land Registrar, Nyamira who showed the parties where the boundary is but on April 26, 2009 the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants illegally trespassed into the plaintiff's parcel of land, uprooted the common boundary aforesaid and damaged several tea bushes belonging to the plaintiff totaling to 100 in number. The plaintiff consequently prays for an order of eviction against the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> defendants and a permanent injunction against the said persons restraining them from re-entering, trespassing onto, cultivating or in any other manner from dealing with the suit land i.e LR No East Kitutu/bonyamondo 1/524. He also seeks for the costs of the suit.



2. On August 12, 2009 the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> defendants filed a written statement of defence and denied the plaintiff's claim maintaining that the common boundary stood as it was fixed by the Land Registrar until September 5, 2008 when the plaintiff purported to execute the decree of Kisii High Court civil case number 80 of 2002. They also denied any trespass on the plaintiff's land or any damage to his tea crop. On August 17, 2009 the plaintiff filed a reply to defence by the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> defendants averring that the suit in Kisii HCC No 80 of 2002 has no correlation with the current case and that the boundary between LR No East Kitutu/bonyamondo 1/524 and LR No East Kitutu/ Bonyamondo 1/821 was not damaged or destroyed on September 8, 2008 and reiterates that the same was destroyed on April 26, 2009.
3. On May 6, 2013 this court made an order that the dispute of ascertaining the boundary be referred to the District Land Registrar, Nyamira and the surveyor, Nyamira with each of the parties being at liberty to engage a private surveyor during the exercise and the said officers to determine and confirm whether there was any encroachment onto either parcel of land.
4. On August 18, 2015 both officers filed their respective reports in court. On November 16, 2015 the court ordered that the 2 reports do form part of the court record with the parties being at liberty to rely on the same at the trial. On March 23, 2017 the plaintiff was granted leave to engage for a private surveyor to visit the suit land failing which the court would rely on the county surveyor's report on record. This was a consent order.
5. On November 17, 2021 this court ordered that both the Land Registrar and County Surveyor, Nyamira be summoned in court to produce their respective reports which was done on January 25, 2022 after which the court gave the Land Registrar and County Surveyor fresh mandate to determine who between the plaintiff and the 5<sup>th</sup> defendant had encroached onto the other's land and to what extent. This was because the earlier reports by the 2 officials were inconclusive and incapable of producing a clear picture on the matter on the ground. They were also mandated to fix the common boundary. The said reports dated July 28, 2022 were finally filed in court on August 3, 2022 by the Land Registrar and County Surveyor whose summary is that:
  1. Parcel No 524 has encroached onto parcel number 821 by approximately 0.044 hectares
  2. Part of the church building will be chopped off.
  3. Both parties have encroached onto each other by approximately 50 feet by 100 feet the 5<sup>th</sup> defendant encroaching on the upper part while the plaintiff encroaches on the lower part.
6. The boundary was then fixed and marked by the County Surveyor. The bitter observation by the Land Registrar is that fixing the boundaries in accordance with the court order would mean putting down part of the church building. The Land Registrar opted that the parties should maintain their boundaries and the status quo as they negotiate on how to adopt an amicable solution.
7. After these reports were filed in court, I invited both parties to file their comments on the same within 30 days from August 24, 2022 which was not done.
8. However, this is a matter that can be sorted out in a more humane and civilized manner. Both parties have encroached onto each other's parcels of land, with the 5<sup>th</sup> defendant encroaching onto the plaintiff's land on the upper part by 11 by 13 meters and the plaintiff encroaches the 5<sup>th</sup> defendant's parcel on the lower side by approximately 20 meters. This is in accordance with the Land Registrar's report although the County Surveyor's report talks of each party encroaching the other's land by approximately 50 feet by 100 feet.



9. I wish to implore on the parties to decide whether the common boundary can be readjusted in such a way that each of them will get their full acreage without necessarily bringing down the church sanctuary or the plaintiff's crops. This will have to involve the Land Registrar, the County Surveyor and the parties' private surveyors so that should this be agreeable then the same can be effected on the ground and in paper.

**RULING DATED, SIGNED AND DELIVERED AT NYAMIRA THIS 29<sup>TH</sup> OF SEPTEMBER 2022.**

**MUGO KAMAU**

**JUDGE**

In the Presence of:

Court Assistant: Sibota

Ms. Ochwal for the Plaintiff

Mr. Soire for the 5<sup>th</sup> Defendant

