



**Asanyo & another v Land registrar & 2 others; Twala & another (Interested Parties)
(Miscellaneous Application 2 of 2022) [2022] KEELC 12598 (KLR) (21 September 2022) (Ruling)**

Neutral citation: [2022] KEELC 12598 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
MISCELLANEOUS APPLICATION 2 OF 2022
EM WASHE, J
SEPTEMBER 21, 2022**

BETWEEN

GEOFFREY MAKANA ASANYO 1ST APPLICANT

INTONA INVESTMENTS COMPANY LIMITED 2ND APPLICANT

AND

CHIEF LAND REGISTRAR 1ST RESPONDENT

DIRECTOR OF SURVEY 2ND RESPONDENT

ATTORNEY GENERAL 3RD RESPONDENT

AND

RICHARD TWALA INTERESTED PARTY

ALLAN LEMAIYAN TWALA INTERESTED PARTY

RULING

1. The 1st and 2nd applicants (hereinafter referred to as “the applicants”) filed a miscellaneous application dated September 4, 2020 (hereinafter referred to as the “application”) seeking for the following orders; -
 1. The instant application be certified urgent and the same be heard on priority basis, owing to the necessity to resolve and/ or address the underling issues urgently and without further delay.
 2. The honourable court be pleased to order and/or direct the 1st and 2nd respondents herein to proceed and visit the ground in respect of the Original LR No Narok/ontona/3 (now sub-divided into LR No Narok/intona/5 & 6) and the Original parcel LR No Narok/intona/4 (Now sub-divided into LR No Narok/intona/7,8,9,10 & 11) and in particular to restore the original boundaries and also to restore the position of Beacon T3 as concerns the Boundary of LR No Narok/intona/5 , belonging and Registered in the names of the 2nd applicant.



3. The honourable court be pleased to order and/or direct the 1st and 2nd respondent, to re-survey LR No Narok/intona/5 & 6 and re-establish the boundaries thereof and in particular to confirm that the acreage thereof have not been interfered with, reduced and/altered.
 4. The honourable court be pleased to order and/or direct the 1st and 2nd respondents herein, or their designates, (with the exception of the Land Registrar and Surveyor, Transmara East and West), to visit LR No Narok/intona/5, (hereinafter referred to as the suit property) and while thereon, demarcate , re-establish and/or otherwise restore the boundaries of the suit property and in particular , Beacon No T3, which separates the suit property from LR No Transmara/intona/11.
 5. Consequent to prayer No 2 herein being granted, the honourable court be pleased to direct that the report be and/or on behalf of the 1st and 2nd respondents, be filed before the honourable court and/or availed to the applicants.
 6. The honourable court be pleased to grant leave and/or; liberty to the applicants herein, to engage and/or appoint a private surveyor, to accompany the 1st and 2nd respondents and/or their designates, during the visitation for purposes of ensuring objectivity and/or impartiality.
 7. The honourable court be pleased to order and/or direct the County Police Commander, Narok County, Sub-County Police Commander, Transmara West Sub-County, the Ward Commander, Kilgoris Police Station, to offer and/or provide reasonable security, to facilitate the visitation exercise by and/or on behalf of the 1st and 2nd respondent.
 8. The honourable court be pleased to direct and/ authorise the applicants herein to pay the charges and/or relevant costs towards the visitation exercise as well as the security charges, if any.
 9. Costs of the application be provided for.
2. The application herein was supported by the affidavit of Geoffrey Makana Asanyosworn on the September 4, 2020 which annexed various documents namely (i) A certified copy of the Mutation form of the property known as Transmara/intona/3 as at December 20, 2018 and a sketch map of Transmara/intona/3 at on February 27, 1993,(ii) A copy of a transfer form of the Property known as Transmara/intona/5 dated April 28, 1993 and an official search of the property known as Transmara/Intona/5 dated February 19, 2016 (iii) a copy of a letter dated July 22, 2020 from the applicants to the Chief Land Registrar (1st respondent) (iv) letter dated July 27, 2020 from the Senior Assistant Chief Land Registrar to the District Land Registrar, Transmara.
 3. The gist of the applicants is that the property known as Narok/intona/3 was originally sub-divided into two portions.
 4. The applicants herein acquired the property known as Narok/intona/5 which is now the subject property in this applicant.
 5. On the other hand, the property known as Narok/intona/4 was subdivided further into Narok/intona/7,8,9,10,11 & 12.
 6. The applicants indicate that in an effort to establish the physical boundaries and/or beacons of the property known as Narok/intona/5, a ground visit was done but one beacon identified as Beacon T3 was not found and/or had been realigned and/or tempered with.



7. The applicants opinion upon discovery of this issue was to engage the 1st and 2nd respondents offices to replace the beacon known as T3 in line with the mutation creating the property known as Narok/intona/5.
8. The applicants therefore wrote to the 1st Respondent on the July 22, 2020 seeking his services to replace, re-store and/or re-establish the Beacon T 3 as per the RIM Survey Map 144/2.
9. The 1st respondent through the delegated office of the Senior Assistant Chief Land Registrar Director in a letter dated July 27, 2020 directed the District Land Registrar, Transmara to address the applicants issues and submit a comprehensive report thereafter.
10. The applicants state that since then, no action has been taken by the District Land Registrar, Transmara in the preparation of this ground report or location of the Beacon known as T3 thereby exposing the applicants to loose a portion of its land to the neighbours and in particular the property known as Narok/intona/11.
11. The applicants therefore believe that the court has the powers and jurisdiction to order the Land Registrar Transmara West and East and the Land Surveyor, Transmara West and East to re-establish and replace the beacon No T 3 so that every proprietor of land can ascertain their approximate acreage of their properties.
12. The court upon perusal of the application directed that it be served on all the respondents for their consideration and further action.
13. The Attorney General on behalf on all the respondents filed a memorandum of appearance on the October 5, 2020.
14. On the February 23, 2022, counsel for the applicants and the respondents consented that it was important for the exercise of re-establishing and/or replacing the beacon known as T3 and any other beacons be undertaken so that each party would know whether or not there is a dispute in terms of the size or location of the beacons amongst the neighbouring properties.
15. The court based on the submission of counsel for the respondents and the concurrence of the applicants proceeded to make the following orders; -
 - “The Sub-County Land Surveyor, Transmara West and East and the Sub-County Land Registrar Transmara West and East do visit the property known as Narok/transmara/5 and place the actual beacons on the ground in line with the Mutation within 45 days thereof”.
16. The Sub-County Land Registrar in compliance of the above order invited all the proprietors of the neighbouring properties to be present during this exercise of re-establishing and/or replacing the beacons of the property known as Transmara/intona/5.
17. It is at this point that the 1st and 2nd interested parties sought leave to be joined as interested parties.
18. Upon joinder, the 2nd interested party filed a notice preliminary objection dated June 28, 2022 (hereinafter referred to as “the preliminary objection”).
19. The grounds raised in the preliminary objection by the 2nd interested party were mainly two; -
 - a. That this court lacks jurisdiction to hear the application as it offends the express provisions of section 18 and 19 of the *Land Registration Act*, No 3 of 2012.



- b. That by this clear provision of the law, this court is barred from entertaining this matter for lack of jurisdiction since the 1st respondent has powers under section 19 of the Land Registration Act, No 3 of 2012.
20. The counsel for the 2nd interested party filed the supporting submissions on the June 29, 2022 while the applicants filed a further affidavit on July 18, 2022 and the submissions relating to the preliminary objection on the same day.
21. The court upon perusing the preliminary objection and the submissions in support thereof, then going through the submissions of the applicants filed on the July 18, 2022 and the authorities submitted therein by both parties, it is clear that the issue of jurisdiction to entertain this application has been doubted by at least the 2nd interested party.
22. The point of departure in the determination of this issue of jurisdiction are the provisions of Section 18 and 19 of the [Land Registration Act](#), No 3 of 2012.
23. Section 18 (2) of the [Land Registration Act](#), No 3 of 2012 provides as follows; -
- “The court shall not entertain any action or other proceedings relating to a dispute as to the boundaries of registered land unless the boundaries have been determined in accordance with this section.”
24. The question in the mind of the court that begs to be answered is whether or not the application filed by the applicants actually constitute a dispute as envisaged in the section 18(2) of the [Land Registration Act](#), No 3 of 2012.
25. According to the [Black Law Dictionary](#), tenth edition at page 572 defines “dispute” as follows; -
- “A conflict or controversy, especially one that has given rise to a particular law suit.”
26. Looking at the prayers listed in the application, the supporting affidavit thereof and the annexures thereof, this court is unable to identify any dispute therein.
27. The prayers listed in the present applicant are invoking the court’s inherent jurisdiction to direct the respondents to undertake their statutory duties as given in section 19 and 20 of the [Land Registration Act](#), No 3 of 2012.
28. The applicants through their letter dated July 22, 2020 have clearly placed before the court a request to the 1st respondent to carry out its duties under section 19(1) and (2) of the [Land Registration Act](#), No 3 of 2012.
29. The letter dated July 22, 2020 was supported by the letter dated July 27, 2020 from the 1st respondent to the District Land Registrar, Transmara for action and/or implementation.
30. Unfortunately, until a consent was recorded in court on the February 23, 2022, no action had been done by the 1st respondent and/or the Land Registrar, Transmara.
31. Section 19(1) & (2) of the [Land Registration Act](#), No 3 of 2012 also provides as follows; -
- (1)) If the Registrar considers it desirable to indicate on a filed plan approved by the office or authority responsible for the survey of land, or otherwise to define in the register, the precise position of the boundaries of a parcel of any part thereof, or if an interested person has made



an application to the registrar, the registrar shall give notice to the owners and occupiers of the land adjoining the boundaries in question of the intention to ascertain and fix the boundaries.”

- (2) The registrar shall, after giving all persons appearing in the register an opportunity of being heard, cause to be defined by survey, the precise position of the boundaries in question, file a plan containing the necessary particulars and make a note in the register that the boundaries have been fixed, and the plan shall be deemed to accurately define the boundaries of the parcel.
32. According to the court’s basic understanding, the powers of the Land Registrar to affix, return and/or place beacons provided on a mutation and/or deed plan can be done either through an application by a land owner or in the process of resolving a dispute.
33. In this instant application, it was the land owner that had made a request to the 1st respondent and/or their designated officers which is well within the law.
34. The action by the Land Registrar to invite the owners of the adjacent properties was in line with section 19(2) of the Land Registration Act, No 3 of 2012 and does not signify the presence of a dispute and should not be construed as such.
35. The 2nd interested party having filed this preliminary objection had a duty to point out the dispute in boundaries between the himself and the applicants herein.
36. So far, none has been provided to this court.
37. Section 20 of the Land Registration Act, No 3 of 2012 particularly provides as follows; -
- “Every proprietor of land shall maintain in good order the fences, hedges, stones, pillars beacons, walls and other features that demarcate the boundaries, pursuant to the requirements of any written law.”
38. Indeed, the applicants were simply enforcing their statutory rights as provided for under section 20 of the Land Registration Act, No 3 of 2012 by ensuring that all the beacons appertaining to the property known as Transmara/Intona/5 were properly on the ground as required by law.
39. This exercise did not imply that a boundary dispute existed with the neighbouring properties including the property known as Transmara/Intona/11.
40. In essence therefore, in the absence of any notable boundary dispute either in the preliminary objection and/or identified in the submissions of the 2nd defendant, the court is of the view that it has the jurisdiction make directions in the present application under section 3A of the Civil Procedure Act cap 21, as well as section 13(1), (2) and (3) of the Environment & Land Court Act, No 19 of 2011.
41. Lastly, the court would like to draw the attention of all the parties in this application that its orders of February 23, 2022 have been fully implemented as both the Sub-County Land Registrar-Kilgoris and the Sub-County Land Surveyor presented their report dated June 30, 2022 on the July 8, 2022.
42. Each party is invited to collect a copy from the offices of the Deputy Registrar of Environment & Land Court for their consumption and further action.

In conclusion therefore, the preliminary objection dated June 28, 2022 be and is hereby dismissed with costs.

DATED, SIGNED & DELIVERED VIRTUALLY IN KILGORIS ELC COURT ON DAY OF 21ST SEPT 2022.

EMMANUEL.M.WASHE



JUDGE

IN THE PRESENCE OF:

COURT ASSISTANT: ELISHA

ADVOCATES FOR THE APPLICANT: MUIRURI

ADVOCATES FOR THE RESPONDENT: MACHARIA

