



Githinji & 3 others v Unique Shelters Limited & 2 others (Environment and Land Appeal E036 of 2021) [2022] KEELC 14427 (KLR) (27 October 2022) (Ruling)

Neutral citation: [2022] KEELC 14427 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND APPEAL E036 OF 2021
MN GICHERU, J
OCTOBER 27, 2022**

BETWEEN

**PETER GITURO GITHINJI 1ST APPLICANT
HILDA KERUBO ONDARI 2ND APPLICANT
JOSEPH M. KAMAU 3RD APPLICANT
WILSON KAMAU T/A VIEW HILL AGENCY 4TH APPLICANT**

AND

**UNIQUE SHELTERS LIMITED 1ST RESPONDENT
LAND REGISTRAR, KAJIADO 2ND RESPONDENT
DISTRICT SURVEYOR (KAJIADO NORTH DISTRICT) 3RD RESPONDENT**

RULING

1. This ruling is on the notice of motion dated December 17, 2021. The said motion is brought under order 42 rules 6(1) and (2) of the [Civil Procedure Rules](#) and sections 1A, 1B and 3A of the [Civil Procedure Act](#) as well as other enabling provisions of law.
The motion has two main prayers remaining namely.
 - i. A stay of execution of orders issued on December 3, 2020, by Honorable B. Cheloti (SRM) pending the hearing and determination of the intended appeal.
 - ii. A stay of execution of the ruling delivered on December 7, 2021 by Hon B. Cheloti pending the hearing and determination of the intended appeal.
2. The grounds for seeking the above orders are as follows;



- a. That substantial irreparable loss will result to the appellants unless the orders sought are granted.
 - b. That there has been no unnecessary delay in bringing this application.
 - c. That the appellants have an arguable appeal with a high probability of success and if the instant application is not allowed, the appeal will be rendered nugatory.
 - d. That the appellants are willing to provide security as the court orders for the performance of such decree which may issue.
 - e. That no prejudice will be suffered by the respondents if the application is allowed.
3. In further support of the application, Peter Gituro Githinji has sworn a supporting affidavit with three annexures which include the order dated December 3, 2020, an application dated October 15, 2021 seeking to have appellants join the suit in the lower court, namely ELC miscellaneous cause No E017/2020 at the Chief Magistrates Court, Kajjado and a copy of the ruling dated December 7, 2021.
 4. The application is opposed by the respondents and one Wilson Ngotho has sworn a replying affidavit filed in court on February 17, 2022 whose gist is that the applicants have not proved that the intended exercise of boundary demarcation will occasion them any prejudice.

It also deposed that the application is a delaying tactic aimed at continued trespass on the respondents land number KJD/Loodariak/20.

5. Counsel for the parties filed written submissions on 6th and October 7, 2022 respectively.
6. I have carefully considered the application in its entirety including the grounds, the affidavits, the annexures and the submissions.

I find that the application dated December 17, 2021 has no merit for the following reasons.

Firstly, the dispute between the parties herein concerns boundaries between parcels numbers KJD/Loodariak/20, 1594, 1810 and 1811.

Section 18 (2) of the [Land Registration Act](#) provides as follows.

The court shall not entertain any action or other proceedings relating to a dispute as the boundaries of registered land unless the boundaries have been determined in accordance with this section”.

From the above provision, it is clear that the lower court did not have jurisdiction to determine the dispute and that is why the learned magistrate referred it to the right forum.

Secondly, I do not see the prejudice the applicant will suffer if the boundaries are determined by the registrar as intended.

I suppose that they too will be in attendance during the exercise and they will be heard. It is only after the boundaries have been fixed by the land registrar that the applicants may file a suit.

For the above stated reasons, I dismiss the application dated December 17, 2021 with costs to the respondents.

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

M.N. GICHERU



JUDGE

