



**Waweru v Mundia & 4 others (Environment and Land Appeal E002 of 2022)  
[2022] KEELC 14935 (KLR) (21 November 2022) (Judgment)**

Neutral citation: [2022] KEELC 14935 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT AND LAND APPEAL E002 OF 2022  
MN GICHERU, J  
NOVEMBER 21, 2022**

**BETWEEN**

**JOSEPH MUNDIA WAWERU ..... APPELLANT**

**AND**

**MARY THONGORI MUNDIA ..... 1<sup>ST</sup> RESPONDENT**

**NYAKIHUGU MUNGAI ..... 2<sup>ND</sup> RESPONDENT**

**FRANCIS NGINAI MUNGAI ..... 3<sup>RD</sup> RESPONDENT**

**LAND REGISTRAR, NGONG ..... 4<sup>TH</sup> RESPONDENT**

**DISTRICT SURVEYOR, NGONG ..... 5<sup>TH</sup> RESPONDENT**

*(The Appellants filed this appeal against the decision of R.K. Kalama,  
Land Registration Officer dated 22nd December, 2021, relating  
to Land Number Ngong/Ngong/3502 and Ngong/Ngong/7130.)*

**JUDGMENT**

1. Joseph Mundia Waweru and Mary Thogoti Mundia, (the appellants) filed this appeal against the decision of R K Kalama, land registration officer dated December 22, 2021, relating to land number Ngong/Ngong/3502 and Ngong/Ngong/7130.
2. The registrar’s findings and ruling which is appealed against reads as follows.

“Based on the surveyor’s observation Ngong/Ngong/350 and Ngong/Ngong/3502 (Ngong/Ngong/2433), the total acreage before subdivision was 5.42 hectares. During the subdivision, the surveyor processed the mutation based on the ground measurements and Ngong/Ngong/3501 (No 7130, 7131 and 7132) was indicated as 3.16 hectares, while Ngong/Ngong/3502 was indicated as 2.26 hectares.



Having considered the statements of both parties and findings of the surveyors since the subdivision which was to subdivide the Ngong/Ngong/2433 into two halves where Francis Mungai bought 2.43 hectares being parcel Ngong/Ngong/3502, and the remainder (sic) Ngong/Ngong/3501 to be 2.99 hectares.

Being that the case Ngong/Ngong/3501 will remain with 2.99 hectares which was subdivided into Ngong/Ngong/7130, 7131 and 7132. Ngong/Ngong/7131 is 0.40 and Ngong/Ngong/7130 will retain the remainder (sic) of the total acreage which is approximately 2.080 hectares.

From the above boundary between Ngong/Ngong/3501 and 3502 is clear as marked out where parcel Ngong/Ngong/3502 is 2.43 hectares while Ngong/Ngong/3501 is 2.99 hectares.

I therefore direct the district surveyor to amend the registry index map to reflect the ground measurements.

This is the final report and supersedes any other report prepared earlier on the above boundary dispute. Right of appeal to the High Court granted to parties -28 days from the date of this ruling.

Delivered on December 22, 2021

R K Kalama

chief land registration officer”.

3. In the memorandum of appeal dated January 7, 2022, the appellants pray for the orders namely;
  - a. The ruling dated 22<sup>nd</sup> December, 2021 be set aside and the boundary remains as it is.
  - b. A permanent injunction be issued restraining the respondents, their agents or servants from interfering with the appellant’s peaceful occupation of Ngong/Ngong/94928, 94929 and 94930.

The appeal is supported by seven grounds which are as follows.

- i. That the land registration officer did not the jurisdiction to entertain the purported dispute.
- ii. That the appellants were not afforded a fair hearing.
- iii. That the land registration officer did not consider all or any evidence before reading the decision he did.
- iv. That the land registration officer failed to consider that land No Ngong/Ngong/7130 did not exist.
- v. That the land registration officer failed to consider the fact that the dispute had already been determined by the Kajiado District Land Disputes Tribunal.
- vi. That the land registration officer failed to consider that there was another report in public domain by another land registrar touching on the same subject matter.
- vii. That the dispute, if any, is time barred.
- viii. That the land registration officer acted in excess of jurisdiction.



4. Counsel for the parties filed written submissions on May 17, 2022 and September 30, 2022 respectively. The respondents' counsel identified two issues for determination as follows.
- a. Whether the orders sought should be granted; whether the applicants have demonstrated that the orders of stay of execution are merited.
  - b. Whether the appeal should be allowed to stand.

The appellants' counsel did not identify any issues for identification.

I will treat the eight grounds of appeal as the issues for identification.

5. I have carefully considered the entire appeal including the grounds, the record compiled by the land registration officer, the submissions by learned counsel for both sides, the record of appeal, the case law cited and the affidavits and annexures on record. I make the following findings.

Firstly, on the respondents' first issue, I find that the order of stay of execution was deserved because the suit land would have been altered by the implementation of the order of the land registration officer. The respondent had nothing to lose as the land is immovable. It is not prudent to execute in a land case until the aggrieved party has exhausted all the avenues of appeal.

On the second ground, I think it is a misnomer which was inadvertent on the part of the respondents' counsel to pose the question "whether the appeal should be allowed to stand". It should have been whether the ruling of the land registration officer dated December 22, 2021 should be allowed to stand.

I will answer that question as i consider the grounds set out by the appellants.

On the appellants' first ground, i find that the land registration officer did not have jurisdiction because i find that what he did on that day exceeded a boundary dispute determination. He caused the adjustment of the registry index map without all the facts.

From the notice of motion dated January 7, 2022, it is obvious that this dispute has previously been litigated upon in Civil Appeal No 1031 of 2007, at the High Court of Kenya at Nairobi, Kajiado Chief Magistrates' Court in Case No 566 of 2015, Tribunal Case No 316/6/011 dated February 16, 2012, boundary dispute determination dated February 21, 2017 and Provincial Appeal Tribunal land case number 16 of 2003.

Many questions arise as to the implication of all the above to the dispute. Could the land registration officer, re-open a case that had been settled on May 11, 2015 by the High Court? I find that he could not. The only avenue open to an aggrieved party would have been to the Court of Appeal.

I therefore agree with the appellants' counsel that the land registration officer had no jurisdiction in this matter.

On the second issue, I find that looking at the record of the day, the land registration officer did not say anything about the previous litigation over the matter. That being the case, it means that he did not consider all this. Had he done so, he would have mentioned it in his proceedings.

It is therefore safe to assume that the appellants were not heard on the past history of the dispute. They were entitled to a fair hearing which did not happen. By deciding on the second ground, I have also decided on the third ground.

On the fourth ground, I find that it is true that the land registration officer proceeded as if LR 7130 was intact, yet there is evidence on record in form annexures 2(a), (b), and (c) to the affidavit dated January 7, 2022 showing that the same was subdivided into parcels numbers 94928, 94929 and 94930.



The reasons already given cover the rest of the grounds. I am in agreement with the submissions by the appellants' counsel.

Finally, there is evidence on record that even though LR 7130 was larger in size than the initial seller and the appellants had originally thought, that discrepancy was eventually settled by the original parties. The respondents have been re-opening a settled matter every now and then. There is no justification for this.

For the above stated reasons, I allow the appeal in its entirety and because costs must follow the event, I order that the respondents pay the costs of the appeal.

Order accordingly.

**DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 21<sup>ST</sup> DAY OF NOVEMBER, 2022.**

**M.N. GICHERU**

**JUDGE**

