



**Republic v Land Registrar, Kajiado North District & 2 others (Environment and Land Miscellaneous Application 130 of 2017) [2022] KEELC 14705 (KLR) (9 November 2022) (Ruling)**

Neutral citation: [2022] KEELC 14705 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KAJIADO**  
**ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION 130 OF 2017**  
**MN GICHERU, J**  
**NOVEMBER 9, 2022**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**LAND REGISTRAR, KAJIADO NORTH DISTRICT ..... 1<sup>ST</sup> RESPONDENT**

**DISTRICT SURVEYOR KAJIADO NORTH DISTRICT ..... 2<sup>ND</sup> RESPONDENT**

**SAMUEL NJAU GACHOMO ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. This ruling is on the notice of motion dated April 4, 2022. It is by the interested party and seeks the following orders.
  - a. Stay of execution of the orders dated July 26, 2021 requiring the District Land Registrar Kajiado to fix boundaries of the disputed land based on the district surveyor's report dated May 17, 2017.
  - b. Review, variation or setting aside of order in (a) above.
  - c. Costs of the suit.
2. The motion which is brought under order 45, rule (1) *Civil Procedure Rules*, sections, 3A and 80 of the *Civil Procedure Act* and all enabling provisions of law is supported by ten grounds, a supporting affidavit dated April 4, 2022 and a supplementary affidavit dated August 22, 2022.

The gist of all the above material is that on April 18, 2017, a team of surveyors visited the disputed land and demarcated the boundaries between the parcels in dispute. As a result of the visit, the interested party is expected to compensate the *ex parte* applicant with 0.05 meters of land.



Secondly, after this, the surveyor has visited the land again and placed a beacon two meters inside the interested party's land. The *ex parte* applicant has threatened to demolish the wall that separates the two land parcels. If the wall is demolished, the interested party would suffer loss because he would be exposed to insecurity. His septic tank and other developments would also be affected. He deposes finally that he was not aware of the demarcation of the boundaries on April 18, 2017 and prays for the exercise to be repeated in his presence.

3. The application is opposed by the applicant who has sworn a replying affidavit dated May 12, 2022. He has given two (2) reasons for opposing the application. The first one is that the interested party was aware of the date of the boundary demarcation but chose not to attend.

Secondly, it is contended that grounds for setting aside the earlier order have not been proved as required by order 45 *Civil Procedure Rules*.

4. Counsel for the parties filed written submissions on August 22, 2022 and September 22, 2022.
5. I have carefully considered the application dated April 4, 2022 in its entirety including the affidavits, the grounds, the submissions and the case law cited therein.

I find that it is fair and just to allow the said application for the following reasons.

Firstly, the interested party has demonstrated that he stands to suffer serious and substantial loss if his property is to be demolished.

Secondly, he has proved that he was not present when the boundary determination took place. It would not be fair or just to condemn a party unheard.

These reasons are sufficient to make me order a review of the earlier orders.

6. I therefore allow the application dated April 4, 2022 but on condition that the interested party pays the costs of the fresh demarcation of boundaries. Parties to be present with their own private surveyors if they so wish and to be given sufficient and reasonable notice of the exercise.

**DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 9<sup>TH</sup> DAY OF NOVEMBER, 2022.**

**M N GICHERU**

**JUDGE**

