



**Sanja (Suing as an Administrator of the Estate of Vincent Sanja Wapicho) v Opicho & 3 others
(Environment & Land Case E012 of 2023) [2025] KEELC 4231 (KLR) (29 May 2025) (Judgment)**

Neutral citation: [2025] KEELC 4231 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA
ENVIRONMENT & LAND CASE E012 OF 2023**

EC CHERONO, J

MAY 29, 2025

BETWEEN

**CHRISPINUS WAFULA SANJA (SUING AS AN ADMINISTRATOR OF THE
ESTATE OF VINCENT SANJA WAPICHO) PLAINTIFF**

AND

DAVID OPICHO 1ST DEFENDANT

SIMON ADADA WASIKE 2ND DEFENDANT

HENRY WASIKE 3RD DEFENDANT

LAND REGISTRAR BUNGOMA 4TH DEFENDANT

JUDGMENT

1. The Plaintiff instituted this suit against the Defendants vide a plaint dated 14/12/2023 seeking judgment for orders inter alia a permanent injunction restraining the Defendants, their agents, servants and/or assignees from interfering in any way whatsoever with the peaceful occupation of land parcel No. E.Bukusu/N.Nalndo/255.. The plaintiff also seeks a permanent injunction restraining the 2nd Respondent from interfering with common boundary between land parcel No. E.Bukusu/N.Nalndo/255. and E.Bukusu/N.Nalndo/3283, 2076, 2251 and 2078. The plaintiff further seeks a Declaration that the kNow and existing common boundary between Land parcel No. E.Bukusu/N.Nalndo/255. and E.Bukusu/N.Nalndo/283, 2076, 2251 and 2078 is the proper and official boundary between the parcels of land.

The Plaintiff averred that Vincent Sanja Wapicho (the deceased) was the registered owner of land parcel number E.Bukusu/N.Nalndo/255 which is adjacent to land parcel number E.Bukusu/N.Nalndo/1599 belonging to one Jackson Wasike Opicho-Now deceased. He averred that both titles were issued during the land adjudication period and that when Jackson Wasike Opicho died, the



- 1st Defendant administered his estate and completed the process without any complaints as to the boundaries.
2. The Plaintiff stated that after distribution of the estate, some of the beneficiaries resorted to selling their portions to third parties causing the sub-division of land parcel number E.Bukusu/N.Nalndo/1599 to land parcel number E.Bukusu/N.Nalndo/3283, 2076, 2251 and 2078. The said third parties i.e the 1st to 3rd Defendant are said to have further sold part of their portions leaving them with smaller portions and they Now wish to fix the boundaries afresh.
 3. It was his case that land parcel number E.Bukusu/N.Nalndo/255. which forms part of the estate of Vincent Sanja Wapicho who died on 02/02/1972 is yet to be shared amongst 35 beneficiaries of the estate and that the 4th Defendant is Now threatening to survey the said parcel without issuing summons to all the beneficiaries of the estate of Vincent Sanja Wapicho. It was stated that this omission by the Respondents is aimed at denying the said beneficiaries an opportunity to protect their right to property. It was their case that the intended exercise to fix the boundaries is malicious and intended to cause unnecessary pandemonium.
 4. The Plaintiff sought judgment against the Defendant for;
 - a. That this hoNourable court be pleased to issue an order of permanent injunction restraining the Defendants, their agents, servants or assignees from interfering in any way whatsoever with the peaceful occupation of land parcel No. E.Bukusu/N.Nalndo/255..
 - b. A permanent injunction restraining the 2nd Defendant from interfering with the common boundary between land parcel No. E.Bukusu/N.Nalndo/255. and E.Bukusu/N.Nalndo/3283, E.Bukusu/N.Nalndo/2076, E.Bukusu/N.Nalndo/2251 and E.Bukusu/N.Nalndo/2078.
 - c. A declaration that the kNown and existing common boundary between land parcel No. E.Bukusu/N.Nalndo/255. and E.Bukusu/N.Nalndo/3283, E.Bukusu/N.Nalndo/2076, E.Bukusu/N.Nalndo/2251 and E.Bukusu/N.Nalndo/2078 is the proper and official boundary between the parcel of land.
 - d. Costs of this suit and interests thereon and court rates.
 5. The Defendants was served with a Summons to Enter Appearance. The 1st, 2nd and 3rd Defendants filed a joint statement of defence dated 23/10/2024 in which they denied the contents of the plaint and averred that they are the absolute registered owners of land parcel E.Bukusu/N.Nalndo/2078, E.Bukusu/N.Nalndo/3283 and E.Bukusu/N.Nalndo/2077. That land parcel No E.Bukusu/N.Nalndo/1599 is separate and distinct from land parcel E./Bukusu/N.Nalndo/255 and they have No intention to use and or occupy land parcel E.Bukusu/N.Nalndo/255.. They urged the court to dismiss the Plaintiff's suit for being bad in law.
 6. The 4th Defendant filed a statement of defence dated 23/02/2025 in which he also denied the Plaintiffs claim in its entirety.

Evidence by Parties.

7. At the trial, the Plaintiff called one witness, Chrispinus Wafula Sanja (PW1) where he adopted his witness statement dated 14/12/2023 as his evidence-in-chief. He equally referred to his list of documents dated 14/12/2023 containing five items and produced as P-Exhibit 1,2,3,4 &5. In re-examination, he stated that his claim was for a boundary dispute and that he had No problem with the Land Registrar vising the land to rectify the boundaries.



8. The defence called three witnesses. DW1 David Wafula Odipo adopted his witness statements dated 23/10/2024 as his evidence-in-chief. He also produced into evidence his documents contained in his list of documents dated 23/10/2024 as D-Exhibit 1 (a) (b) (c). In cross-examination, he testified that his land is parcel No. E.Bukusu/N.Nalndo/2078 measuring approximately 1.20ha and it borders Land Parcel No. E.Bukusu/N.Nalndo/255.. That there has been No dispute between them and that the boundary dispute is between land parcel E.Bukusu/N.Nalndo/255. and land parcel E.Bukusu/N.Nalndo/1599 where a life fence was removed.
9. DW2 Adada Wasike referred to his witness statement dated 23/10/2024 which he sought to adopt as his evidence-in-chief. He testified that his land is Parcel No. E.Bukusu/N.Nalndo/3283. He further testified that the land was surveyed by the County Surveyor.
10. DW3 Henry Simiyu Wasike referred to his witness statement dated 23/10/2024 and sought to adopt as his evidence-in-chief. He testified that his Land Parcel No. E.Bukusu/N.Nalndo/2077 borders land parcel E.Bukusu/N. Nalndo/255 and that he had called the County Surveyor to rectify the boundary that had been removed.

Submissions by parties.

11. At the close of the plaintiff's and the defendants' case, the Parties agreed to file and exchange written submissions.
12. The Plaintiff filed submissions dated 03/04/2025 where he submitted that the 4th Defendant should Not be used to disinherit the Plaintiff and his family what is rightfully theirs. He submitted that Section 19(3) of the [Land Registration Act](#) mandates provides that the Land Registrar must involve all parties before any boundary alteration. He urged the court to make a declaration that the boundaries between the Plaintiff's land and the Defendants' resultant subdivisions remain as originally fixed during adjudication, an injunction restraining the Defendants and the Land Registrar from altering the boundaries without a court order and costs of this suit.
13. The 1st, 2nd and 3rd Defendants filed submissions dated 27/03/2025 in which they submitted that the issue raised before this court fall within the jurisdiction of the Land Registrar under Section 18(2) of the [Land Registration Act](#). They cited the case of Fumo v. Farah Environment And Land Court Case 128 of 2018(2023) KE ELC 16516(KLR). They also submitted that the Plaintiff has failed to demonstrate why he should be issued with a permanent injunction. They relied in the case of Nguruman Limited v Jan Bond Nielsen & 2 other [2014] eKLR.

Analysis and determination

14. I have considered the pleadings, evidence by the parties and their written submissions. I have also considered the documents produced in evidence and the applicable law.
15. At the outset, it is important to Note that from his submissions, the Plaintiff appears to seek reliefs that differ from those pleaded in the plaint. It is trite law that parties are bound by their pleadings, and submissions canNot be used to introduce new cause of action or seek order Not prayed for in the pleadings.
16. The Plaintiff in the plaint seeks an order of a permanent injunction against the Defendants from interfering with his quiet enjoyment of the land and the common boundary of the resultant parcels of land including his own. The plaintiff seeks an order of a Permanent Injunction restraining the defendants by themselves, servants, employees and/or agents from interfering with his peaceful occupation of land parcel No. E.Bukusu/N.Nalndo/255.. It is trite that a permanent injunction



is an equitable relief issued as a final order after the case has been heard and determined on merits. determination in the case. It seeks to prevent a party from continuing with a particular action or behavior. See the case of Kenya Power & Lighting Co. Limited v Sheriff Molana Habib [2018] eKLR where the Court held inter alia as follows:

“...A permanent injunction which is also known as perpetual injunction is granted upon the hearing of the suit. It fully determines the rights of the parties before the court and is thus a decree of the court. The injunction is granted upon the merits of the case after evidence in support of and against the claim has been tendered. A permanent injunction perpetually restrains the commission of an act by the Defendant in order for the rights of the Plaintiff to be protected. A permanent injunction is different from a temporary/interim injunction since a temporary injunction is only meant to be in force for a specified time or until the issuance of further orders from the court. Interim injunctions are normally meant to protect the subject matter of the suit as the court hears the parties...”

17. There is No doubt that the Plaintiff and others are the registered owner of land parcel No. E.Bukusu/N. Nalndo/255 having been so registered on 28/11/2022 following a confirmation of grant for the estate of Vincent Sanja Wapicho wherein he is the administrator. It is also Not in contention that the 1st, 2nd and 3rd Defendants are the registered owners of land parcel No E.Bukusu/N.Nalndo/2078, 3283 and 2077 respectively. The Plaintiff averred that the Defendants have since sold their portions and are Now trying to squeeze themselves into his land by pushing for a boundary rectification. The Defendants on their part refute the Plaintiffs claim and contend that they have Not in any way interfered with the Plaintiffs land as they are in occupation of their respective parcels. They argued that they only sought to have the surveyor replace beacons after the live boundaries that were in place were removed.
18. Section 108 of the *Evidence Act* provides “The burden of proof in a suit or proceeding lies on that person who would fail if No evidence at all were given on either side.” The Plaintiff however tendered evidence that was in consistent with his pleadings and even ended up submitting on different prayers. Nothing was placed before this court to show that the Defendants have interfered with the enjoyment of his respective portion. He did Not prove that there was any trespass or intrusion by the Defendants into his land. His assertions are based on mere apprehension and Not empirical evidence. The Plaintiff failed to provide sufficient evidence to proof his claim.
19. See case of Mbuthia Macharia v Annah Mutua & ANother [2017] eKLR, which discussed the burden of proof and stated thus: “The legal burden is discharged by way of evidence, with the opposing party having a corresponding duty of adducing evidence in rebuttal. This constitutes evidential burden. Therefore, while both the legal and evidential burdens initially rested upon the appellant, the evidential burden may shift in the course of trial, depending on the evidence adduced. As the weight of evidence given by either side during the trial varies, so will the evidential burden shift to the party who would fail without further evidence? In this case, the incidence of both the legal and evidential burden was with the appellant.”
20. The Plaintiff also sought a declaration that the existing common boundaries between the various properties were proper and the official boundaries. How then can a court determine that boundaries are fixed and are proper? The boundaries can be deemed to have been fixed as provided by Section 19(3) of *Land Registration Act*, which provides; “Where the dimensions and boundaries of a parcel are defined by reference to a plan verified by the office or authority responsible for the survey of land, a Note shall be made in the register, and the parcel shall be deemed to have had its boundaries fixed under this section”



21. For this court to find and hold that the boundaries herein had been fixed, the Plaintiff ought to have availed evidence of a plan verified by the office responsible for survey of land, with a Note made in the Register that the boundaries have indeed been fixed. This section of law contains mandatory provisions. No such evidence of a Register and a Note therein was availed and therefore, this court canNot deem that the boundaries had been fixed.

22. What then happens when the court canNot make a declaration that boundaries had been fixed? From the evidence presented, the parties agree that the applicable law for resolving boundary disputes is Section 18 of the *Land Registration Act*, 2012 which provides as follows:

“Boundaries

1. ...
2. 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.
3. ...”

23. The foregoing provision is couched in mandatory terms, requiring that disputes pertaining to land boundaries be determined by the Land Registrar, except in instances where the boundaries have already been fixed. This Court therefore lacks jurisdiction to usurp the statutory mandate conferred upon the Registrar, save in accordance with the exceptions provided under the law.

24. Regulation 40(6) of the Land Registration (General) Regulations 2017 confirms that the only jurisdiction that the court has in boundary disputes is appellate and Not original. It provides as follows.

“ Any party aggrieved by the decision of the Registrar made under paragraph (5) may, within 30 days of the date of Notification, appeal the decision to the court”.

25. Since this suit is Not an appeal against the decision of the Land Registrar, then the prayers sought canNot be granted for want of jurisdiction.

26. Under the provisions of Section 27 of the *Civil Procedure Act*, the award of costs is a discretion of the Court. However, it is also trite that costs follow the event and is awarded to the successful litigant. The Plaintiff having failed to prove his case on a balance of probabilities, and there being No exceptional reasons or circumstances, the Defendants are entitled to the costs of this suit.

27. In conclusion, I find and hold that the Plaintiff has failed to prove his claim against the Defendants on a balance of probabilities. Consequently, the Plaintiff suit therefore fails and the same is hereby dismissed with costs

28. It is so ordered

DATED, SIGNED AND DELIVERED AT BUNGOMA THIS 29TH DAY OF MAY, 2025.

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HON.E.C CHERONO

ELC JUDGE

In the presence of;

M/S Nekesa H/B for Wattangah for the defendants



Plaintiff-present.

Bett C/A.

