



Maroa & another v Nyakobwe (Environment and Land Miscellaneous Application E006 of 2022) [2022] KEELC 15413 (KLR) (19 December 2022) (Ruling)

Neutral citation: [2022] KEELC 15413 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MIGORI
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E006 OF 2022
MN KULLOW, J
DECEMBER 19, 2022**

BETWEEN

JOHN CHACHA MAROA 1ST APPLICANT

JAMES CHACHA 2ND APPLICANT

AND

MAGOIGA MAROA NYAKOBWE RESPONDENT

RULING

1. By a notice of motion dated March 29, 2022, the applicant sought the following orders; -
 - a. That the Land Registrar and the County Surveyor of Kuria East and West sub-counties, do proceed to confirm the boundaries on land parcel No. Nyabasi/ Busonga/ 166 and parcel No Nyabasi/ Busonga/152 and file a report thereafter.
 - b. That the OCS Kehancha police station to provide security.
 - c. That costs of this application be provided for.
2. The application is based on the 10 grounds thereof and the supporting affidavit sworn by the 1st applicant on even date on his own behalf and on behalf of the 2nd applicant. The applicant stated that they are the joint registered owners of parcel No Nyabasi/ Busonga/ 166 while the respondent is the registered owner of parcel No Nyabasi/ Busonga/152. It is his claim that there has been a long-standing dispute over the boundaries of the 2 parcels of land, which has severally been reported to the area chief but no action has ever been taken.
3. The applicants are apprehensive that due to the animosity, conflict and misunderstandings between the 2 families; they are now desirous of ending the said long standing conflict by way of a resurvey of both parcels of land and confirmation of boundaries and further sought the protection and security by the Kehancha police during the exercise.



4. They thus urged the court to allow the application in the wider interest of justice.
5. The application was opposed; the respondent filed a replying affidavit sworn on the June 16, 2022. He confirmed the proprietorship of the 2 parcels of land and the long-standing dispute between the 2 families and further stated that the parcels of land share a common boundary.
6. It was however his contention that the application is an abuse of the court process for the reason that; the alleged dispute does not fall under the jurisdiction of the court as the same is a boundary dispute which is within the jurisdiction of the Land Registrar and further that the provisions of the law under which the application is grounded does not confer or mandate the court to grant the orders sought.
7. It was his claim that should the application be allowed; he stands to suffer prejudice as he will have been condemned without due process of the law. He thus urged the court to dismiss the application.
8. The application was canvassed by way of written submission, both parties filed their rival submissions which I have read and taken into account in arriving at my ruling as hereunder;

Analysis And Determination

9. From the foregoing, the sole issue arising for determination is whether the instant application is merited and the applicant is entitled to the reliefs sought.
10. The applicants herein have urged the court to compel the Land Registrar and the County Surveyor to confirm the boundaries between parcel Nos 166 jointly registered in their names and parcel 152 registered in the name of the respondent and which share a common boundary; owing to the long-standing dispute between the 2 parties which has created animosity, conflict and misunderstandings. Even though they acknowledge that the jurisdiction of confirmation of boundaries is a preserve of the Land Registrar, it is their contention that this court has exclusive, original and supervisory jurisdiction to grant the orders sought.
11. The respondents on the other hand maintained that this court is not properly vested with the jurisdiction to issue the reliefs sought given that the determination of boundaries is a preserve of the Land Registrar and County Land Surveyor.
12. This court derives its jurisdiction from Article 162(2) (b) of the Constitution as read together with Section 13(2) of the ELC Act. Sections 18 and 19 of the Land Registration Act addresses the issue of boundaries and the procedure to be followed by an interested party. The sections provide as follows;

“ 18 (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.

(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 or 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.

13. Section 18(2) above clearly ousts the jurisdiction of the court to determine the issues of boundaries and vests the requisite jurisdiction of the same with the Land Registrar. The doctrine of exhaustion of remedies provides that where there is a clear procedure to be followed in the resolution of a dispute; a party must first 'exhaust' the said procedure before proceeding to court. The applicants herein have not demonstrated the actions and steps taken in the form of an application to the Land Registrar to have the boundary issue resolved.
14. Further, it is important to note that this court cannot at this juncture compel the Land Registrar unless by a judicial review application seeking an order of *Mandamus*. In the instant case, the applicant has filed a miscellaneous application; it is my considered opinion that the said application is premature for the reason that there is no evidence on record to show that the dispute was referred to the Land Registrar pursuant to the provisions of sections 18 and 19 of the [Land Registration Act](#).
15. In the absence of any proof; I find that this is a classic section 18 and 19 of the [Land Registration Act](#) matter that must be referred to the Land Registrar for determination.
16. Furthermore, even though the applicants' advocate had told this court that the substantive suit pertaining this matter was heard and determined; the applicants have not attached any judgment or decree in relation to the same.

Conclusion

17. In the premises; I find that the notice of motion dated March 29, 2022, is not merited and is hereby struck out with costs to the respondent.

DATED, SIGNED AND DELIVERED IN VIRTUALLY AT MIGORI ON 19TH DAY OF DECEMBER, 2022.

MOHAMMED N. KULLOW

JUDGE

In presence of; -

..... Applicants

.....Respondent

Court Assistant- Tom Maurice/ Victor

