



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISII**

**CIVIL APPEAL NO.91 OF 1999**

**SILAS ODHIAMBO OSODO ..... APPELLANT**  
**VERSUS**  
**ZACHARIA ONYANDO AUKO ..... RESPONDENT**

**JUDGMENT:**

The Respondent was admittedly the registered co-proprietor in respect of plot Kanyada/Kotieno Katuma "A"/1050. The other proprietor is named Trufena w/o Ouko who is his mother. It means that the respondent was adequately taken care of during the distribution of the estate of his late father.

There is an abstract in the register in this record of appeal. It shows that the size of plot 1050 aforesaid is 2 hectares. All that the respondent was entitled to do was to cause the Land Registrar and District Surveyor to determine the boundaries if he thought that the appellant had encroached upon some of the land comprised in his said title. Under s.21(4) of the Registered Land Act Cap.300 a court has no jurisdiction to entertain any action relating to a dispute as to the boundaries of registered land unless the boundaries had been determined as stipulated in the Act.

So the order which the magistrate purported to give in his judgment i.e. directing the Land Registrar and the Surveyor to determine the boundaries between plot 1050 and 1054 constituted an act which the parties themselves should have initiated if they adhered to the categorical stipulations of the law as adverted to above.

Accordingly I hold that the suit was clearly a non-starter. It should have been dismissed for already contravening the law. So I hereby allow this appeal with costs. The lower court's suit is dismissed with costs.

**Dated and delivered on 29th of July 2003.**  
**I.C.C. WAMBILYANGAH**  
**JUDGE**