



**Mwangi & another v Muiga (Environment & Land Case
E016 of 2024) [2025] KEELC 3984 (KLR) (23 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3984 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT & LAND CASE E016 OF 2024**

**JO OLOLA, J
MAY 23, 2025**

BETWEEN

MOSES KAMAU MWANGI 1ST PLAINTIFF

SILAS MURIITHI MWANGI 2ND PLAINTIFF

AND

MARY WANGUI MUIGA DEFENDANT

RULING

1. By the Notice of Motion dated 9th August, 2024, Moses Kamau Mwangi and Silas Muriithi Mwangi (the Plaintiffs) pray for the following orders:-
 - a. That this Honourable Court may be pleased to grant eviction orders against the Respondent, her entire family, agents, servants and anybody else under her authority from the land parcel No. Nyeri/Endarasha/1559 belonging to Wairimu Mwangi, the Applicants' mother which the Respondent is occupying illegally;
 - b. The eviction operation be carried out by Silverline Auctioneers, Uhuru Street, Protocol Place Opposite Marathe Plaza P.O. Box 7567-0100 Thika Tel: 0721349245 with the assistance of OCS Endarasha Police Station;
 - c. The cost of this Application be provided for.
2. The application which is supported by an Affidavit sworn by the 1st Plaintiff on 9th August, 2024 is premised on the grounds that
 - i. The Respondent and her family have crossed the common border and have illegally occupied a portion of about 3 acres on the land parcel No. Nyeri/Endarasha/1559 without permission or any colour of right;



- ii. The Respondent and her family have built illegal houses and structures on the suit property thereby denying the family of Wairimu Mwangi the use of their mother's land.
 - iii. The Applicants' mother cannot sub-divide her said land among her children due to illegal occupation by the Respondent.
3. Mary Wangui Muiga (the Defendant) is opposed to the application. By her Preliminary Objection dated 11th October, 2024, the Defendant objects to these proceedings on grounds stated as follows:
 - i. As per Section 18 (2) of the [Land Registration Act](#), the Honourable Court lacks jurisdiction to entertain boundary disputes until the boundaries have been determined by the Land Registrar; and
 - ii. The Plaintiff lack locus standi to bring forth this suit as the registered owner of Nyeri/Endarasha/1559 is alive and well and no POA (sic) has been filed on her behalf.
4. Simultaneously with the Preliminary Objection, the Defendant filed a Replying Affidavit sworn on 11th October, 2024 wherein she avers that the registered owner of the suit property is alive and well and that the alleged boundary dispute cuts across on both parcel No. Nyeri/Endarasha/559 and the suit property. The Defendant avers that the said Wairimu Mwangi who is the registered proprietor of the suit property is equally in occupation of the Defendant's land. The Defendant asserts that this court lacks jurisdiction to entertain boundary disputes until the same have been determined by the Land Registrar.
5. I have carefully perused and considered the submissions and authorities placed before me in regard to the Preliminary Objection as raised by the Defendant.
6. The first limb of the Defendant's objection is her contention that this court lacks jurisdiction to deal with the suit by virtue of the provisions of Section 18(2) of the [Land Registration Act](#). The said Section provides as follows:

“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.”
7. On the basis of that provision, the Defendant asserts at Paragraph 3 to 5 of her Replying Affidavit that the subject matter herein is a boundary dispute and that this court cannot therefore be heard to entertain the same unless and until the boundaries have been determined by the Land Registrar. The Defendant avers that her own parcel of land No. Nyeri/Endarasha/559 borders the parcel No. Nyeri/Endarasha/1559 which is registered in the name of the Plaintiff's mother. It is the Defendant's case that the Plaintiff's mother is also occupying a portion of her parcel of land.
8. The Plaintiff's however vehemently deny that the subject matter herein is a boundary dispute. On the contrary the Plaintiffs assert that their suit before the court revolves around trespass by the Defendant whom they accuse of occupying 3 acres of the parcel of land registered in their mother's name.
9. It was not clear how the Plaintiffs came to the conclusion that the Defendant had encroached on a portion of their mother's land measuring 3 acres. While indeed they have framed their cause of action in the Plaint dated 9th August, 2024 as that of trespass and illegal occupation of their land by the Defendant, a reading of their own pleadings left me with no doubt that this was a boundary dispute.



10. I say so because at Paragraph 5 of their said Plaintiff, the Plaintiffs accuse the Defendant of annexing the portion of land they claim as follows:

“ 5. The Plaintiffs jointly and severally will state that their mother Wairimu Mwangi is advanced in age and she cannot conduct this case and that therefore has given her two sons (the Plaintiffs) Power of Attorney to conduct this case on her behalf and demand a portion of about 3 acres or thereabouts taken from her land parcel No. Nyeri/Endarasha/1559 by her neighbour (the Defendant) and annexures (sic) to her land parcel No. Nyeri/Endarasha/559 illegally.”

11. That the Plaintiffs considered the Defendant and her family to have interfered with the boundaries of the land comes out more clearly in their prayers in the Plaintiff wherein they seek judgment as follows:

“ a) The Defendant and her family, servants and all the people under her authority do vacate and give vacant possession of the said portion illegally occupied by her on the land parcel No. Nyeri/Endarasha/1559 which is registered in the name of the Plaintiff’s mother Wairimu Mwangi in trust for herself and her children; and

b) That in default of the Defendant and her people to move out of the said portion on the land parcel No. Nyeri/Endarasha/1559 District Surveyor (and) Land Registrar be ordered to return the boundary at its original place....”

12. Arising from the foregoing, it was clear to me that despite the manner in which the Plaintiffs had framed the suit, it was nothing but a boundary dispute.

13. As the Court of Appeal stated in *Azzuri Limited –vs- Pink Properties Limited* (2018) eKLR:

“ ... boundary disputes pertaining to lands falling within general boundary areas must be referred to the Land Registrar for resolution; while disputes pertaining to lands with fixed boundaries may be investigated and possibly resolved simply through a surveyor...From this analysis of the law, it should be clear from the above that, we are in agreement with the Learned Judge’s conclusion that the dispute ought to have been heard by the Land Registrar as stated in the statute. Jurisdiction is everything. It has been said many times before, that, without it, a court has no power to make one more step, irrespective of the strength and nature of evidence in the parties’ possession.”

14. In the circumstances herein, I was persuaded that the dispute herein falls under the purview of Sections 18(2) and 19 of the *Land Registration Act* and this Court will not confer upon itself jurisdiction to determine a boundary dispute.

15. Since the Defendant had filed a counterclaim against the Plaintiffs based on the same set of facts, it is my finding that both the suit and the Counterclaim cannot lie.

16. In the premises I hereby strike out both the Plaintiff dated 9th August, 2024 as well as the Defendant’s Counterclaim dated 19th November, 2024.

17. The Defendant shall have the costs of the Plaintiff’s suit.

RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT MOMBASA THIS 23RD DAY OF MAY, 2025



.....

J.O. OLOLA

JUDGE

In the presence of:

Ms. Firdaus Court Assistant.

The Plaintiffs present in person

Ms. Muchai Advocate for the Defendant

