



**Githandika & another v Kariuki & 3 others (Miscellaneous Civil Application  
E011 of 2024) [2025] KEELC 1061 (KLR) (6 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1061 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA  
MISCELLANEOUS CIVIL APPLICATION E011 OF 2024**

**JM MUTUNGI, J**

**MARCH 6, 2025**

**BETWEEN**

**SIMON NJOROGE GITHANDIKA ..... 1<sup>ST</sup> APPLICANT**

**MARGARET NJOKI KARIUKI ..... 2<sup>ND</sup> APPLICANT**

**AND**

**GICHIRA SYMON KARIUKI ..... 1<sup>ST</sup> RESPONDENT**

**JOYCE WANJIRU MITWE ..... 2<sup>ND</sup> RESPONDENT**

**LOISE WANJIRA MITWE ..... 3<sup>RD</sup> RESPONDENT**

**VIRGINIA WANJIRU NYAGA ..... 4<sup>TH</sup> RESPONDENT**

**RULING**

1. This Ruling relates to the Notice of Motion application dated 23<sup>rd</sup> May 2024. The Applicant by the application seeks extension of time to file an appeal against the determination made by the Land Registrar Kerugoya dated 18<sup>th</sup> October 2022. Further the Applicant prays that pending the determination of the Intended Appeal the Respondents be restrained from demolishing the Applicants building located within the original boundaries of land parcel number Inoi/Kamondo/2654 and Inoi/Kamondo/2662.
2. The Applicants application was premised on the grounds:-
  1. The Applicants failed to file an appeal due to factors beyond their control.
  2. The decision of the Land Registrar and the re establishment of the boundaries has resulted in their houses being on their neighbours parcels of land and they are subject to demolition.
  3. The Applicant in the Affidavit sworn in support of the application explained that his deceased mother Elizabeth Njoki Githandika was the registered owner of land parcel Inoi/



Kamondo/2662 and was the 1<sup>st</sup> Interested party in Kerugoya CMCC No. 18 of 2017. He stated the 2<sup>nd</sup> Applicant was the registered proprietor of land parcel Inoi/Kamondo/2654. The Applicant explained that his mother had been ailing over some time and averred that on 14<sup>th</sup> October 2022 when the Land Registrar fixed the land parcel boundaries neither his mother nor the 2<sup>nd</sup> Applicant was present. The Applicant deponed that after the death of his mother and her internment, he visited her Advocate to find out the status of the Court matter and he was advised it was still pending in Court only to be shocked on 3<sup>rd</sup> April, 2024 when the Court marked the file as closed.

4. The Applicant further avers the boundaries fixed by the Land Registrar were not in conformity with the order of reference made on 9<sup>th</sup> May 2018 which required that the boundaries be marked as per the registered mutation form. The Applicant averred resulting from the marked boundary his house fell on his neighbours land and is liable to be demolished. He averred the 4<sup>th</sup> Respondent had served him with an eviction notice while the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents have threatened to fence off part of the 2<sup>nd</sup> Applicant's land and to demolish her shop. The Applicants aver the delay in appealing against the Land Registrar's Ruling/Decision was occasioned by lack of communication and guidance by their Advocates on record. They contend their appeal has good chances of success and that the delay was not so inordinate as to be inexcusable.
5. The 4<sup>th</sup> Respondent filed a Replying Affidavit sworn on 9<sup>th</sup> July 2024 in opposition to the Applicants application. The 4<sup>th</sup> Respondent affirmed that she and her late husband John Magondu Muriithi were jointly registered as owners of land parcel Inoi/Kamondo/2661 measuring 0.30 Ha. She averred that the 1<sup>st</sup> Applicant had encroached onto her part of her land by having part of his house on her land. The 4<sup>th</sup> Respondent averred that the 1<sup>st</sup> Respondent instituted Kerugoya CMCC No. 18 of 2017 against her with others praying for an order for the District Surveyor to visit and mark the boundaries of land parcels Inoi/Kamondo/2653, 2660 & 2661 so that each of them reflected the correct size on the ground.
6. The 4<sup>th</sup> Respondent further averred that the Trial Court duly issued an order of reference of the matter to the Land Registrar on 31<sup>st</sup> January 2018 inter alia to remark the boundaries of the affected parcels of land and parties were given liberty to be represented by their own private Surveyors during the exercise. Contrary to the averment by the Applicant that his mother was not present during the exercise, the 4<sup>th</sup> Respondent deponed that was untrue as she was present as the report indicated that all the Defendants and all the Interested Parties were present other than Ann Wanjiku Mutahi shown in the report as the 3<sup>rd</sup> Interested Party. The 4<sup>th</sup> Respondent contended that the Applicant's claim that his mother was not able to keep abreast of the occurrences in the matter for whatever reason was not substantiated. She further averred the report of the Land Registrar and Surveyor had been adopted by the Court and hence could not be subject of any review as the Applicants never challenged the report before the Court that made the order of reference.
7. The Application was canvassed by the parties by way of Written Submissions. The Applicants filed their submissions dated 22<sup>nd</sup> October 2024 while the 4<sup>th</sup> Respondent filed her submissions dated 28<sup>th</sup> October 2024.
8. I have reviewed the application, the Affidavit in support, and the 4<sup>th</sup> Respondent's Affidavit in opposition. I have also considered the submissions by the parties and the authorities referred to in the submissions.



9. The report/determination by Land Registrar dated 18<sup>th</sup> October 2022 filed in the Magistrate's Court Kerugoya was made pursuant to an order of reference made by the Trial Magistrate in Kerugoya CMCC No. 18 of 2017. The Applicants annexed an order issued by the Court on 9<sup>th</sup> May, 2018 by Hon. Y. M. Barasa –RM while the 4<sup>th</sup> Respondent annexed an order made earlier by the same Magistrate on 31<sup>st</sup> January, 2018 in regard to the re establishment of the boundaries of land parcels Inoi/Kamondo/2653, 2659, 2660, 2661 and 2662. The Court Order of 9<sup>th</sup> May 2018 under Order (4) of the extracted Order directed:-
4. That the Land Registrar and the District Surveyor do carry the exercise and file a report within 60 days.
10. The report having been prepared pursuant to an order of the Court, the Court that made the order was the proper Court to deal with any issues arising from the report. There is no indication that the Applicants challenged the report before the Magistrates Court. The 4<sup>th</sup> Respondent however annexed a Ruling made by Hon. G. W. Kirugumi (PM) on 29<sup>th</sup> March, 2023 where an application by Andrew Githinji Munene and Stephen Mwangi Magu who wished to be joined as the 7<sup>th</sup> and 8<sup>th</sup> Interested Parties to the suit was dismissed on the basis that the Land Registrar and the Surveyor had already carried out the resurvey and in case the Intended Interested Party had any issues affecting their parcel boundaries they could only raise the same with the Land Registrar as the Court had no jurisdiction to deal with issues relating to boundaries.
11. The Land Registrar and the Surveyor did not carry out the re survey exercise Suo moto but was pursuant to a Court order. Their report was filed in Court and was adopted by the Court. The Applicants if they had any issues and/or concerns regarding the conduct of the Land Registrar and/or survey in carrying out the exercise ought to have applied to have the same set aside and/or reviewed or varied. An appeal to this Court would only have arisen against any Order or Ruling made by the Trial Court against such an application. The Trial Court adopted the report of the Land Registrar and the Surveyor and perhaps only implementation remains. The Trial Court closed its file and no Appeal or Review application has been preferred to this Court against its orders.
12. The application by the Applicants is misconceived and an abuse of the Court process. The same is dismissed with costs to the 4<sup>th</sup> Respondent.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT KERUGOYA THIS 6<sup>TH</sup> DAY OF MARCH 2025.**

**J. M. MUTUNGI**

**ELC - JUDGE**

