



REPUBLIC OF KENYA



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Karanja v District Land Surveyor Nakuru District & another (Environment and Land Case 583 of 2013) [2025] KEELC 5179 (KLR) (10 July 2025) (Judgment)

Neutral citation: [2025] KEELC 5179 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND CASE 583 OF 2013**

**A OMBWAYO, J
JULY 10, 2025**

BETWEEN

CHARLES KAMAU KARANJA PLAINTIFF

AND

DISTRICT LAND SURVEYOR NAKURU DISTRICT 1ST DEFENDANT

LAND REGISTRAR NAKURU & ANOTHER 2ND DEFENDANT

JUDGMENT

1. The Plaintiff commenced the present suit *vide* a Complaint dated 6th November, 2013 against the Defendants seeking the following orders:
 - a. An injunction against the defendants themselves, servants and or agents from interfering in any way whatsoever with the plaintiff's quiet enjoyment of land parcel No. Bahati/Bahati Block 1/395.
 - b. That costs of this suit be provided for.
2. The 1st and 2nd Defendants filed their Statement of Defence dated 28th April, 2015 where they denied the allegations in the Complaint. The 3rd Defendant filed his Statement of Defence and Counter claim dated 26th October, 2018 where he denied the allegations in the Complaint and sought for the following orders:
 - a. Permanent injunction restraining the Plaintiff (Now Defendant) from trespassing on parcel title no Bahati/Bahati Block 1/890.
 - b. Eviction orders from parcel title no. Bahati/Bahati Block 1/890.
3. The Plaintiff's case was dismissed and the 3rd Defendant's counterclaim proceeded as the main suit for hearing.



Defence case

4. Virginia Wanjiru Njoroge testified as DW1. She testified that her late husband was not a member of the CO and that she did not know whether the Plaintiff was a member. She testified that it was written that the Plaintiff was a member. She further testified that the Euphobia tree was still present in between their parcels. Upon cross examination by Mariga for the Plaintiff, DW1 stated that the land was obtained through exchange with Elijah Meru. She stated that she did not know Elijah's wife. She stated that they exchanged land number Block 16/Mbugiti/615 with Bahati/Bahati/Block1/890. Mbugiti is in Muranga. She added that it was in Gatanga while the land in Bahati was in Nakuru. She stated that they exchanged land since she did not want to live there. She admitted that she did not know the measurement in the land but that it was in record as 1.05 Ha.
5. She stated that the land was narrow and virgin. She further stated that she was not shown the boundary of the land in Nakuru.
6. She stated that her husband went to the tribunal. She also stated that the Registrar came to the boundary with the surveyor. She admitted that she never went to the land. She also admitted that she did not know the report. DW1 confirmed that the Land Registrar made a declaration. She admitted that she did not see the map.
7. She stated that they had encroached on each other's land. She also stated that the surveyor never consulted her. She stated that she paid the surveyor but could not recall the exact amount.
8. Upon re-examination, she stated that her land had been encroached with that of the Plaintiff. She stated that the same was in the surveyor's report. She stated that the Plaintiff should vacate her land and also remove his house. She stated that the boundary was on the land. She also stated that part of the land was bigger than on the map. She stated that her land was bigger towards the river due to the riparian land.
9. Peter Wanyama, the regional Land Surveyor, Nakuru testified as DW2. He testified that he had received summons to attend court. He went on to testify that he had a report regarding the site visit on 10th August, 2010 relating to Bahati/Bahati/Block1/889, 890,895. He testified that the report was dated 29th September, 2023. He added that there was also a previous report dated 25th October, 2021. It was his testimony that he had visited the parcels twice. He further testified that from the 1st visit they found that the Plaintiff's building was erroneously on the 3rd Defendants parcel. He testified that the land that belonged to the Plaintiff was Bahati/Bahati Block 1/895 while for the Defendant was Bahati/Bahati/Block 1/890. He testified that Bahati/Bahati/889 and 895 emanated from 890. He produced the reports as 3DEX 14 and 3rd DEX 15. He also produced the RIM as the 3rd DEX 16.
10. Upon cross examination by Mariga, DW2 confirmed that he did his first report on 25th October, 2021 pursuant to a court order. He further confirmed that the RIM was not an authority. He stated that he was to subject his report to 3 parcels of land. He stated that the map was published in 1984 and that the land was L.R No.7203. He added that there were many people present.
11. He confirmed that they were to establish boundaries as per court orders. He stated that he did a letter to the parties but admitted that he had not produced the same. He stated that the parties were informed of the survey but admits that he had no evidence.
12. He admitted that on the ground the parties had not agreed. He added that no one came to tell them that they had agreed. He admitted that they never did any hearing. He stated that the boundaries were general and not fixed. He admitted that he never inquired about the 3 parcels of land. He added that he had not ascertained the acreage nor compared the title and RIM to come up with the variance in acreage.



13. He confirmed that the acreage of 890 was 1.1105 Ha while on the ground 890 was 0.8840 Ha. He added that the RIM acreage was 1.2348. He stated that they corrected the records for the same to tally with the ground where there is no dispute. He added that where there was dispute, they would leave it to court. He stated that they relied on the maps. He also stated that there were natural hedges as boundaries.
14. DW2 was referred to the decree dated 27th January, 2009 where he confirmed that it had affected 3 parcels. He stated that he was not aware of the decision by the Land Registrar and that one could not claim land occupied for 2 years. The boundaries on the land were old. He added that he was not aware of any trespass. He stated that he could not tell the age of natural boundaries and that the house was old and that 889 had houses while 890 had no house. He went on to state that 889 was not part of the suit. He stated that the 3rd Defendant has not sought any order against the one of 889. He admitted that payment was made to their office.
15. Upon re-examination, he stated that the issue of dialogue was not directed to the Land Registrar of himself and that if the dispute was a land claim, they did not rely on the RIM. He stated that boundary dispute was on the position. He also stated that if the matter was a land claim, they would refer the parties to court. He stated that there were survey charges but that he could not recall them. That marked the close of the 3rd Defendant case.

Submissions.

16. Counsel for the Plaintiff filed his submissions dated 31st May, 2025 where he identified one issue for determination, whether the RIM Bahati/ Bahati Block 1 (mutukukanio) can be used as the authority in the determining granting of orders as prayed. He relied on Section 20 and 21 of the [Land Registration Act](#) 2012 and submits that any alteration of a boundary must carry in it force of the law and the parties claiming ownership to the boundary dispute must be allowed to present their case before a hearing session by the Land Registrar on the ground where the land is situated. It was counsel's submission that the boundaries have been in existence for over forty years with natural hedges and trees that have been in existence since for the same period. He submits that Exhibit 11 and the provincial surveyor confirmed this position. He also relied on Section 18 of the [Land Registration Act](#) and submits that the ground status being real and no approximation could be used to amend the maps hold that the measurements provided for in the RIM could not be used exclusively ignoring the ground existence, being the features marking the boundaries. He submits that if the Regional Surveyor was impartial, he would have conducted proper boundary dispute hearing without leaving out the Land Registrar. He urged the court to rely on the evidence of the Regional surveyor which confirmed that the boundaries were not fixed in the mutukanio scheme. He further submits that a boundary would only be fixed after parties have presented evidence before a Land Registrar. He went on to urge the court to take cognizance of the duration of the boundaries that are currently in place. He relied on the cases of *Azzuri Limited V Pink Properties Limited* [2017] eKLR, *Samuel Wangau V AG & 2 others* (2009) eKLR. He submits that under Section 19 of the [Land Registration Act](#), the Land Registrar cannot fix boundaries which are general in nature unless and until he gives notice to the owners and occupiers of the land adjoining the boundaries in question of his intention to ascertain and fix the boundaries.
17. He submits that this honourable court does not have the jurisdiction to grant orders departing from the finding of the Land Registrar and District Surveyor dated 19th August, 2010. He added that the court could only affirm the finding of this report as the land transferred in the year 1985 when the 3rd Defendant acquired its proprietorship. He cited the case of *Phoenix of E. A. Assurance Company Limited V S.M. Thiga T/A Newspaper Service* [2019] eKLR, and *Sasomuna Holdings Co Ltd v Kenya National Highways Authority*, the orders sought have not be granted because the only reliance is on



the surveyor report and on which has no legal backing noting the Land Registrar was never involved in the making of the report dated 27.10.2021 as per the requirement of the law.

18. Counsel for the 3rd Defendant on the other hand filed her submissions dated 13th May, 2025 where she submits that the suit was for a claim of land and not a boundary dispute. She relied on Section 18 of the *Land Registration Act* and the case of *Willis Ochola V Mary Ndege* [2016] eKLR. She further relied on the case of *George Kamau Macharia V Dexka Limited* [2019] eKLR and *Azzuri Limited V Pink Properties Ltd* [2018] eKLR.
19. It was counsel's submission that the Land Registrar heard the case but and disregarded the court order and proceeded to make his own order as per Exhibit 11. She urged the court to be guided by the surveyor's report and issue a permanent injunction and eviction orders against the Plaintiff.

Analysis and Determination

20. I have carefully considered the pleadings, evidence on record and submissions and I am of the view that the two issues for determination is whether the RIM map was authoritative on the position of boundaries on the ground and whether or not the surveyors' finding that there was an encroachment onto the 3rd Defendant's parcel was proper.
21. Section 18 of the repealed Registered *Land Act* Cap 300 Laws of Kenya, referred to the Registry Index Map, (RIM) to mean a map or series of maps prepared and maintained by the Director of Surveys for every registration district. Notably, the Registry Index Map shows the outlines of individual parcels in a given area using general boundaries which are not coordinated. RIM on general boundaries give approximations regarding the positions of parcels of land which are demarcated by natural or man-made features like hedges, ditches, walls, pillars, fences, or stones, and whose boundary lines are inaccurate and not legally binding. In addition, it is used to identify on the ground a plot shown on the register; assist in the relocation of a boundary should it be lost and enable effecting subdivision.
22. In the instant case, it is not in dispute that the ownership of the suit land as known by the Plaintiff's was Bahati/Bahati Block 1/895 while for the Defendant it was Bahati/Bahati/Block 1/890. It is this court's view that the issue in contention is encroachment by either the Plaintiff or 3rd Defendant onto each other's parcel of land.
23. The 3rd Defendant claims that the Plaintiff has since encroached onto her parcel of land. She however admitted that she was never shown the map so as to confirm the boundaries in her suit property. She admitted that she did not know the said boundaries nor the exact acreage. She added that she engaged the services of a surveyor.
24. The regional surveyor, Nakuru testified as DW2 where he produced two reports on boundaries for 3 parcels. He stated that the boundaries were general and not fixed. He also confirmed that he had not ascertained the acreage nor compared the title and RIM to come up with the variance in acreage.
25. DW2 also confirmed that the acreage of 890 was 1.1105 Ha while on the ground it was 0.8840 Ha while the RIM acreage was 1.2348. He admitted that the RIM was not an authority to be used but admitted that they relied on the maps. He admitted that he was not aware of the decision by the Land Registrar. He further confirmed that the boundaries on the land were old and this was also corroborated by DW1's evidence who testified that trees were used as boundaries. It is clear that the surveyor's report could not conclusively establish the exact acreage but only found that there was encroachment onto the 3rd Defendant's parcel by the Plaintiff.
26. It is worthwhile to note that even though the Land Registrar did not testify, he had earlier conducted a hearing on 17th and 19th August, 2020 in the presence of both parties together with the surveyor



where he found that the boundaries were present but directed that the map be amended to conform to that on the ground. It is this court's view from the testimony as well as the experts report that the boundary on the RIM does not appear on the ground on the two parcels herein.

27. Moreover, considering that a boundary dispute for general boundaries is not about survey measurements but about the boundary features on the ground and any other evidence of where the original boundary was. In the circumstance, I find that it is necessary that the RIM ought to be amended to conform to the ground. I do order that the County Land Registrar and the Regional surveyor do carry out a survey on the disputed parcels of land and amend the Registry index Map to conform to the occupation on the ground. Each party shall bear its own costs. It is so ordered.

HON. JUSTICE ANTONY O. OMBWAYO

ENVIRONMENT AND LAND COURT

2025-07-10

