



Ounga & another v Land Registrar Kisumu & another; Leo Investments Ltd (Interested Party) (Environment & Land Petition E005 of 2024) [2025] KEELC 5234 (KLR) (10 July 2025) (Judgment)

Neutral citation: [2025] KEELC 5234 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT & LAND PETITION E005 OF 2024**

**SO OKONG'O, J
JULY 10, 2025**

IN THE MATTER OF: ALLEGED CONTRAVENTION OF ARTICLES 2, 3, 10, 19, 20, 22, 23, 162(2)(B) OF THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF: ALLEGED VIOLATION OF RIGHTS PROTECTED UNDER ARTICLES 35, 40, 47, AND 50 OF THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF: ALLEGED VIOLATION OF RIGHTS PROTECTED UNDER SECTION 19(2) OF THE LAND REGISTRATION ACT NO.3 OF 2012.

AND

IN THE MATTER OF: SECTION 13 OF THE ENVIRONMENT AND LAND COURT ACT (CAP. 8D) LAWS OF KENYA

AND

IN THE MATTER OF: THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS AND FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES, 2013

BETWEEN

JOHNSON OMONDI OUNGA 1ST PETITIONER

JOHN OUNGA AJWANG 2ND PETITIONER

AND

THE LAND REGISTRAR KISUMU 1ST RESPONDENT

THE REGIONAL SURVEYOR KISUMU 2ND RESPONDENT

AND



JUDGMENT

1. The Petitioners brought this petition on 22nd May 2024, seeking the following reliefs against the Respondents;
 1. A declaration that the manner in which the Respondents had summoned the Petitioners to a meeting for hearing, resurvey and determination of the boundary position on the same day without involving all the persons whose names appear in the register violated the rights of the petitioners and of those whose names appear on the register hence unconstitutional.
 2. A declaration that the refusal by the Respondents to furnish the Petitioners with information requested relating to the alleged dispute, such as a copy of the application for boundary determination, green cards and names of the persons whose names appear on the register, violated the Petitioners' right of access to information.
 3. A declaration that the refusal by the Respondents to share the requested relevant information and materials with the Petitioners and give the Petitioners sufficient time within which to study such information and materials so as to prepare their defence to the application for boundary determination violated the Petitioners' rights to fair administrative action and fair hearing.
 4. An Order of Certiorari to remove into this Court for purposes of being quashed, the summons dated 14th March, 2024 and any other consequential decision, reports or proceedings arising therefrom.
 5. A permanent injunction restraining the Respondents, their agents or any person acting under their instruction from unlawfully hiving off or excising any portion of the suit property.
 6. Costs of the petition.
 7. Any other or further relief that this Court may deem fit to grant to meet the ends of justice.

The Petitioners' case

2. In their petition, the Petitioners averred that they were the sons of Aberdnego Ounga Ajuang' (deceased) and also the legal representatives of his estate. The Petitioners' averred that Aberdnego Ounga Ajuang' (deceased) (hereinafter referred to only as "the deceased") was the proprietor of all that parcel of land known as Title No. Kisumu/Dago/484 (hereinafter referred to as "the suit property") which was adjacent to a parcel of land known as Title No. Kisumu/Dago 3XX3 (hereinafter referred to as "Plot No. 3XX3") owned by the Interested Party. The Petitioners averred that through a boundary dispute summons dated 14th March 2024, the 1st Respondent notified the Petitioners that the Interested Party had made an application to the 1st Respondent to determine an alleged disputed boundary between Plot No. 3XX3 and the suit property. The Petitioners averred that the 1st Respondent required the Petitioners to appear before him at the alleged disputed boundary on 23rd May 2024 at 10:00 am or soon thereafter.
3. The Petitioners averred that the alleged application for the determination of the boundary dispute was never copied to the Petitioners by the Interested Party and had not been shared with the Petitioners by the 1st Respondent despite a request for the same being made by the Petitioners to the 1st Respondent. The Petitioners averred that from the time the suit property was registered in the name of the deceased



- to the date when they were notified of the dispute, there had never been any boundary dispute over the same. The Petitioners averred that the 1st Respondent warned them that the determination of the position of the boundary between Plot No. 3XX3 and the suit property would proceed even in the Petitioners' absence.
4. The Petitioners averred that they had observed a clear demonstration of bias by the Respondents in favour of the Interested Party in that whereas the 1st Respondent warned the Petitioners that the boundary determination would proceed even in their absence, the 1st Respondent never extended a similar warning to the Interested Party if the Interested Party should fail to appear at the alleged disputed boundary on 23rd May 2023. The Petitioners averred that the 1st Respondent copied the 2nd Respondent in the summons, a clear indication that there was going to be a resurvey and a purported determination of the position of the boundary on the said date of 23rd May 2023.
 5. The Petitioners averred that upon receipt of the summons, the Petitioners wrote to the Respondents on 29th April 2024, raising pertinent issues but the letter had not elicited any response from the Respondents. The Petitioners averred that through a second letter dated 15th May 2024, they wrote to the 1st Respondent reminding it to respond to the first letter dated 29th April 2024. The Petitioners averred that in the letter, they also asked the Respondents to comply with the law before proceeding to resurvey of the suit property to determine the position of the boundary, and to supply the Petitioners with some specified information and materials. The Petitioners averred that the letter was not responded to and the information sought was not supplied. The Petitioners averred that among the information and materials/documents requested by the Petitioners were; a copy of the application made by the Interested Party to enable the Petitioners know and understand the nature, scope and extent of the alleged boundary dispute, copies of registers for all the adjacent properties to enable the Petitioners know the particulars of those properties including the proprietorship, measurements, and history of transactions in respect of each of those properties.
 6. The Petitioners averred that they noticed that some plots with common boundaries to Plot No. 3XX3 owned by the Interested Party were not mentioned in the summons contrary to the express provisions of the law. The Petitioners averred that they asked the 1st Respondent to comply with the law, issue fresh summons, list all those properties that had been left out and summon their proprietors also to the boundary determination meeting. The Petitioners averred that they would not receive a fair hearing should they attend the meeting convened by the 1st Respondent without having been supplied with the crucial information they had requested in their two letters to the Respondents to enable them to prepare their defence.
 7. The Petitioners averred that the intention of the Respondents to hold a hearing, carry out a resurvey and determine the boundary on the same day amounted to an ambush and was calculated to deny the Petitioners an opportunity for a fair hearing. The Petitioners averred that this was the second time the Respondents were engaging in the act of issuing them with illegal summons. The Petitioners averred that in 2022, the 1st Respondent had summoned them for the determination of the same boundary dispute at the instance of one, Liaquatali Sadrudin Walji, who was the then alleged proprietor of Plot No. 3XX3, now said to be owned by the Interested Party. The Petitioners averred that in a move almost similar to the present one, the Respondents ensured that the summons then was not served upon the Petitioners and a resurvey was hurriedly carried out in the absence of the Petitioners and other land owners whose names appeared on the register. The Petitioners averred that they moved to court and challenged the exercise in Kisumu ELC Judicial Review No. E008 of 2022. The Petitioners averred that in a judgment delivered on 22nd June 2023 in favour of the Petitioners, the actions of the Respondents, including the illegal summons and all the consequential reports and proceedings, were quashed through an order of certiorari.



8. The Petition was supported by the affidavit of the 1st Petitioner sworn on 21st May 2024 and a supplementary affidavit sworn on 13th November 2024 by Atandi Peter Ayimba. The Petitioners annexed to the supporting affidavits, a copy of the grant of letters of administration issued to them in respect of the estate of the deceased, a copy of the title deed for the suit property, a copy of the judgment made in ELC JR. No. E008 of 2022, a copy of the boundary dispute summons, a copy of the Petitioners' letter dated 29th April 2024 and a copy of a letter from the Petitioners' advocates dated 15th May 2024.

The 1st and 2nd Respondents' case

9. The Attorney General entered an appearance on behalf of the 1st and 2nd Respondents. The Respondents filed grounds of opposition dated 4th June 2024. The Respondents averred that this court lacked jurisdiction to hear the Petition and the application for a conservatory order as the same offended the express provisions of Sections 18 and 19 of the [Land Registration Act](#) No. 3 of 2012. The Respondents contended that the Petition concerned issues relating to a boundary dispute which was within the purview of the Land Registrar's mandate.
10. The Respondents averred that the Petitioners had not exhausted the mandatory procedure for resolution of a boundary dispute provided for under Section 79 (3A), 80, 86 and 91 (9) of the [Land Registration Act](#) 2012. The Respondents averred that the orders sought by the Petitioners were untenable as the same could only be issued in an application for Judicial Review.
11. The Respondents averred that the Petition was fatally defective and bad in law for lack of specificity and precision. The Respondents averred that the Petitioners just mentioned constitutional provisions they alleged to have been threatened and or violated, but failed to demonstrate how they had been threatened or violated by the Respondents. The Respondents averred that the Petitioners had equally failed to demonstrate the harm occasioned to them as a result of the alleged violation.
12. The Respondents averred that the burden of proving allegations of violations of fundamental rights and freedoms rests with the party so claiming. The Respondents cited *Mumo Matemu v. Trusted Society of Human Rights Alliance & 5 others* [2013] eKLR in support of this submission.

The Interested Party's case

13. The Interested Party opposed the petition through a replying affidavit sworn on 24th September 2024 by Kenneth Kiprop Ronnoh. The Interested Party averred that it was the owner of Plot No. 3XX3, which was adjacent to the suit property. The Interested Party averred that it was also representing the interests of the following adjacent property owners: Rozina Awino (Title No. Kisumu/Dago/ 4X0), Eston Okumu (Title No. Kisumu/Dago/576), Paul Aboge (Title No. Kisumu/Dago/ 4X1), John Odindo (Title No. Kisumu/Dago/ 4X6), Leornida Omweke (Title No. Kisumu/Dago/2856), and Samwel Obiero Aboge (Title No. Kisumu/Dago/424).
14. The Interested Party averred that the area where the suit property was situated had been the subject of a long-standing boundary dispute involving the neighbouring landowners who were keen to resolve the dispute between themselves in accordance with Section 19 of the [Land Registration Act](#) 2012. The Interested Party averred that the Petitioners were aggrieved by the 1st Respondent's efforts to address the boundary dispute affecting both the Petitioners' property and adjacent properties and had consequently filed this Petition.
15. The Interested Party averred that Section 19 of the [Land Registration Act](#) 2012 outlined the procedure for boundary determination, including notifying the relevant parties and conducting a survey to



define the exact location of the boundaries. The Interested Party averred that Section 79 of the Land Registration Act 2012 granted the Registrar the power to rectify the register to reflect accurate boundaries once they are determined. The Interested Party averred that a permanent injunction sought by the Petitioner aimed to permanently obstruct this legal process, thereby preventing the Registrar from lawfully and accurately resolving the boundary dispute.

16. The Interested Party averred that the Petitioners had sought to permanently block the Land Registrar from determining the boundaries through a survey, which would have a detrimental effect on the Interested Party and the neighbouring property owners, and would be contrary to the law. The Interested Party averred that the relief sought was disproportionate to the circumstances of the case. The Interested Party averred that it was in the best interest of the Petitioners, the Interested Party, and the other adjacent property owners whom the Interested Party was representing for the boundary dispute to be conclusively resolved. The Interested Party averred that that would allow all property owners in the area to fully utilise their properties as envisioned under Article 40 of the Constitution.
17. The Interested Party averred that this was not the first time the Petitioners had moved to court to frustrate the boundary dispute resolution in the area where more than 8 parcels were affected by the lack of expeditious resolution of the dispute. The Interested Party averred that the Petitioners filed a similar suit in, Republic v. Obare & 2 Others; Walji (Interested Party); Ounga & Another (Exparte) (Environment & Land Case Judicial Review Application E008 of 2022) [2023] KEELC 18227 (KLR) (22 June 2023). The Interested Party contended that the Petitioners' request for copies of the registers for the properties owned by the other property owners appeared to be a fishing expedition aimed at delaying and frustrating the resolution of the boundary dispute.
18. The Interested Party averred that the Petitioners should have sought an order that the court do grant a fixed timeline within which the Land Registrar would comply with any remaining requests by the Petitioners, thereby ensuring that the boundary dispute was resolved justly, efficiently and conclusively. The Interested Party averred that the Petitioners' allegation that the adjacent property owners had not been involved in the boundary dispute was false. The Interested Party averred that the owners of the neighboring properties had actively participated in the boundary resolution process.

The Petitioners' submissions

19. The Petitioners in their submissions dated 13th November 2024 framed the following issues for determination;
 - a. Whether the refusal by the Respondents to furnish the Petitioners with a copy of the application by the third party and with all information contained in the register relating to the properties mentioned in the summons and all the adjacent properties, violated the Petitioners' right of access to information.
 - b. Whether the intended determination of the boundary dispute without giving the Petitioners a chance to be heard and without providing them with information necessary to accord them a fair hearing threatened their right to a fair hearing and fair administrative action.
 - c. Whether the intended resurvey and boundary determination threatened the Petitioners' right to the protection of property.
 - d. Whether the court had jurisdiction to hear and determine the petition.
 - e. Whether the Petitioners were entitled to the reliefs sought in the petition.



20. The Petitioners submitted that it is always the duty of the public entity to prove that access to information cannot be granted and not the citizen to prove that he is entitled to access, once a request has been made. The petitioners submitted that the 1st Respondent violated the Petitioners' right under Article 35(1)(a) of *the Constitution* of Kenya, 2010. In support of this submission, the Petitioners relied on Article 35 of *the Constitution* of Kenya, Sections 9 and 11 of the *Access to Information Act*, Sanjay Ramniklal Shah and Others v. Central Bank of Kenya and Others, Nairobi HC.COMM. No. E708 of 2021, Nairobi Law Monthly v. Kenya Electricity Generating Company and 2 Others [2013]eKLR, Trusted Society of Human Rights Alliance and 3 Others v. Judicial Service Commission [2016]eKLR and Katiba Institute v. President's Delivery Unit and 3 Others [2017] eKLR and President of the Republic of South Africa v. M & G Media CCT 03/11.
21. On the issue of whether the intended determination of boundary without giving the Petitioners a chance to be heard and without providing them with information necessary to accord them a fair hearing threatened their right to a fair hearing and fair administrative action, the Petitioners submitted that by refusing to provide the Petitioners with a copy of the application, they were unable to know the full particulars of the allegations contained therein such as, when the purported encroachment happened whose parcel of land had encroached upon the applicant's and by what extent. The Petitioners submitted that their right to fair hearing was threatened with violation contrary to Article 50(1) and(2)(b) of *the Constitution* which provides that the right to a fair hearing includes the right to be informed of the charge, with sufficient detail to answer it.
22. On whether the intended resurvey and boundary determination threatened the Petitioners' right to protection of property, the Petitioners submitted that given that the Respondents had earlier carried out an illegal and unlawful survey by which a portion of the Petitioners' property was hived off, they were apprehensive that the intended illegal survey of the same property threatened their right to protection of property enshrined under Article 40 of *the Constitution*.
23. On the issue of whether this Court had jurisdiction to hear and determine the petition, the Petitioners submitted that the challenge to the jurisdiction of the court was misplaced since the Petitioners were not asking the Court to usurp the 1st Respondent's power to determine the boundary. The Petitioners submitted that they moved the court alleging that the Respondents had violated their rights and were seeking the court's interpretation and application of *the Constitution* and the grant of consequential declaratory orders and other reliefs which were beyond the jurisdiction of the 1st Respondent to deal with. In support of this submission, the Petitioners cited, the decision of the Supreme Court of Kenya's in Abidha Nicholus v. The *Attorney General & 7 others, Petition No.E007 of 2023*.
24. The Petitioners submitted that the court had jurisdiction over the petition as the previous dispute was triggered by a boundary dispute summons dated 14th May 2022, while the present petition had been triggered by a boundary dispute summons dated 14th March 2024. The Petitioners averred that the first suit was instituted by way of an application for judicial review, while the present one was through a petition. The Petitioners submitted that the prayers sought in the Judicial Review application differed from the prayers sought herein, and the reliefs sought through this petition could not be granted in the Judicial Review application. In support of this submission, the Petitioners cited the decision of the Supreme Court of Kenya in John Florence Maritime Services Limited & another v. Cabinet Secretary Transport & Infrastructure & 3 others (Petition 17 of 2015) [2021] KESC 39(KLR)(Civ) (6 August 2021) (Judgment).



The Interested Party's submissions

25. The Interested Party, in its submissions dated 9th December 2024, framed one issue for determination, namely, whether the court should allow the Respondents to conduct the boundary survey in accordance with Section 19 of the [Land Registration Act](#) to accurately define the boundaries of the disputed properties.
26. The Interested Party submitted that Section 19 of the [Land Registration Act](#) 2012 establishes a clear legal framework for the resolution of boundary disputes, emphasising the necessity of surveying to accurately define property boundaries. The Interested Party submitted that by allowing the Respondents to proceed with the boundary survey, the court would ensure adherence to this framework, which is designed to promote fairness and transparency in property ownership. In support of this submission, the Interested Party cited *Muteru v. County Land Registrar, Laikipia; James & another (Interested Parties) (Environment & Land Miscellaneous Case 1 of 2022) [2023] KEELC 21990 (KLR) (22 November 2023)*. The Interested Party submitted that the petition lacked merit and was a calculated attempt to frustrate the lawful determination of a boundary dispute as provided for under the [Land Registration Act](#).
27. The Interested party submitted that the Petitioners had demonstrated a consistent pattern of using court processes to delay and frustrate the resolution of this boundary dispute. In support of this submission, reliance was placed on *Republic v. Obare & 2 Others; Walji (Interested Party); Ounga & Another (Exparte) (Environment & Land Case Judicial Review Application E008 of 2022) [2023] KEELC 18227 (KLR) (22 June 2023)*, where the Petitioner filed a similar suit to impede the boundary determination, further delaying justice for all affected property owners. The Interested Party submitted that the Petitioners had alleged that they had been excluded from the boundary determination process due to a lack of access to relevant information. The Interested Party submitted that these claims were without merit as the Petitioners were notified of the boundary determination process, as evidenced by the summons issued on 14th May 2022 and other correspondence on the matter.
28. The Interested Party submitted that the Petitioners' conduct showed a deliberate attempt to derail the resolution of the boundary dispute, causing significant delays and prejudice to all affected parties. The Interested Party submitted that the Petitioners' repeated use of legal processes to obstruct justice was a misuse of the court's time and resources. The Interested Party submitted that to ensure a just and efficient resolution of the dispute, the court should prioritise justice and efficiency by setting a clear and reasonable timeline for the Land Registrar to address any remaining requests from the Petitioners. The Interested Party submitted that this approach would ensure that the boundary dispute was resolved conclusively, minimising further delays that could perpetuate uncertainty for all affected parties. The Interested Party submitted that granting the reliefs sought by the Petitioner would not only obstruct the lawful process of boundary determination but also create a precedent that undermines the principles enshrined in the [Land Registration Act](#). The Interested Party submitted that such a decision would also contravene Article 40 of [the Constitution](#), which guarantees the right to property ownership and the protection of property from unlawful encroachment or restriction.

Analysis and Determination

29. I have considered the petition and the supporting affidavits, the replying affidavit and grounds of opposition filed in opposition thereto and the submissions by the advocates for the parties. I am of the view that the issues arising for determination are as follows;
 1. Whether the court has jurisdiction to hear and determine the petition.



2. Whether the Respondents violated the Petitioners' right to information.
3. Whether the Respondents' intention to hold a hearing, carry out resurvey and determine the boundary dispute between the Petitioners and the Interested Party would deny the Petitioners a right to a fair hearing.
4. Whether the Petitioners are entitled to the reliefs sought.

Whether the court has jurisdiction to hear and determine the petition.

30. Section 13 of the Environment and *Land Act* 2011 provides as follows:

“ 13. Jurisdiction of the Court

- (1) The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2)(b) of *the Constitution* and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.
- (2) In exercise of its jurisdiction under Article 162(2)(b) of *the Constitution*, the Court shall have power to hear and determine disputes-
 - a) Relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
 - b) Relating to compulsory acquisition of land;
 - c) Relating to land administration and management;
 - d) Relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and
 - e) Any other dispute relating to environment and land.”

31. The reliefs that the court can grant are set out in Section 13(7) as follows:

“ 13(7) In exercise of its jurisdiction under this Act, the Court shall have power to make any order and grant any relief as the Court deems fit and just, including—

- (a) interim or permanent preservation orders including injunctions;
- (b) prerogative orders;
- (c) award of damages;
- (d) compensation;
- (e) specific performance;
- (g) restitution;
- (h) declaration; or
- (i) costs.”



32. In *Daniel N Mugendi v. Kenyatta University & 3 others* [2013] eKLR, the Court of Appeal stated that:

“In the same token we venture to put forth the position that as we have concluded that the Industrial Court can determine industrial and labour relations matters alongside claims of fundamental rights ancillary and incident to those matters, the same should go for the Environment & Land Court, when dealing with disputes involving environment and land with any claims of breaches of fundamental rights associated with the two subjects.”

33. The procedure for determining boundary disputes is provided for in Sections 18 and 19 of the [Land Registration Act](#) 2012, which provide as follows:

“Boundaries.

18.

- (1) Except where, in accordance with section 20, it is noted in the register that the boundaries of a parcel have been fixed, the cadastral map and any filed plan shall be deemed to indicate the approximate boundaries and the approximate situation only of the parcel.
- 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.
- (3) Except where, it is noted in the register that the boundaries of a parcel have been fixed, the Registrar may, in any proceedings concerning the parcel, receive such evidence as to its boundaries and situation as may be necessary: Provided that where all the boundaries are defined under section 19 (3), the determination of the position of any uncertain boundary shall be done as stipulated in the [Survey Act](#), Cap. 299.

Fixed boundaries.

19.

- (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 parts 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.

- (3) Where the dimensions and boundaries of a parcel are defined by reference to a plan verified by the office or authority responsible for the survey of land, a note shall be made in the register, and the parcel shall be deemed to have had its boundaries fixed under this section”.

34. The petitioners have claimed that they were aggrieved by the summons issued to them by the 1st Respondent to appear before the 1st Respondent for the determination of the boundary dispute over the suit property and the neighbouring parcels of land. The Petitioners have challenged the legality and the procedure adopted by the 1st Respondent in determining boundary dispute. The Petitioners have sought declaratory reliefs, an order of certiorari to quash the summons issued to them and consequential proceedings and a permanent injunction restraining the Respondents from hiving off or excising any portion of the suit property. From the provisions of the law that I have set out above, it is clear that this court has jurisdiction to determine the Petitioner’s petition. The Petitioners have contended that their rights to a fair hearing, right to access information and right to property have been threatened with violation by the Respondents. It is only this court that has jurisdiction to give redress to the Petitioners for the grievances that they have against the Respondents. The Petitioners have not approached this court to determine the boundary dispute between the parties. I agree with the Respondents and the interested parties that the court has no jurisdiction in the first instance to determine such a dispute, which is reserved for the Land Registrar under the [Land Registration Act 2012](#). I therefore find no merit to the objection taken by the Respondents to the petition based on the jurisdiction of the court.

Whether the 1st Respondent violated the Petitioner’s right to information thereby compromising their rights to a fair hearing.

35. Article 35(1) of [the Constitution](#) provides that:

- “ 1) Every citizen has the right of access to—
 - a) information held by the State; and
 - b) information held by another person and required for the exercise or protection of any right or fundamental freedom.”

36. Section 4 of the [Access to Information Act 2016](#) provides as follows:

- “ 1. Subject to this Act and any other written law, every citizen has the right of access to information held by—
 - a) the State; and
 - b) another person and where that information is required for the exercise or protection of any right or fundamental freedom.
2. Subject to this Act, every citizen’s right to access information is not affected by—
 - a) any reason the person gives for seeking access; or



- b) the public entity's belief as to what are the person's reasons for seeking access.
- 3) Access to information held by a public entity or a private body shall be provided expeditiously at a reasonable cost.
- 4) This Act shall be interpreted and applied on the basis of a duty to disclose and non-disclosure shall be permitted only in circumstances exempted under section 6.
- 5) Nothing in this Act shall limit the requirement imposed under this Act or any other written law on a public entity or a private body to disclose information.”

37. In *Katiba Institute v. President's Delivery Unit & 3 others* (supra), it was held that:

“The right to access information is a right that the individual has to access information held by public authorities acting on behalf of the state. This is an important right for the proper and democratic conduct of government affairs, for this right enables citizens to participate in that governance. For instance, successful and effective public participation in governance largely depends on the citizen's ability to access information held by public authorities. Where they don't know what is happening in their government and or if actions of those in government are hidden from them, they may not be able to take meaningful part in their country's governance. In that context, therefore, the right to access information becomes a foundational human right upon which other rights must flow. And for citizens to protect their other rights, the right to access information becomes critical for any meaningful and effective participation in the democratic governance of their country.”

38. In *Trusted Society of Human Rights Alliance & 3 Others v. Judicial Service Commission* (supra), the court stated:

“Article 35(1) (a) of *the Constitution* does not seem to impose any conditions precedent to the disclosure of information by the state. I therefore agree with the position encapsulated in *The Public's Right to Know: Principles on Freedom of Information Legislation – Article 19* at page 2 that the principle of maximum disclosure establishes a presumption that all information held by public bodies should be subject to disclosure and that this presumption may be overcome only in very limited circumstances and that public bodies have an obligation to disclose information and every member of the public has corresponding right to receive information. Further the exercise of this right should not require individuals to demonstrate a specific interest in the information”.

39. Regulations 40 and 41 of *The Land Registration (General) Regulations No. 278 of 2017*, which deal with re-establishing and ascertainment of the disputed boundaries provide as follows:

- “40. Application for re-establishing a missing boundary or ascertainment of a boundary in dispute
 - (1) An interested person may apply to the Registrar for the ascertaining of a missing boundary or a boundary in dispute under section 18(3) of the Act in Form LRA 23 set out in the Sixth Schedule.
 - (2) The Registrar shall issue a notice in Form LRA 24 set out in the Sixth Schedule to all persons appearing in the register that may be affected or such other



persons as the Registrar may deem necessary for resolution of the dispute if a person has complied with paragraph (1).

- (3) The Registrar shall notify the office responsible for survey of land of the intended hearing of a boundary dispute and require their attendance if a person has complied with paragraph (1).
- (4) In determining a boundary dispute lodged in accordance with paragraph (1), the Registrar shall be guided by the recommendation of the office responsible for survey of land.
- (5) The Registrar shall, after giving all persons appearing for the hearing in accordance with the notifications sent under paragraphs (1) and (2) an opportunity to be heard, make a determination of the dispute and inform the parties accordingly.
- (6) Any party aggrieved by the decision of the Registrar made under paragraph (5) may, within thirty days of the date of notification, appeal the decision to the Court.”

40. It is not in dispute that the Interested Party made an application to the 1st Respondent under Regulation 40 of The Land Registration (General) Regulations No. 278 of 2017 to determine the boundary between the suit property, Plot No. 3XX3 and the adjoining plots, Kisumu/Dago/ 4X1, 4X0 and 4X6. It is also not in dispute that on receipt of that application, the 1st Respondent on 14th March 2024, served the Petitioners with summons under Regulation 41 of The Land Registration (General) Regulations No. 278 of 2017 requiring them to appear before the 1st Respondent on 23rd May 2024 at the disputed boundary for the determination of the boundary dispute. It is not disputed that upon receipt of the said summons, the Petitioners wrote to the 1st Respondent to supply them with a copy of the Interested Party’s application and copies of the registers for the adjacent parcels of land whose boundaries would also be in issue at the meeting that was convened by the 1st Respondent. It is not disputed that the 1st Respondent neither responded to the Petitioners’ letter and the reminder thereto nor supplied the requested documents as at the time the Petitioners came to court.

41. I am satisfied that the information sought by the Petitioners were in the possession of the 1st Respondent by virtue of its office and that the same was necessary to enable the Petitioners to adequately respond to the application that the Interested Party had made to the 1st Respondent for the ascertainment of the boundary between the suit property, Plot No. 3XX3 owned by the Interested Party and the neighbouring parcels of land. In the circumstances, I agree with the Petitioners that the 1st Respondent violated their right to information which compromised their ability to have a fair hearing of the boundary dispute.

42. Article 50(1) of *the Constitution* provides as follows:

“(1) Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body.”

43. In *Evans Odhiambo Kidero & 4 Others v. Ferdinand Ndungu Waititu & 4 Others* [2014] eKLR, the Supreme Court stated as follows:

“Article 50(1) refers to the right to a fair hearing for all persons, while article 50(2) accords all accused persons the right to a fair trial. Article 25(c) lists the right to a fair trial as a non-



derogable fundamental right and freedom that may not be limited. Often the terms ‘fair hearing’ and ‘fair trial’ are used interchangeably, sometimes to define the same concept, and other times to connote a minor difference. Although the right to a fair trial is encompassed in the right to a fair hearing in our Constitution, a literal construction of these two provisions may be misconstrued in some quarters to mean that Article 50(1) deals with the right to fair hearing in any disputes including those of a civil, criminal or quasi criminal nature whereas Article 50(2) is limited to accused persons thereby arguing that the protection of such right only relates to criminal matters. This is not an acceptable interpretation or construction within the parameters of articles 19 and 20 of the Bill of Rights, which calls for an expansive and inclusive construction to give a right its full effect.”

44. In the same case, the court stated further that:

“Fair hearing, in principle incorporates the rules of natural justice, which includes the concept of audi alteram partem (hear the other side or no one is to be condemned unheard) and nemo iudex in causa sua (no man shall judge his own case) otherwise referred to as the rule against bias.”

45. I am of the view that if the 1st Respondent proceeds to hear and determine the Interested Party’s application for the determination of the boundary dispute involving the suit property without providing the Petitioners with the information requested, the Petitioners’ right to a fair hearing will be infringed.

Whether the Petitioners are entitled to the reliefs sought in the petition

46. As mentioned earlier, the Petitioners have sought several reliefs against the Respondents. I have found no error or omission in the manner in which the 1st Respondent summoned the Petitioners to attend the boundary dispute hearing. The summons informed the Petitioners of the dispute and gave the Petitioners adequate time to prepare. It is not for this court to direct the Land Registrar on how to conduct the boundary dispute hearing. The Land Registrar’s powers are underpinned by the statute and relevant regulations, which I have referred to. Whether the Land Registrar should conduct a survey through the land surveyor or not while conducting the boundary dispute determination is for the Land Registrar to decide, depending on the circumstances of each case. The same applies to when its determination should be made. The court has no business giving directions in this regard. I therefore find no merit in prayer (a) of the petition. A case has, however been made for the grant of prayers (b) and (c) of the petition. With regard to the prayer for certiorari, I am of the view that this is not an appropriate case for the grant of the order. It is common ground that the boundary dispute hearing did not take place. The court stopped the Respondents from proceeding with the hearing before the scheduled hearing date. In the circumstances, there are no proceedings, decisions or reports to quash through an order of certiorari. As I mentioned earlier, I found no fault with the summons dated 14th March 2024. There is no basis, therefore, for quashing the same. The only error that was committed by the 1st Respondent was its failure to supply the Petitioners with the necessary information to enable them to prepare their response to the Interested Party’s application. As concerns the prayer for a permanent injunction, I agree with the Interested Party that the same cannot be granted. The court cannot tie the hands of the Land Registrar on the decision it can make on the Interested Party’s application. The court cannot also permanently stop the Land Registrar from hearing and determining the application. What the court can do in the interest of justice is to stop the hearing of the application temporarily pending the furnishing of the information that the Petitioners had requested from the 1st Respondent.



47. On the issue of costs, I am of the view that each party should bear its own costs. This is because, this is not the first time that the Petitioners have approached this court to stop the determination of the boundary between the suit property and the Interested Party's land. The Petitioners have not explained why they did not seek from the 1st Respondent the information which formed the basis of this petition when they first came to court in 2022. The Petitioners appear to be keen on litigating in piecemeal, which this court must discourage by denying them the costs of the petition.

Conclusion

48. In conclusion, I hereby make the following orders in the matter;

1. I declare that the refusal by the Respondents to furnish the Petitioners with information requested relating to the boundary dispute between the Interested Party and the Petitioners, such as a copy of the application by the Interested Party for boundary determination, and copies of the registers (green cards) for the parcels of land adjoining Kisumu/Dago/ 3XX3 and Kisumu/Dago/ 3XX5 (the suit property) violated the Petitioners' right of access to information.
2. I declare that the refusal by the Respondents to share the requested relevant information and materials referred to in (1) above with the Petitioners and give the Petitioners sufficient time within which to study such information and materials so as to prepare their defence to the Interested Party's application for boundary determination violated the Petitioners' rights to fair administrative action and right to fair hearing.
3. The 1st Respondent shall furnish the Petitioners with a copy of the application by the Interested Party for boundary determination, and copies of the registers (green cards) (subject to availability) for the parcels of land adjoining Kisumu/Dago/ 3XX3 and Kisumu/Dago/ 3XX5 (the suit property) requested for through the Petitioners' letters dated 29th April 2024 and 15th May 2024 within 30 days of the Petitioners' paying for the same if any payment is required of which the Petitioners shall be advised.
4. Upon supplying the Petitioners with the documents referred to in paragraph 3 above, the 1st Respondent shall issue fresh summons for the determination of the boundary dispute lodged by the Interested Party. In addition to the property owners mentioned in the earlier summons, the new summons shall also be served upon the owners of Kisumu/Dago/4X7, 4X8, 2XX6, 2XX8, 3XX2, 3XX3 and 3XX2 and any other interested adjacent plot owner.
5. Each party shall bear its costs of the petition.

DELIVERED AND SIGNED AT KISUMU ON THIS 10TH DAY OF JULY 2025

S. OKONG'O

JUDGE

Judgment delivered virtually through Microsoft Teams Video Conferencing Platform in the presence of;

Mr. Wambola for the Petitioners

N/A for the Respondents

Mr. Ochieng for the Interested Party

Ms. J. Omondi-Court Assistant

