



**Shari v Daniel & 4 others (Environment & Land Case
E062 of 2024) [2025] KEELC 5021 (KLR) (2 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5021 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE E062 OF 2024**

EK MAKORI, J

JULY 2, 2025

BETWEEN

JAMES BUYA SHARI PLAINTIFF

AND

NDOGE DANIEL 1ST DEFENDANT

SYLVANO MWAKA DANIEL 2ND DEFENDANT

ABRAHAM MABOMBE 3RD DEFENDANT

AMUMA DANIEL 4TH DEFENDANT

ELIZA MADUBI DANIEL 5TH DEFENDANT

RULING

1. The plaintiff/applicant initiated this legal action by submitting a plaint dated June 27, 2024. Accompanying the said plaint is an application of the same date requesting the following orders:
 - a. There be a temporary injunction restraining the defendants, their agents, employees, servants, and otherwise from interfering with, obstructing, or in any way hindering the plaintiff from conducting a land survey on the property known as Tanadelta/Ngao 'A'/425 pending the hearing and determination of this suit.
 - b. The Police Officer in charge of Tarasaa Police Station shall enforce the orders of this court.
 - c. The costs of this application should be provided for.
2. The defendants filed Preliminary Objections (PO) claiming that the letter inviting them to the boundary settlement was addressed to their late father, Daniel Mabombe, and that they lack the capacity to be sued under Sections 3 and 82(a) of the Succession Act concerning personal representatives.



3. The court invited the parties to tender their written submissions concerning the preliminary objection and the issue of issuance of an injunction. Both Mr. Kilonzo, representing the plaintiffs, and Mr. Komora, representing the defendants, complied.
4. Arising from the foregoing and the materials placed before me, the issues that fall for determination of this court, based on the available materials and submissions, are whether the PO raised is sustainable and whether an injunction should be issued at this stage.
5. It should be noted that in the past, this court issued directions regarding the disposal of the entire suit. It was on December 11, 2024, that I referred this matter for mediation in the following manner:

“Looking at the Preliminary Objection to the application for an injunction and the pleadings by the parties:

- a. The issue at hand is a boundary dispute between the parties.
- b. In my considered view, parties can resolve this issue through the relevant Government Survey Offices.

Consequently, the court put it to the parties if they could undertake a joint survey in the spirit of Alternative Dispute Resolution Mechanisms as set in Article 159 (2)(c) of *the Constitution* and Section 20 of the ELC Act.”

7. It appears that the parties have not complied with my directives; the defendants either failed to attend the mediation process or the alternative dispute resolution mechanisms, claiming they were never invited to participate in the boundary fixing as mandated by law. It should be noted that the invitation was addressed to their late father. Conversely, the plaintiffs proceeded with the exercise and engaged a surveyor to carry out the survey; a report has been duly filed.
8. In summary, without delving into the rigmaroles of the PO and the application for injunction, the plaintiff requests orders to define the boundaries of their property, Tanadelta/Ngao ‘A’/425. During this process, the county surveyor asked neighboring property owners to assist in establishing the boundary. The surveyor contacted Daniel Mabombe of Plot No. Ngao ‘A’/127, who passed away in 2002. A letter dated May 29, 2024, shows that the surveyor wrote to the deceased.
9. In response to both the Preliminary Objection (PO) and the application for injunctive relief, the primary issue we have concerns whether this court has jurisdiction to address the boundary delimitation. When I directed the parties toward mediation, I expected their cooperation in involving the Land Registrar and a Surveyor to determine the boundary. It may appear that the said orders were misunderstood, for which I take responsibility for not being clear enough.
10. The dispute before the court concerns the boundary delineation between the plaintiff’s land parcel No. Tanadelta/Ngao ‘A’/425 and that of the defendants, Plot No. Ngao ‘A’/127, as well as the neighboring parcels of land. It should be reckoned that the land ostensibly belonging to the defendants is still in the name of the late father aforesaid.
11. This discussion invokes the roles of the Land Registrar and the Surveyor. Their responsibilities concerning the determination of boundaries and the resolution of boundary disputes are outlined under Sections 18 and 19 of the *Land Registration Act*. The pertinent provisions are stated as follows:

“



- “(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).”

7. Section 19 provides that:

- “(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.”

7. According to the provisions of the mentioned law, the authority to resolve boundary disputes lies with the Land Registrar. When the parties participated in unsuccessful mediation, I expected them to follow the process specified in Sections 18 and 19 of the Land Registration Act, but the defendants chose not to participate. Therefore, boundary disputes must be referred to the Land Registrar.

8. A report by the Surveyor cannot replace a report by a Land Registrar. See *Willis Ocholla v Mary Ndege* [2016] eKLR:

“That contrary to the submissions by the plaintiff’s counsel, the list of documents filed by the plaintiff does not include any document with the land registrar’s determination of the boundary dispute between the parties herein as proprietors of land parcels Kisumu/Karateng/298 and 296. That the Kisumu County Surveyor’s report dated April 27, 2015 cannot be a substitute of a land registrar’s determination under section 18(2) of the Land Registration Act for reasons that the two offices are not synonymous or the same.”

7. The court hereby affirms that the positions of the Land Registrar and the Land Surveyor are crucial in the adjudication of boundary disputes. Nevertheless, the responsibilities attributed to these offices



are as prescribed by law, specifically governed by sections 18 and 19 of the [Land Registration Act](#) in the context of this case. In particular, pursuant to sections 19 (1) and (2), the interested party seeking to establish and demarcate the boundary between their property and that of the respondent must formally apply to the Land Registrar for such determination.

8. The procedure for establishing a missing boundary or resolving a boundary dispute under sections 18 and 19 of the [Land Registration Act](#) is more specifically detailed in the Land Registration (General) Regulations, 2017, Regulations 40 and 41, which state as follows:

“(40)

- (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 the resolution of the dispute if a person has complied with paragraph (1).
- (3) The Registrar shall notify the office responsible for the 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.
- (7) Upon expiry of thirty days, the Registrar shall-
 - a. cause to be defined by survey, the precise position of the boundaries in question;
 - b. file a plan approved by the authority responsible for survey of land containing the necessary particulars; and
 - c. make a note in the register that the boundaries have been fixed, and thereupon the plan shall be deemed to define accurately the boundaries of the parcel.
- (8) A dispute for determination of a boundary and or parcel shall, unless in the case of special circumstances, be completed within



a period not exceeding six months from the date of filing the application.

41.

- (1) An interested person may apply to the Registrar for the ascertaining and fixing of boundaries of 19(1) Act, in Form LRA 23 set in the Sixth Schedule.
- (2) The notice issued by the Registrar under section 19(1) of the Act shall be in Form LRA 24 set out in the Sixth Schedule.
- (3) When making a decision under section 19 (1) of the Act, the Registrar shall follow the procedure outlined in Regulation 40.”

7. Based on the preceding discussion regarding the boundary fixing procedure, the process may be initiated either by the Land Registrar or by the individual seeking resolution of a boundary dispute through the Registrar. Failure to adhere to the procedures outlined for determining and establishing boundaries renders the court, pursuant to section 18(2) of the *Land Registration Act*, incapable of entertaining any actions or proceedings related to boundary disputes involving the specific parcels of land in question. Additionally, under Regulation 40(6) of the Land Registration (General) Regulations, 2017, the court's jurisdiction concerning boundary disputes is appellate. It is the court's view that such jurisdiction cannot be invoked at the initial stage as contemplated by the plaintiff.
8. Having made the above observations, I note that in referring the matter for mediation, I anticipated that the procedure I outlined would be adhered to by the parties. Unfortunately, this was not the case; the process became obstructed, and the parties subsequently became uncooperative. Consequently, it is necessary to restart the process from the beginning through a new referral, based on the roadmap I have meticulously outlined above.
9. Consequently, the PO and the application for injunction will not assist any of the parties involved in the litigation and are hereby dismissed without any orders as to costs. Instead, these shall constitute the final orders of the court in the interest of justice:
 - a. This matter is hereby remitted with a court-ordered directive to the relevant Land Registrar in the jurisdiction where the land parcels, No. Tanadelta/Ngao 'A'/425 is located.
 - b. The Land Registrar and the relevant Land Surveyor shall establish the boundaries of the specified parcel and any neighboring parcels adjoining them to determine the boundary dimensions of the Plaintiff's land accurately.
 - c. The Land Registrar is required to adhere to the Roadmap as outlined in Sections 18 and 19 of the *Land Registration Act*. This obligation is supported by Regulations 40 and 41 of the Land Registration (General) Regulations, 2017, and is further detailed in paragraphs 10 to 18 of this ruling.
 - d. A Report is to be filed within the next 60 days for the court's adoption.
 - e. Liberty to apply.

DATED, SIGNED, AND DELIVERED VIRTUALLY IN MALINDI ON THIS 2ND DAY OF JULY 2025.

E. K. MAKORI



JUDGE

In the presence of:

Ms. Kinyakanga H/B for Ms. Oloo for the Plaintiffs.

Mr. Komora for the Defendants.

Happy: Court Assistant

