



REPUBLIC OF KENYA



Miyano (Suing as an administrator ad litem of the Estate of Miyanoi Kooshoi) v Land Registrar, Kajiado & 3 others (Environment and Land Case Civil Suit 1 of 2024) [2024] KEELC 3632 (KLR) (8 April 2024) (Ruling)

Neutral citation: [2024] KEELC 3632 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

ENVIRONMENT AND LAND CASE CIVIL SUIT 1 OF 2024

MN GICHERU, J

APRIL 8, 2024

IN THE MATTER OF THE REGISTRATION OF LAND ACT AND LAND ACT 2012

AND

IN THE MATTER OF BOUNDARY DISPUTE BETWEEN LAND PARCEL NUMBER KAJIADO/PURKO/134 AND KAJIADO/PURKO/156

BETWEEN

ISELE MIYANO (SUING AS AN ADMINISTRATOR AD LITEM OF THE ESTATE OF MIYANOI KOOSHOI) APPLICANT

AND

THE LAND REGISTRAR, KAJIADO 1ST RESPONDENT

THE DISTRICT SURVEYOR, KAJIADO 2ND RESPONDENT

THE ATTORNEY GENERAL OF KENYA 3RD RESPONDENT

SILEIT NGORNGOL NKURRUNA 4TH RESPONDENT

RULING

1. This ruling is on the notice of motion dated 16/1/2024. The motion which is by the applicant is brought under Sections 1A and 3A of the *Civil Procedure Act*, Sections 18 and 19 and 20 of the *Land Registration Act* and all other enabling provisions of the law. It seeks the following orders.
3. That the Land Registrar's decision dated 27/9/2023 and all consequential orders be set aside.
4. That the Land Registrar and District Surveyor be ordered to revisit the dispute in compliance with the law.



5. That a resurvey be carried out in the presence of all interested parties to determine the boundary between L.R. Kajiado/Purko/134 and 156.
6. That the applicant's private surveyor to oversee the work of the District surveyor during the resurveying process.
2. The motion is based on four grounds and is supported by an affidavit by the applicant which has four annexures.

The gist of the above material is as follows.

3. Firstly, the applicant is the wife of the registered owner of L.R. Kajiado/Purko/134 which he acquired from Nkoile Group Ranch.

Secondly, on 15/9/2023, the first and second respondents visited the suit land and the neighbouring parcels to determine a boundary dispute.

Thirdly, it was a finding of the first and second respondents that the suit land encroaches on L.R. Kajiado/Purko/156 by approximately 33 acres.

Fourthly, the applicant engaged a private surveyor on 8/12/2023 who carried out a resurvey of the suit land and came up with a report dated 8/12/2023.

Finally, it is in the interests of justice that the Land Registrar's decision be set aside and there be a resurvey in strict compliance with the law in the presence of all interested parties.

4. When the matter first came to court on 17/1/2024, the applicant was directed to serve the respondents. I had assumed that the applicant had served as directed when I handled the matter on 22/2/2024 but I now realize that there was no service on the respondents as directed. Even if the motion had been served, I would still make the findings that I am about to make. Service on the respondents is therefore immaterial to the findings below.

5. I have carefully considered the motion in its entirety including the grounds, the affidavits and the annexures and I find as follows.

Firstly, under Regulation 40 (6) of the [Land Registration \(General\) Regulation, 2017](#) any party aggrieved by the decision of the Land Registrar in a boundary dispute determination can only approach this court by way of appeal. Since this matter was filed by way of a miscellaneous application, then one would say that it is not properly before the court.

6. Secondly, I am not convinced that this court has any power, except on appeal, to order that the Land Registrar repeats a boundary determination exercise. No provision of law has been cited to me to show that there is such power. What I think is that the Land Registrar has power to repeat such an exercise on his own volition. Such power is akin to the power of this court under Order 45 of the [Civil Procedure Rules](#) to review its own orders. If the applicant could convince the Land Registrar that there is new evidence, error apparent on the face of the record or some other important matter, then the Land Registrar could probably review his own decision. That is what the applicant should have done instead of approaching the court the way she did in this case.

7. Thirdly, the report by the applicant's private surveyor does not say that the applicant's land is less than it should be. That would be the only basis for seeking a resurvey. In the absence of such evidence, the resurvey would not serve any useful purpose.



8. Finally, the Land Registrar is the authority on boundaries under Sections 18 and 19 of the *Land Registration Act*. Under regulation 40(4) of the *2017 regulations* (*supra*) it is provided as follows.

" 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".

There is no way that the district surveyor can be under the supervision of a private surveyor as the applicant seeks in prayer 6 of the notice of motion. There is no basis for such supervision or oversight. The District Surveyor is an independent person in the discharge of his duties.

For the above stated reasons, I find no merit in the motion dated 16/11/2024. I dismiss it with no order as to costs because it was not served.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 8TH DAY OF APRIL 2024.

M.N. GICHERU

JUDGE

