



Republic v County Land Registrar & another; Oketho & another (Interested Parties); Odero (Exparte) (Environment and Land Judicial Review Case E012 of 2024) [2024] KEELC 14225 (KLR) (6 November 2024) (Ruling)

Neutral citation: [2024] KEELC 14225 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E012 OF 2024
GMA ONGONDO, J
NOVEMBER 6, 2024**

BETWEEN

REPUBLIC PLAINTIFF

AND

COUNTY LAND REGISTRAR 1ST RESPONDENT

COUNTY SURVEYOR, HOMABAY 2ND RESPONDENT

AND

OTIENO PETER OKETHO INTERESTED PARTY

ANN ACHIENG AKUSAN INTERESTED PARTY

AND

PAULUS OKOTH ODERO EXPARTE

RULING

1. The applicant, Paulus Okoth Odero through L K Obwanda and Company Advocates originated an application by way of Notice of motion dated 2024 for;
 - a. Order of Judicial review in the nature of mandamus compelling Homa Bay County Land Registrar and Homa Bay County Surveyor through the Attorney General to conduct boundary survey on land parcels number Gem/Kowuor/Kotieno/1254, Gem/Kowuor/Kotieno/1255 Gem/Kowuor/Kotieno/1256.
 - b. Order of Judicial review in the nature of mandamus compelling Homa Bay County Land Registrar and Homa Bay County Surveyor through the Attorney General upon conducting the boundary survey on land parcels number Gem/Kowuor/Kotieno/1254, Gem/Kowuor/



Kotieno/125 Gem/Kowuor/Kotieno/1256 to prepare and file a report including a sketch plan affirming whether or not there is any encroachment either of the owners on each other's parcel or any encroachment from any other person who is not the registered owner of the said parcels.

- c. An order that the above orders be supervised by the police Commander, Homa Bay for purposes of enforcement.
 - d. The cost of this application be borne by the respondents and the interested parties jointly and severally.
2. The respondents and the interested parties were duly served as disclosed in the affidavit of service sworn on 22nd October 2024 by L K Obwanda learned counsel for the applicant.
 3. Ms Kimberly instructed by L K Obwanda and Company Advocates learned counsel for the applicant has referred to the affidavit of service and urged the court to grant the orders sought in the application.
 4. In that regard, is the application meritorious?
 5. As noted in paragraph *para_2 2* hereinabove, the respondents and the interested parties were made aware of the existence of the application. However, they opted not to responded to the same; see *Ogada-vs-Mollin (2009) eKLR*.
 6. The applicant approached the respondents who are bestowed with the public duty to determine boundaries as provided for under sections 18 and 19 of the *Land Registration Act 2016 (2012)*. The duty has not been carried out as confirmed by the applicant.
 7. This court is guided by Articles 22, 23, 40 and 47 of *the Constitution* of Kenya 2010 herein. The meaning of the term 'Mandamus' in Black's Law Dictionary 10th Edition is quite instructive, too.
 8. Clearly, the application is steadfast, cogent and meritorious. Thus, the applicant is entitled to the orders sought in this application.
 9. A fortiori, the application be and is hereby allowed in terms of orders sought therein as set out in paragraph *para_1 subpara_a 1 (a) (b) (c) and para_1 subpara_d (d)* hereinabove.
 10. It is so ordered.

DATED AND DELIVERED AT HOMA BAY THIS 6TH DAY OF NOVEMBER 2024

G. M.A ONG'ONDO

JUDGE

Present

Ms Kimberly instructed by L. K Obwanda learned counsel for the applicant

Mr. Luanga, court assistant

