



**Olkeri Group Ranch v Oldonyo-Nyokie Group Ranch (Environment & Land
Miscellaneous Case E022 of 2022) [2023] KEELC 627 (KLR) (1 February 2023) (Ruling)**

Neutral citation: [2023] KEELC 627 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND MISCELLANEOUS CASE E022 OF 2022**

**MN GICHERU, J
FEBRUARY 1, 2023**

BETWEEN

OLKERI GROUP RANCH APPLICANT

AND

OLDONYO-NYOKIE GROUP RANCH RESPONDENT

RULING

1. This ruling is on the preliminary objection dated September 14, 2022. It is based on two grounds as follows.
 - i. That this court lacks jurisdiction to hear the application as it offends the express provisions of sections 18 and 19 of the *Land Registration Act* (Act No 3 of 2012) for reasons that the subject matter of the application is a boundary issue which falls within the jurisdiction of the land registrar.
 - ii. That the said application is misconceived, incompetent, incurably defective, bad in law, and a base of the due process of law and should be struck out with costs.
2. The application referred to in the preliminary objection is the one dated June 27, 2022. It seeks one main order as follows.

The district surveyor be ordered to carry out a fixed survey with intervisible points and not general boundary survey showing the boundary between the two group ranches and file a report in court. As recommended by the National Land Commission vide a report dated March 28, 2018, pending the hearing of this application (sic).
3. In support of the application Ezekiel Tuya Sananka filed an affidavit together with seven (7) annexures.



4. Even though counsel for the parties consented to the filing of written submissions by December 20, 2023, only the respondent's filed theirs on October 19, 2022. The applicant's counsel did not file any submissions even after the deadline.

5. I have carefully considered the preliminary objection and I find that two issues arise namely.

- a. Is the preliminary objection on a pure point of law?
- b. Can this court delve into a boundary dispute before the land registrar has made a determination thereto?

On the first issue, I find that the preliminary objection is on a pure point of law. The issue of jurisdiction is actually on a point of law which has already been pleaded namely, this court directing the district surveyor on how to carry out a survey over land whose boundary is disputed by two parties.

I therefore find the preliminary objection meets the test set out in the case of *Mukbisa Biscuit Manufacturing Co Ltd -vs- West End Distributors Company Limited (1969) EA 696*.

On the second issue, I find that section 18(2) of the [Land Registration Act](#) ousts the jurisdiction of this court in cases of boundary determination. The exclusive jurisdiction in this regard is vested in the land registrar. It provides as follows.

- (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'.

From the above provision it is clear that this court will only have jurisdiction after the land registrar has determined the boundaries but not before.

For the above reasons, I uphold the preliminary objection dated September 14, 2022 and strike out the notice of motion dated June 27, 2022 with costs.

It is so ordered.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 1ST DAY OF FEBRUARY, 2023.

MN GICHERU

JUDGE

