



**Republic v District Land Registrar, Kajiado & another; Taiko & 2 others (Interested Parties)
 (Sued as Administrators of the Estate of Nkopuduo Nyika - Deceased) (Environment and Land
 Miscellaneous Application 1 of 2021) [2023] KEELC 15822 (KLR) (1 March 2023) (Judgment)**

Neutral citation: [2023] KEELC 15822 (KLR)

**REPUBLIC OF KENYA
 IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
 ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION 1 OF 2021
 MN GICHERU, J
 MARCH 1, 2023**

**IN THE MATTER OF AN APPLICATION BY LAND OWNERS OF PARCELS OF
 LAND SURROUNDING KAJIADO/ELANGATA-WUAS/3083 PARTICULARLY DAVID
 NKAPAPA MAORA, JOSEPH TAJEU MAORA, (ADMINISTRATORS OF THE ESTATE
 OF MAORA LOPISIA MAISIAK-DECEASED) AND PATRICK MARAI MUNGAI FOR
 JUDICIAL REVIEW ORDERS OF CERTIORARI, PROHIBITION AND MANDAMUS**

AND

IN THE MATTER OF SECTION 19(1, 2, AND 3) OF THE LAND REGISTRATION ACT, 2012

AND

**IN THE MATTER OF ARTICLES 10, 23 (3), (F), 27, 47, 48,
 50 AND 162(2) (B) OF THE CONSTITUTION OF KENYA**

AND

**IN THE MATTER OF SECTIONS 8 AND 9 OF THE
 LAW REFORM ACT (CAP 26) THE LAWS OF KENYA**

AND

**IN THE MATTER OF SECTIONS 7, 8, AND 9 OF
 THE FAIR ADMINISTRATIVE ACTIONS ACT, 2015**

AND

**IN THE MATTER OF THAT PARCELS OF LAND KAJIADO/
 ELANGATA-WUAS/3083 FORMERLY KAJIADO/ELANGATA-WUAS/17**

BETWEEN

REPUBLIC APPLICANT

AND



THE DISTRICT LAND REGISTRAR, KAJIADO 1ST RESPONDENT

THE DISTRICT LAND SURVEYOR, KAJIADO 2ND RESPONDENT

AND

BENSON MBOYA TAIKO INTERESTED PARTY

LEKENAH TAIKO KIROYIA INTERESTED PARTY

LEMOMO OLE TAKO INTERESTED PARTY

**SUED AS ADMINISTRATORS OF THE ESTATE OF NKOPUDUO NYIKA -
DECEASED**

JUDGMENT

1. The Applicants seek the following reliefs against the first and second Respondents.
 - (a) Order of certiorari to quash the decision of the first Respondent to register a mutation dated 25/8/2020 which had the effect of increasing the acreage of L.R. Kajiado/Elangata Wuas/17 by 201 acres.
 - (b) An order of certiorari to quash the decision of the first Respondent to issue a new title deed to the owners of L.R. Elangata – Wuas/17 with increased acreage.
 - (c) An order of certiorari to quash the decision of the second Respondent contained in the letter dated 6th August, 2020 addressed to the 1st Respondent for the rectification of the acreage for L.R. No. 17.
 - (d) An Order of Mandamus against the first Respondent directing them to determine the fixed boundaries for L.R. 17 with regard to the provisions of the [Land Registration Act](#) particularly Sections 18 and 19 by giving notice to all owners and occupiers of the land adjoining the boundaries of the said land.
 - (e) An order of Mandamus to issue against the second Respondent directing them to determine the fixed boundaries of L.R. 17 with regard to the provisions of the [Land Registration Act](#) particularly Sections 18 and 19 by giving notice to all owners and occupiers of the land adjoining the boundaries of the said land.
 - (f) An order of Prohibition against the second Respondent from conducting any surveys on the parcels of land adjoining L.R 17 and /or without following due procedures.
 - (g) An order of Prohibition against the first and second Respondents from entering the new measurements of L.R. Kajiado/Elangata-Wuas/3083 as per the resurvey into the cadastral map.
2. The suit is supported by a verifying affidavit dated 18/1/2021 which has five annexures. In the affidavit, Patrick G. Marai Mungai deposes as follows. He is the registered owner of L.R. Kajiado/Elangata-Wuas/574 which is adjacent to parcel Number Kajiado/Elangata – Wuas/17 which measured 555 hectares and which is now Kajiado/Elangata- Wuas/3083 measuring 756 hectares.
3. The deponent bought the land from Kanchori Singeen and got it registered in his name in May, 2015.



4. On 5/8/2020, the District Surveyor Kajiado surveyed L.R. 17 and found it to be 756.4 and not 555.0 hectares as per the register. He directed the Land Registrar to rectify the records accordingly.
5. Even though the District Surveyor indicated that the owners of the neighbouring parcels were present during the survey exercise, only three of them were present. Again the first Respondent issued a title deed with the increased acreage while well aware that the requisite procedure for fixing boundaries was not adhered to.
6. The Interested parties' advocate filed a notice of appointment dated 10/5/2021 but did not respond to the suit. The Respondent did not file any reply or even instruct counsel to file a notice of appointment.
7. At the trial on 18/1/2022, Patrick Marai Mungai testified on his own behalf and that of his co-applicant. He adopted the verifying affidavit and the documents.
8. I have carefully considered the entire record including the verifying affidavit, documents and the issues raised therein. I make the following findings.
9. Firstly, the second Applicant's title deed reads 109.3 hectares or 269.971 acres.
10. Secondly, there is no allegation that L.R. 17 encroaches on L.R. 574 belonging to the second Applicant.
11. Thirdly, the Applicants have not cited any law or regulation that governs boundary demarcation proceedings and how the determination of 5/8/2020 differed from that law or regulations.
12. Fourthly, there is no evidence of an eye witness who was present on 5/8/2020 at the boundary determination to give first hand evidence in this case.
13. Fifthly, the Land Registrar is the authority on boundary dispute determination by virtue of Sections 18 and 19 of the [Land Registration Act](#) and for the court to fault him, credible evidence has to be adduced to show the wrong done by him or the surveyor.

In this case, there is no evidence of an expert like a surveyor or a Land Registrar to show that anything went wrong on 5/8/2020/.

14. For the above stated reasons, I find no merit at all in this suit. I dismiss it in its entirety.

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

M.N. GICHERU

JUDGE

