



**Maranga v Obegi (Environment & Land Case 76 of 2017)  
[2022] KEELC 35 (KLR) (4 May 2022) (Ruling)**

Neutral citation: [2022] KEELC 35 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISII  
ENVIRONMENT & LAND CASE 76 OF 2017**

**JM ONYANGO, J**

**MAY 4, 2022**

**BETWEEN**

**JULIA MARANGA ..... PLAINTIFF**

**AND**

**JAMES OBEGI ..... DEFENDANT**

**RULING**

1. The Plaintiff filed suit against the Defendant claiming that the Defendant had trespassed onto her land parcel registration number Nyaribari Chache/B/B Boburia /11113 and placed construction materials thereon with the intention of constructing a permanent structure thereon. Together with the Plaintiff, the Plaintiff filed a Notice of Motion seeking a temporary injunction to restrain the Defendant from interfering with the Plaintiff's ownership and possession of L/R NO. Nyaribari Chache/B/B/ Boburia/11113.
2. Upon being served with the Plaintiff and Summons to enter appearance, the Defendant filed a Defence denying the Defendant's claim and stated that he is the owner of land parcel number Nyaribari Chache/B/B BOBURIA/12455 which is situated some two Kilometres from the Plaintiff's land and that he had never entered the Plaintiff's land or deposited building materials thereon. He further claimed that the Plaintiff had sued the wrong person.
3. In response to the application for injunction, the Defendant reiterated the averments in his Defence. In his Further Replying Affidavit sworn on 16<sup>th</sup> May, 2017 he deponed that the Plaintiff was the owner of L.R No. Nyaribari Chache/B/B Boburia/ 2942 which was now divided into two parcels namely; Nyaribari Chache/B/B Boburia/11112 and 11113 which had a common boundary with L.R No. Nyaribari Chache/B/B Boburia/7696 which belongs to his wife.
4. He further stated that sometime in 2015, his wife obtained approval to develop her plot no. 7696 and proceeded to develop the same. He denied that he had trespassed onto L.R No 11113.



5. When the application came up for hearing on 30.5.2017, the court observed that the main issue in dispute was whether the Defendant had encroached on the Plaintiff's land parcel Nyaribari Chache/B/B Boburia/11113. He therefore directed that the Land Registrar and the County Surveyor Kisii County visit land parcels No. Nyaribari Chache/B/B Boburia/11112, 11113 (formerly 2942) and 7696 to delineate and fix the respective boundaries and file a report with a sketch map showing the relationship between the said plots within 90 days.
6. In their report dated 18<sup>th</sup> September 2017 the Land Registrar and County Surveyor made the following observations:
7. Parcels No. B/B Boburia/11112 and 11113 exist in our records (Survey and Registry). Parcel No. 7696 does not exist in our records as it was nullified vide court order No. 243 of 2011 and reverted back to 5972. Parcel no. 5972 has since been sub-divided into parcels no. 13907 and 13908.
8. Parcels no 11112 and 13907 share a common boundary. Parcels 11112 and 11113 share a common boundary. The three parcels do not originate from the same mother number. Parcels 13907 touches on the 10m road to the west and 13m road to the East.
9. Parcels 11112 and 11113 touch on the 10m road to the west and shares a common boundary with parcels 6353 and 6017 to the East. However, the piece of land being claimed by the Plaintiff does not have any relationship with the abuttals mentioned above.  
Parcel No. 11113 shares a boundary with market plots (Gekomu Mwembe market) to the North.
10. They concluded that the County Director in charge of Physical Planning and Urban Development be called to identify the end of the market plots as this would automatically indicate the starting point of parcel No. 11113.
11. Upon perusal of the report by the Land Registrar and County Surveyor, the Court directed that the Director Physical Planning and Urban Development to visit Gekomu Market and delineate the perimeter boundaries with specific regard to parcels 11112 and 11113 which share common boundaries with the market and file his report.
12. In his report dated 12<sup>th</sup> November, 2018 and filed in court on 14<sup>th</sup> December, 2018 the Director Physical Planning and Urban Development observed as follows:
  - i. Plot No. 51 Gekomu market is the last market plot according to the layout plan for Gekomu Market. The plot borders freehold land.
  - ii. Parcels No. 11112 and 11113 are freehold titles following sub-division of parcel No. 2942 which from the layout plan should form the boundary between freehold and market plots.
  - iii. Parcels no. 11112, 11113 and plot No. 51 are fully developed.
13. Having received the two reports, the court directed the parties to file their comments on the same.
14. In their comments both parties agreed that the reports be adopted as the judgment of the court.
15. Having considered the pleadings, the reports by the Land Registrar and County Surveyor Kisii County as well as the report by the Director, Physical Planning and Urban Development, as well as the comments filed by counsel for both parties, I am of the view that the reports conclusively resolve the issues in dispute and I adopt them as the judgment of the court. It is clear that the Defendant has not trespassed onto the Plaintiff's parcel of land as parcel no. Nyaribari Chache/B/B Boburia/11113 and



parcel no. 12455 do not share a boundary. There is also no evidence that the Defendant has deposited any building materials on the Plaintiff's land.

16. Consequently, the Plaintiff's claim has no basis and it is dismissed with costs to the Defendant.

**DATED, SIGNED AND DELIVERED AT KISII THIS 4TH DAY OF MAY, 2022.**

**J.M ONYANGO**

**JUDGE**

