



**Osinde v Nyamwaro & another (Environmental and Land Originating
Summons E002 of 2023) [2025] KEELC 4024 (KLR) (21 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 4024 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E002 OF 2023**

DO OHUNGO, J

MAY 21, 2025

BETWEEN

KENNEDY ONKUNDI OSINDE PLAINTIFF

AND

WILSON NYAMWARO 1ST DEFENDANT

CHARLES MONDAS 2ND DEFENDANT

RULING

1. The Plaintiff moved the Court through Originating Summons dated 22nd March 2023 wherein he averred that he was the proprietor of the parcel of land known as Nyansiongo Settlement Scheme 3193 while the First Defendant was the proprietor of the parcel of land known as Nyansiongo Settlement Scheme 3192. He therefore prayed for the following orders:
 1. A declaration to be issued that both parcels of land exist on the map.
 2. An order be issued to ascertain the beacons for both parcels of land on the ground.
 3. The land registrar and the District Surveyor Nyamira County to be directed by the court to ascertain the beacons on the ground, establish them on the ground and present their findings to this honorable court.
 4. A declaration be issued that both the defendants have encroached the plaintiff's parcel of land.
 5. An order of restitution can be issued upon the findings of encroachment of defendants on the plaintiff's parcel of land.
 6. Restitution of and re-establishing of the boundaries.
 7. Costs of this suit be borne by the defendants jointly and severally.



2. The Originating Summons is supported by an affidavit sworn by the Plaintiff. He deposed that he, the First Defendant and Second Defendant are the registered proprietors of parcel numbers Nyansiongo Settlement Scheme 3193, 3194 and 3192 respectively. He further deposed that on 2nd March 2023, the First Defendant trespassed into parcel number Nyansiongo Settlement Scheme 3193 by fencing in such a way that he annexed a portion of Nyansiongo Settlement Scheme 3193. The Plaintiff further deposed that he reported the matter to a surveyor who went and showed them where the boundaries ought to be, but the First Defendant refused to remove the fencing from Nyansiongo Settlement Scheme 3193.
3. The First Defendant reacted to the Originating Summons by filing Notice of Preliminary Objection dated 13th April 2023 in which he contended that the Court lacks jurisdiction and that the suit offends Sections 18 and 19 of the *Land Registration Act*.
4. On 23rd May 2024, at the Plaintiff's request, the Court (Mugo Kamau, J.) ordered the Land Registrar and the County Surveyor to file a report in Court. Subsequently, the two officers filed a report dated 14th October 2024. The report, to which is annexed a field diagram, reads as follows:

The undersigned visited the suit properties on 25th June 2024 as ordered by this honorable court.

There is a slight discrepancy between the position of the common boundary of Nyansiongo SS/3193 and 3194 as represented on the mutation and as is on the ground. Whereas the mutation indicated that the said boundaries run from way points 413 to 417 through way point 414; however, on the ground the boundary (which is marked by a wall constructed by the owner of Nyansiongo SS/3194) runs almost on a straight line from way point 413 to 417 through way point 416. The ownership of the portion of land represented by the highlighted part on the annexed Field Diagram is therefore disputed.

5. On 23rd October 2024, the Court ordered parties to file written comments or submissions in respect of the report. The Plaintiff filed submissions dated 29th October 2024 in which he urged that the report be adopted, and that the boundary be amended to run from point 410 through point 413, 414 to 417 instead of running from point 417 to 413. He prayed that the shaded area in the field diagram to form part of his parcel number Nyansiongo Settlement Scheme 3193 and contended that the discrepancy is too negligible to engage the parties any further. He further submitted that the Defendants should bear costs of the suit.
6. The First Defendant's written comments or submissions are contained in a letter dated 5th March 2025, written by his advocates on record to the other parties' advocates. A copy of the letter was filed in Court. The First Defendant opposed the report and contended that the suit before the Court is a boundary dispute. He also argued that the report focused more on Nyansiongo Settlement Scheme 3193 and 3194 than 3192. He proposed a resurvey of all three parcels and that the costs be met by both parties.
7. On his part, the Second Defendant filed submissions dated 16th January 2025. He submitted that report did not comply with the orders of the Court and failed to adjudicate, ascertain and fix the boundaries. That the report did not demonstrate any discrepancies in the boundary between parcel numbers Nyansiongo Settlement Scheme 3193 and 3192 and did not therefore disclose any encroachment on his part. He went on to argue that this suit is a boundary dispute and therefore contravenes Section 18 (2) of the *Land Registration Act*.
8. I have considered the report and the parties' submissions. In view of the position taken by the Defendants that the report did not comply with the order of the Court, I found it necessary to revisit



the order of 23rd May 2024 and the oral application that led to its issuance, with a view to determining the scope of the order. The record shows that on that date, Mr Kiboi who is on record for the Plaintiff, addressed the Court as follows:

The Land Registrar and County Surveyor visited the suit land on 1/4/2024. We are awaiting their reports. In respect of the Preliminary Objection we are ready to withdraw the suit depending on the outcome of the above report.

9. The Court then proceeded to make an order in the following terms:

The Land Registrar's and County Surveyor's reports to be filed in Court within the next 21 days.

10. Besides the order of 23rd May 2024, there is nothing on record showing what exactly the Land Registrar and County Surveyor were to do. In those circumstances, I am unable to make any order either adopting or rejecting the report. It will remain on record and parties will be at liberty to refer to it or rely on it at trial.

11. In the meantime, since the Preliminary Objection dated 13th April 2023 has raised the issue of whether the Court has jurisdiction to hear and determine the Originating Summons, I order that the Preliminary Objection be heard and determined first.

DATED, SIGNED, AND DELIVERED AT NYAMIRA, THIS 21ST DAY OF MAY 2025.

D. O. OHUNGO

JUDGE

Delivered in the presence of:

Mr Kiboi for the Plaintiff

Ms Otieno holding brief for Mr Okok for the First Defendant

Mr Were holding brief for Mr Atisi for the Second Defendant

Court Assistant: B Kerubo

