



**Indata v Makanga (Environment & Land Miscellaneous Case
E015 of 2024) [2025] KEELC 3806 (KLR) (15 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3806 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VIHIGA
ENVIRONMENT & LAND MISCELLANEOUS CASE E015 OF 2024**

E ASATI, J

MAY 15, 2025

BETWEEN

AMOS ONAMI INDATA APPLICANT

AND

ELPHAS ASIKIYE MAKANGA RESPONDENT

RULING

1. This Ruling is in respect of the application dated 9th January 2025 brought by the applicant seeking for; -
 - a. An order of injunction restraining the Respondent, his employees, servants and/or agents or anybody acting under his instructions from entering upon, remaining on, taking possession of carrying out any business or any other activity whatsoever on the trespassed premises or in alienating or interfering by any means howsoever with the property known as W/Bunyore/Ebusiekwe/2146 pending haring and determination of this application.
 - b. The honourable court do issue an order directing the OCS Luanda police station to provide security to the Land Registrar Vihiga County to survey and determine the common boundary line between parcels of land W/Bunyore/Ebusiekwe/2146 and 2145.
 - c. The building, structure, wall and/or any kind of erected structure found constructed across the applicant's parcel of land NO. W/Bunyore/Ebusiekwe/2146 after the successful survey by the Land Registrar Vihiga Country be vandalized and/or demolished forthwith.
 - d. That costs of this application be borne by the Respondent herein.
2. The grounds upon which the application was brought are that the applicant is the owner of land parcel W/Bunyore/Ebusiekwe/2146 and the Respondent W/Bunyore/Ebusiekwe/2145. That the Respondent has forcefully trespassed and constructed his building stretching across the boundary



from his parcel of land No. W/Bunyore/Ebusiekwe/2145 thereby encroaching onto the applicant's land.

3. That the applicant who is ready to agree with whatever outcome of survey report of the Land Registrar, reported the matter to the Land Registrar Vihiga County so that the dispute could be resolved. That it is the Land Registrar's advice that for the boundary dispute to be resolved the court has to issue an order directing the OCS Luanda police station to provide adequate security to enable the surveyors discharge their constitutional duty. That the applicant shall suffer immense and irreparable loss and damage unless the orders sought are granted. The application was supported by the averments in the Supporting Affidavit sworn by the applicant on 9th January 2025.
4. The application was opposed vide the Respondent's Replying Affidavit sworn on 20th January 2025. His case is that the application has been filed with unclean hands, is misconceived and driven by malice. That ownership of land parcel No. W. Bunyore/Ebusiekwe/2146 was acquired through fraud.
5. That there was no iota of hostility upon the land officers as alleged by the applicant. That the family was not willing to have the exercise done before the issue of ownership and how the applicant got the land were determined. That the Respondent has not trespassed onto the land as the applicant found the Respondent already on the land. That this being a family issue that can be easily resolved, police should not be involved. That the court should restrain the applicant and the Land Registrar.
6. The application was disposed of by way of written submissions. Written submissions dated 20th February 2025 were filed on behalf of the applicant by the firm of Marisio Luchivya & Co. Advocates. Counsel submitted that it is the duty of the Land Registrar to resolve boundary disputes. That the Respondent's refusal to allow the surveyors to survey and determine the boundary is what necessitated the application. That it is for the interest of justice that the application be allowed.
7. On behalf of the Respondent it was submitted vide the written submissions dated 7th March 2025 filed by L.M Ombete & Company Advocates that the proceedings have been instituted by way of Miscellaneous application. That the orders sought are against the rights of the parties involved in the suit. That a miscellaneous application generally cannot commence a suit. Counsel relied on the case of *Norah Ndunge Henry & another vs Abednego Mutisya & Another* (2022) eKLR and submitted that the instant application as filed is defective, incompetent and the court cannot grant the orders sought.
8. Counsel submitted further that the provisions of the law cited are non-existent in law. That the proper provisions of law for the order sought were not invoked.
9. Further that the grounds for grant of an order of temporary injunction have not been demonstrated.
10. I have considered the application and the grounds thereof. It is clear that the subject matter of the application is a boundary dispute and as submitted on behalf of the applicant, the power to determine boundary disputes is with the Land Registrar. Under the provisions of section 18 of the *Land Registration Act*, the court has no jurisdiction to determine boundary disputes.
11. The substantive prayer sought in the application is for an order directing the police to provide security during the exercise of determining the boundary dispute by the Land Registrar. It was the applicant's case as deposed to in paragraph 6 of the Supporting Affidavit that the Land Registrar advised the parties to obtain a court order directing the OCS Luanda police station to provide adequate security to enable the surveyors discharge their duty. Attached to the Supporting Affidavit was a report on boundary dispute determination between parcel of land comprised of L.R WEST Bunyore/Ebusiekwe/2146



and 2145 dated 25th November 2024 signed by H.K Langa Land Registrar Vihiga. The land Registrar indicates in the report that

“The exercise could not proceed since the Respondent was hostile and officers on the ground could not carry out survey verification to determine the actual boundaries separating the two parcels in question.

We were also advised by area administration that for the exercise to proceed there is need of security officers to be present on the site to maintain law and order and that court directs the area OCS to provide security.”

12. From this report, it evident that the Land Registrar visited the ground and was unable to complete the exercise due to what he calls the Respondent’s hostility. Although the Respondent has opposed the application, he has not demonstrated any prejudice he is likely to suffer if security officers are present during the exercise so as to provide security to the Land Registrar and his offers who will be determining the dispute and to maintain law and order.
13. Further, although the Respondent opposes the application on the grounds that the applicant’s title was procured by fraud, there is no case challenging the applicant’s title. Evidence placed before this court is that up to the date of filing the application the land was in the applicant’s name.
14. The prayer for injunction and for demolition of structures are substantive reliefs that ought to be sought for in an appropriate forum. Herein they are premature and misconceived in view of the provisions of section 18(2) of the *Land Registration Act*.
15. The court finds that the application is partly merited and hereby allows it in the following terms: -
 - i. The OCS Luanda police station to provide security to the Land Registrar Vihiga County to survey and determine the common boundary line between parcels of land No.s W/Bunyore/Ebusiekwe/2146 and 2145.
 - ii. Each party to bear own costs of the application.

Orders accordingly.

RULING, DATED AND SIGNED AT VIHIGA AND READ VIRTUALLY THIS 15TH DAY OF MAY 2025 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.

E. ASATI,

JUDGE.

In the presence of:

Ajevi Court Assistant.

No appearance for the applicant.

Odendo h/b for Ombete for the Respondent.

