



Republic v Registrar of Lands Vihiga County; Amahati (Exparte Applicant) (Environment and Land Case Judicial Review Application E001 of 2024) [2025] KEELC 3887 (KLR) (15 May 2025) (Judgment)

Neutral citation: [2025] KEELC 3887 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VIHIGA
ENVIRONMENT AND LAND CASE JUDICIAL REVIEW APPLICATION E001 OF 2024**

E ASATI, J

MAY 15, 2025

IN THE MATTER OF ARTICLE 165 (3) 9D) (II), ARTICLE 165 (6) (7) AND ARTICLE 40 (1) (3) (6) OF THE CONSTITUTION

AND

IN THE MATTER OF SECTION 18(2) AND SECTION 20 (2) OF THE LAND REGISTRATION ACT

AND

IN THE MATTER OF AN APPLICATION BY HANNINGTON ALUKOHE AMAHATI

AND

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW BY WAY OF MANDAMUS

AND

IN THE MATTER OF LAND PARCEL NO. E/BUNYORE/EBUSIRATSI/438

AND

IN THE MATTER OF REFUSAL BY REGISTRAR OF LANDS VIHIGA COUNTY TO SURVEY AND ERECT BOUNDARY MARKS ON LAND PARCEL NO. E/ BUNYORE/EBUSIRATSI/438 AND EXERCISE OF FAIR ADMINISTRATIVE ACTION

BETWEEN

REPUBLIC APPLICANT

AND

THE REGISTRAR OF LANDS VIHIGA COUNTY RESPONDENT

AND



JUDGMENT

1. *Vide* the Notice of Motion dated 30th September 2024, the Ex parte applicant sought for;
 - a. An order of Judicial Review by way of *Mandamus* be issued, directed to the Land Registrar Vihiga County to visit and survey and erect boundary marks on Land Parcel No. E/Bunyore/ebusiratsi/438.
 - b. An order or judicial Review by way of *mandamus* compelling the Respondent, the Land Registrar Vihiga to visit survey and erect boundary marks on land parcel No. E/Bunyore/ebusiratsi/438.
 - c. The Officer Commanding Station (OCS) Kilingili Police Station to provide security for the exercise.
 - d. The Respondent to file a report with the court within 30 days after visiting, surveying and erecting the boundary marks on land parcel No. E/Bunyore/ebusiratsi/438.
 - e. The Respondent be compelled to pay the costs of these proceedings.
2. The grounds upon which the application was brought as contained In the Notice of Motion and Statement of Facts are that the ex parte applicant is the absolute proprietor of land parcel No. E/Bunyore/ebusiratsi/438 measuring 1.4 acres. That sometimes in the year 2017 the owners of the neighboring parcels of land destroyed the boundary marks and/or beacons between the applicant's parcel of land and the neighbouring parcels of land. That they encroached onto the applicant's land whereby they felled down trees, erected houses and started farming on the encroached portion. That the applicant wrote to the Respondent requesting him to resolve the boundary dispute and paid a sum of Ksh 9000/- for the process of survey and establishment of boundary marks/beacons for which receipt was issued and a site visit scheduled for 17/4/2019 but that on the appointed date the Respondent did not turn up to date. That no explanation has been given to the applicant. That this has made the trespassers to take over the whole parcel thereby forcing the applicant to remain landless.
3. The Respondent opposed the application *vide* the Grounds of opposition filed on 10/12/2024. It was the Respondents case that the applicant has failed to raise the issues with the Land Registrar through the standard procedure for ascertainment of boundaries. That the applicant has not shown any proof of payment of the prescribed fees for resolution of boundary dispute. That the court lacks jurisdiction to entertain any action on boundary dispute unless the same has been determined by the office of the Land Registrar under the provisions of the [Land Registration Act](#) No. 3 of 2012.
4. Pursuant to directions given on 14/11/2024 the application was argued by way of written submissions. Written submissions dated 19th February 2025 were filed by the firm of M.W Khakasa & Co advocates for the ex parte applicant. It was submitted on behalf of the ex parte applicant that section 20 (2) of the [Land Registration Act](#) provides that the Registrar may in writing order the demarcation within a specified time of any boundary marks and any person who fails to comply with such an order commits an offence and is liable on conviction to a fine not exceeding two hundred thousand shillings.
5. That Regulation 40 and 41 of the [Land Registration \(General\) Regulations 2017](#) provides for the procedure to be followed in making an application for re-establishment of boundaries.



6. That it is clearly the statutory mandate of the Registrar to determine boundary disputes like the one in the present case. That despite numerous requests by the ex parte applicant the Land Registrar Vihiga County has abdicated this statutory duty conferred upon him without giving any justification. Counsel relied on the case of *Republic v Director of Survey and others* Nakuru Environment and Land Court Judicial Review No.9 of 2015 where it was held that it was the duty of the Director of surveys and his subordinates to mark and point who own land.
7. Counsel urged the court to allow the application.
8. No submissions were field by the Respondent. Counsel elected to rely on the Grounds of opposition filed.
9. I have considered the application. There is no dispute that the power to determine and fix boundaries and resolve boundary disputes rests with the Land Registrar.
10. The ex parte applicant has demonstrated through the annexures to the application that he requested the Land Registrar Vihiga to establish the boundary marks in respect of East Bunyore/ebusiratsi/438,437,440 and 439. The letters dated 18th December 2018 and 25th October 2023 by the ex parte applicant and addressed to the Land Registrar Vihiga County show this.
11. Receipt No, 5194870 shows that the ex parte applicant paid Ksh 9000/- for boundary dispute for Ebusiratsi/438 v 437, 439 and 440. Boundary Dispute Summons annexed to the application shows that the Land Registrar issued Summons to Peter Ojili, Joash Nahumba, Noah Litaka Nambuto and Nambuto Ambole informing them that the Land Registrar was to determine the dispute on 17th April, 2019.
12. There is no evidence that the determination took place. The ex parte applicant avers that the Land Registrar has failed to visit the site and to determine the dispute.
13. From the foregoing, the court finds that the Land Registrar's failure to complete the process and determine the boundary dispute is unlawful. The court finds that the ex parte applicant is entitled to the relief sought.
14. The application is therefore hereby allowed as follows: -
 - a. An order of Judicial Review by way of *Mandamus* be issued, directed to the Land Registrar Vihiga County to visit and survey and place boundary marks on Land Parcel No. E/Bunyore/ebusiratsi/438.
 - b. The Officer Commanding Station (OCS) Kilingili Police Station to provide security during the exercise.
 - c. The Respondent to file a report in the court within 60 days after visiting, surveying and erecting the boundary marks on land parcel No. E/Bunyore/ebusiratsi/438.
 - d. The owners of the other parcels of land involved in the boundary dispute to be given sufficient notice of the Land Registrar's visit.
 - e. No order as to costs.

Orders accordingly.

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



E. ASATI,

JUDGE.

In the presence of:

Ajevi.....Court Assistant.

Wadallah for the Ex Parte Applicant.

No appearance for the Respondent.

