



**Kathumbi v Nyaga & another (Environment and Land Appeal
E043 of 2024) [2025] KEELC 5878 (KLR) (18 June 2025) (Judgment)**

Neutral citation: [2025] KEELC 5878 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIRONMENT AND LAND APPEAL E043 OF 2024**

**AK BOR, J
JUNE 18, 2025**

BETWEEN

JOSEPH NJERU KATHUMBI APPELLANT

AND

NYAGUTHII NYAGA 1ST RESPONDENT

LAND REGISTRAR KIRITIRI 2ND RESPONDENT

(Appeal arises from the ruling of Hon R. Njoki Kabara (Principal Magistrate) delivered in Siakago PM ELC Case No. E070 of 2022)

JUDGMENT

1. This appeal arises from the ruling of Hon R. Njoki Kahara (Principal Magistrate) delivered in Siakago PM ELC Case No. E070 of 2022 -*Nyaguthii Nyaga v Joseph Njeru Kathumbi & Land Registrar, Kiritiri* on 4/9/2024. The 1st Respondent filed suit seeking to have the boundaries of Mbeere/Kirima/1 and Mbeere/Kirima/705 determined by the Land Registrar, Kiritiri. The Appellant is the registered proprietor of Mbeere/Kirima/705 while the 1st Respondent is the registered proprietor of Mbeere/Kirima/1.
2. Through an agreement of the parties, the Regional Surveyor visited the disputed land and prepared a report dated 29/1/2024 which recommended that the boundary of the two parcels of land be re-affixed in accordance with the findings in the report. The trial court adopted the surveyor's report on 31/1/2024 and issued orders directing the Land Registrar and County Surveyor to visit the disputed land to implement the recommendations. The OCS Kiritiri Police Station was to provide security during the exercise.
3. Being dissatisfied with those orders, the Appellant filed the application dated 12/2/2024 seeking to have the court review and set aside its orders. The grounds for the application were that there was an



error apparent on the face of the record in that the trial court adopted the Surveyor's report despite the fact that the report was erroneous and indicated the wrong acreages of the disputed land parcels. Further, that the surveyor used the wrong acreages to compute how the new boundaries were to be fixed.

4. More specifically, the Appellant contended that the surveyor erroneously indicated the registered acreage of Mbeere/Kirima/1 as 4.0 hectares(ha) instead of the registered 3.46 Ha, Mbeere/Kirima/705 as 2.80 Ha instead of 2.81 Ha. Mbeere/Kirima/1507, which lies between the two parcels of land was indicated as measuring 0.46 Ha instead of 0.44 Ha in accordance with the official searches annexed to the review application. According to the Appellant, the consequence of those errors was that the 1st Respondent would get more land than was actually registered in its name.
5. The trial court heard the application and in a ruling delivered on 4/9/2024, dismissed it with costs. The court found that the survey undertaken by the County Surveyor was conducted in accordance with the law. The court noted that the Appellant was present during the survey exercise and did not raise a dispute at the time. The court refrained from interfering or faulting the findings of the surveyor while noting that the court was not clothed with the skills of a surveyor. That prompted the filing of this appeal.
6. From the memorandum of appeal, the issues that arise for determination are whether the survey report dated 29/1/2024 was based on inaccurate land sizes and whether the trial court erred in refusing to set aside the orders it made on 31/1/2024.
7. Order 45 Rule 1 of the *Civil Procedure Rules* sets out the circumstances under which a court may review its orders including the discovery of new and important matter or evidence which, after the exercise of due diligence was not available to a party at the time of making the order or on account of an error or mistake apparent on the face of the record or for any other sufficient reason.
8. It is helpful to reproduce the findings in the surveyor's report dated 29/1/2024:

“Findings

1. The boundaries of Mbeere/Kirima/1 and 705 had been placed by the Land Registrar -Kiritiri, only the owner of Mbeere/Kirima/705 fenced his part.
2. The registered areas for Mbeere/Kirima/1 and Mbeere/Kirima/705 are 4.0 Ha and 2.8 Ha respectively.
3. The sizes of Mbeere/Kirima/1 resulted to 3.239 Ha while Mbeere/Kirima/1 resulted to 3.253 Ha.
4. Land parcel No. Mbeere/Kirima/1507 is intertwined between Mbeere/Kirima/1 and 705. Its registered size is (0.46) the owner is deceased, according to the family represented by the wife Beatrice.
5. To determine the new boundaries, cumulative sizes of Mbeere/Kirima 1, and Mbeere/Kirima/705 resulted to 6.88 Ha. While the cumulative registered areas is 7.27 Ha.
6. To determine the size of each parcel the ratio of the registered size is multiplied by the area as follows-
 - i. Mbeere/Kirima/1 ($4/7.27 \times 6.881$) =3.786Ha
 - ii. Mbeere/Kirima/705 ($2.81/7.27 \times 6.881$) =2.65Ha



iii. Mbeere/Kirima/1507 (0.46/7.27 x 6.881) =0.435Ha

7. Using the new sizes, above, the new boundaries ought to be resurveyed as per the attached map. The rationale for the re-affixing the boundary afresh is premised on the fact that the total surveyed areas is less than the total registered areas.

Recommendations

1. The re-affixing of the new boundaries to be carried out in the presence of the OCS for that jurisdiction.
 2. That the land Registrar Kiritiri to present during the exercise.”
10. According to the official searches which the Appellant availed to the trial court, the registered area for Mbeere/Kirima/1 is 3.46 Ha, Mbeere/Kirima/705 is 2.81 Ha while Mbeere/Kirima/1507 is 0.44 Ha. It is therefore evident that the surveyor relied on incorrect registered acreages when preparing his report and conducting the subsequent calculations. This was a clear factual error. The Appellant’s concerns were thus well founded and warranted consideration by the trial court. However, the trial court proceeded to adopt the surveyor’s report wholly without addressing this critical issue, which amounted to an error apparent on the face of the record and it was a proper ground for review. The Learned Magistrate erred in dismissing the application for review.
 11. The appeal succeeds. The ruling delivered on 4/9/2024 is set aside and in its place, the Appellant’s application dated 12/2/2024 is allowed. The orders made on 31/1/2024 adopting the surveyor’s report dated 29/1/2024 are set aside.
 12. The matter is remitted back to the Magistrate’s Court for the boundary determination exercise to be undertaken afresh. The Regional Surveyor is directed to go to the ground and reaffix the boundaries and prepare a proper report in relation to Mbeere/Kirima/1 and Mbeere/Kirima/705 using the acreage in the official land records of the land in dispute.
 13. Each party will bear the costs of the appeal.

DELIVERED VIRTUALLY AT EMBU THIS 18TH DAY OF JUNE 2025.

K. BOR

JUDGE

In the presence of:

Ms. Nyaguthii Nyaga for the 1st Respondent

Mr. A. Male holding brief for Mr. J. Kiongo for the 2nd Respondent

Diana Kemboi-Court Assistant

No appearance for the Appellant

