



**Mbugua v Kabau (Environment and Land Case 46 of 2016)
[2025] KEELC 6697 (KLR) (29 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6697 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE 46 OF 2016**

**JG KEMEI, J
SEPTEMBER 29, 2025**

BETWEEN

JOSEPH GAKAU MBUGUA PLAINTIFF

AND

MATHEW NDONGA KABAU DEFENDANT

RULING

1. The Applicant moved this Court vide the Notice of Motion dated 2/6/25 seeking the following orders;
 - a. Arrest of the delivery of the judgment scheduled for 26/6/25 and reopen the case for purposes of recalling Mr D. Songole, in charge of the Survey of Kenya, Ngong, in the interest of justice.
 - b. Order the Land Registrar Ngong to visit the suit land (Ngong Ngong/6202) and determine the acreage and boundaries of the suit land
 - c. Expunge the report dated 20/2/25 filed by Mr D Songole because he did not visit the suit premises as ordered by the Court.
 - d. Summons P. K. Nginya, the then District Surveyor Kajiado, to produce a report dated 23/11/2015 in the interest of justice
 - e. Admit as evidence the plaintiff's 2nd witness statement dated 24/10/2016 by Jazan Koika Ole Mosiro (deceased).
2. The application is premised on the grounds annexed thereto and the supporting affidavit of Joseph Gakau Mbugua, sworn on 2/6/25.
3. He stated that the suit before the Court revolves around the acreage, boundary fixing and rectification of maps, a core mandate of the Land Registrar, who ought to visit the locus quo and determine acreage



- and the boundary demarcations under sections 14 -19 of the *Land Registration Act* (LRA) and file a report in Court.
4. That upon visiting the Surveyor, Mr D. Songole, the said Surveyor informed him that he did not visit the locus quo before the preparation of the report dated 20/2/25 in Court, hence the prayer to expunge the said report as it is misleading and conceals material facts in the case. In his view, justice will not be served if the judgment is delivered on the strength of the said report.
 5. In addition, he urged that the Court do summon P. K. Nginya to produce a report dated 23/11/2015 in respect to the suit land.
 6. Further, he urged that the witness statement dated 24/10/2016 of one Jazan Koikai Mosire, deceased, be admitted in evidence. The deceased sold the land to the Plaintiff.
 7. The respondent opposes the application through the grounds of opposition dated the 13/6/25 on the grounds that; to the extent that the applicant seeks to recall the surveyor to testify and on the same breadth expunge his testimony already before Court is at best contradictory, in any event the report of the said Surveyor was pursuant to a Court order which is yet to be vacated appealed and or set aside; joinder of the Land Registrar after the closure of the hearing is an afterthought and an abuse of the process of the Court; the prayers sought are contradictory and cannot be granted; no explanation has been tendered to explain why the report by P K Nginya was not sought before the hearing of the suit ; admission of witness statement of Mosire is resjudicata , the Court having decided to determine the same in the judgement. The Court was urged to dismiss the application.
 8. The Court has had the opportunity to read and consider the submissions of the parties on record.
 9. The key issue for determination is whether the application is merited.
 10. The background of the dispute is that the Plaintiff filed suit on 20/1/2016 seeking relief against the Defendant for a permanent injunction to prevent trespassing on the suit land, as well as general damages for trespass and interference. The Defendant, in contrast, filed a defence and counterclaim, denying the plaintiff's claim and asserting that the plaintiff's title, No. Ngong/Ngong/6202, is irregular and should be cancelled.
 11. After several failed attempts, the suit was finally heard on 24/2/25, where both parties adduced evidence, and upon conclusion, directions were issued with respect to the filing of written submissions. The Court reserved judgment for 26/6/25.
 12. The provisions of Sections 14 – 19 of the *Land Registration Act* delegate authority to the Land Registrar to resolve disputes concerning fixed boundaries, similar to those brought before the Court. The Plaintiff has claimed that the Defendant has encroached onto his parcel of land. Conversely, the Defendant argues that the title claimed by the plaintiff is irregular and should be cancelled. The resolution of these issues remain pending in Court.
 13. Typically, under the doctrine of exhaustion of internal mechanisms available in law, this matter should have initially been referred to the Land Registrar for determination. My review of the matter indicates that an earlier attempt was made to submit the dispute to the Land Registrar, but without achieving tangible results. I also observe that this Court has already assumed original jurisdiction over the matter, and it may be too late to invoke the exhaustion of internal mechanisms provided under sections 18 and 19 of the *Land Registration Act*. In the interest of expediting the resolution of the dispute, this Court will proceed to determine the matter.
 14. On the issue of whether the Court should order the Land Registrar to visit the site and prepare a report, the Court notes that the record shows that on 27/9/22, this Court issued detailed orders directing the



Land Surveyor to visit the locus in quo, establish the beacons of the suit lands subject of the suit, and prepare a report. The Court received evidence from the Surveyor, one D Songole, that he did not visit the site but instead prepared the report based on the data available to him. This was contrary to the Court's orders. In any event, the principles of fairness and natural justice require that the site visit be conducted in the presence of the parties.

15. As explained above, boundary disputes are technical in nature, thus, the reason why the Land Registrar and the Surveyors' input is always vital to the determination of such disputes. It is therefore the view of this Court that the orders issued by My Brother Justice D Mwangi should be implemented fully.
16. Order 1 Rule 8 of the *Civil Procedure Act* allows the Court to order joinder on application or on its own motion at any stage of the proceedings on such terms as it may consider just of a party whose presence will enable the Court to effectually and completely adjudicate upon and settle all the questions involved in the suit.
17. Furthermore, I am convinced that, for the reasons stated above, the Land Registrar should be added as a party to the suit as the third Defendant because it is a necessary party, being the custodian of the documents and the office that will ultimately implement the Court's orders. I will make the orders required in the end.
18. Regarding the question of recalling D. Songole, the Court notes that the witness adduced evidence on 24/2/25 as PW2 on behalf of the Plaintiff. The applicant has not established a basis for recalling this witness. Recalling a witness is not something to be taken lightly. Proper grounds must be presented to persuade the Court of its merits. The circumstances of each case must be considered, but the Court must guard against the constant temptation for a party to recall a witness to bolster its evidence.
19. In this case, the Court is not persuaded that there is merit in recalling D Songole. That said, if ultimately the Surveyor will be the one to visit the site and prepare the report, then I see no reason why he cannot be allowed to testify.
20. On summoning P K Nginya to present a report dated 23/11/2015, the Court found that the applicant had not established a legal basis to warrant the granting of the orders. In view of the Court allowing a site visit to be conducted by the Land Registrar and the Surveyor, the Court is of the opinion that perhaps the subsequent events may supersede this report.
21. The applicant has requested the Court to admit the witness statement of Jazan Koika Ole Mosiro, deceased. This matter was settled by the Court on 24/12/25, and I agree with the respondent that it is res judicata. I leave it at that.
22. Final orders for Disposal

In the end, the application partially succeeds and I make the following orders;

- a. The hearing of the suit is hereby reopened.
- b. The Land Registrar, Kajiado County, is hereby enjoined to the suit as the 3rd Defendant.
- c. The Plaintiff is directed to serve the said Land Registrar with all the pleadings within a period of 15 days.
- d. Upon service, the 3rd Defendant will be at liberty to file any pleadings as desired within a period of 15 days.
- e. The Land Registrar and the County Surveyor of Kajiado County are hereby instructed to, within 30 days, determine the ground position of the disputed parcels LR No Ngong /



Ngong/1664 and Ngong /Ngong/6202 in the presence of both parties. In addition, establish the beacons for each parcel and assess whether there is any encroachment on each party's land, including the extent of such encroachment if present.

- f. The Land Registrar and the County Surveyor to prepare and present comprehensive reports in writing and file in Court on or before 15/11/25. Thereafter, appear in Court and testify on notice.
- g. Any incidental costs arising from the exercise shall be shared equally by the parties in this case.
- h. These orders shall be served upon the Land Registrar and the County Surveyor, Kajiado, Kajiado, forthwith.
- i. The applicant shall bear costs of the application

23. Orders accordingly.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 29th DAY OF SEPTEMBER, 2025 VIA MICROSOFT TEAMS.

J. G. KEMEI

JUDGE

Delivered Online in the Presence of:

Mr. Kurauka for the Plaintiff

Mr. Thiga for the Defendant

C/A – Ms Yvette

