



**Mburu v Kagua & 4 others (Environment and Land Petition 4 of 2024)
[2025] KEELC 6237 (KLR) (Environment and Land) (25 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6237 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA
ENVIRONMENT AND LAND
ENVIRONMENT AND LAND PETITION 4 OF 2024
MC OUNDO, J
SEPTEMBER 25, 2025
(FORMERLY NAKURU PETITION 8 OF 2022)**

BETWEEN

NYAMBURA MBURU PETITIONER

AND

FRANCIS NDUNGU KAGUA 1ST RESPONDENT

PETER GITHINJI KIHARA 2ND RESPONDENT

LAND REGISTRAR, NAIVASHA 3RD RESPONDENT

DISTRICT/COUNTY SURVEYOR, NAIVASHA 4TH RESPONDENT

THE HONOURABLE ATTORNEY GENERAL 5TH RESPONDENT

RULING

1. Before me for determination is an Application by way of Notice of Motion dated the 13th March, 2025, brought pursuant to the provisions of Section 1, 1A, 3, 3A of the *Civil Procedure Act*, and all other enabling provisions where the Petitioner/Applicant seeks for the directions and orders No. 2 and 4 issued on 10th February 2025 be set aside so that the matter can proceed to full hearing and determination. She also seeks for the costs of the instant Application.
2. The said Application was supported by the grounds therein and the Supporting Affidavits of equal date, sworn by Nyambura Mburu, the Petitioner/Applicant herein, who deponed that whereas she was the registered proprietor of Land Title Number Naivasha/Mwichiringiri Block 4/2931 measuring approximately 4.412 Hectares, the 1st and 2nd Respondents were the registered proprietors of Naivasha/Mwichiringiri Block 4/2643 which neighbored her parcel of land.



3. That she had filed the instant case in December 2022 after the Land Registrar had, through a report dated 8th March 2022 exercised his jurisdiction under Section 18(2) of the [Land Registration Act](#) having been dissatisfied by the manner in which the Land Registrar had handled the process. That the 1st and 2nd Respondents had invaded her land, cut down her fence and gate and destroyed property on the alleged basis of the impugned report of 8th March 2022. That she had filed the Constitutional Petition seeking judicial review orders to quash the decision and the direction of the Land Registrar issued on 8th March 2022 and for compensation for the actions of the Respondents which included destroying her property.
4. That indeed, pursuant to the directions and orders of the court, the Land Registrar had filed a further report dated 20th December 2023 recommending further work to be done and the map to be amended. That whereas the court had issued further orders on 30th September 2024 so as to keep track of how the Land Registrar was resurveying and amending the parcels, the Land Registrar was yet to fully implement the said orders despite service which was a ground for intervention by this court. That it was therefore not in the interest of justice to close the file or even stipulate that the court had no jurisdiction since the Land Registrar had exercised their mandate incorrectly and unfairly and arrived at an incorrect decision. That further, the Land Registrar had also taken an undue period of time.
5. She deponed that the Land Registrar's work and reports on the instant matter had been inconclusive, unfair, unprocedural and oppressive to the Petitioner and that 1st and 2nd Respondents had taken advantage of the said unprocedural and unfair reports. She explained that the first report dated 8th March 2022 was hiving off two acres from her land and allocating the same to the 1st and 2nd Petitioners (sic). That on or about 4th April 2022, the 1st and 2nd Respondents had by themselves and/or their agents invaded the Petitioner's parcel of land and forcefully cut down the Petitioner's fence and gate and proceeded to allocate themselves approximately two acres out of the Petitioner's land. That further, they had gone ahead to excise a road and attempted to further subdivide the land that they had excised from the Petitioner.
6. She deponed that the 3rd and 4th Respondents had issued paperwork attempting to demonstrate that they had resolved the apparent boundary dispute on 8th March 2022 which had not been the case. That the Petitioner was neither invited when the Land Registrar visited the area nor given a chance to participate in the process or provided with the final report. That nonetheless, the 3rd and 4th Respondents had issued a report dated 8th March 2022 indicating that her parcel of land number Naivasha/Mwichiringiri Block 4/2931 had encroached Naivasha/Mwichiringiri Block 4/2943 by 1.0 Hactare (Approximately 2 acres) as a result of what they had termed as 'boundary shift' and recommended that new boundaries be marked to fix the alleged boundary shift and proceed with re-parcellation.
7. That however, it had come to her notice that the 1st and 2nd Respondents may be in the process of disposing the land hence she would suffer irreparable damage if the orders sought were not granted. That with the kind of collusion between the 1st to 4th Respondents, it was in the interest of justice to have the matter herein proceed to its logical conclusion and determination since she stood to suffer loss and harm if the court file herein was closed prematurely.
8. That in any case, that the court record had two other survey reports that had been issued by different surveyors and that all the reports had impugned the report dated 8th March 2022 that had been issued by the Land Registrar and the County Surveyor. She thus prayed that the instant application be allowed as prayed.



9. The Application was opposed by the 1st and 2nd Respondent's Replying Affidavit dated 9th April, 2025 sworn by Peter Githinji Kihara and Francis Ndungu' Kagua, the 1st and 2nd Respondents herein who deponed that they were the registered proprietors of the parcel of land known as Naivasha/Mwicingiri Block 4/2643. They deponed that where a party was dissatisfied with the Land Registrar's decision regarding a boundary issue, one was to file an appeal before the Honorable Court challenging the said decision. That the jurisdiction of the honorable court with regard to boundary disputes was Appellate only hence the Petition before court ought to be dismissed.
10. That the Petitioner herein did not file an appeal against such decision owing to the fact that she was time barred hence the Petition before the honorable court was frivolous and was only done in bad faith. They denied having trespassed on the Petitioner's property.
11. That the court had directed the Land Registrar and County Surveyor together with Surveyors from the parties side to resurvey and establish boundaries on the suit properties, which directions had been complied with resulting in the report dated 20th December, 2023 which report was somewhat similar to the one that had been done by the Petitioner's Surveyor.
12. That the Petitioner had sent her sister before the Registrar on the 24th November, 2021 to represent her and following the summons issued, hence the allegations that she had neither been summoned nor appeared before the Registrar was false. That no re-parcellation had been done and neither had there been new boundaries marked as had been alleged. That they were not in the process of disposing of their land which allegations were only meant to seek the court's sympathy, thus making the application scandalous
13. That the County Surveyor and the Land Registrar having submitted their reports to the effect that the issue herein was a being a boundary dispute, the honorable court could not change the boundary or outcome by hearing witnesses. They thus prayed that the instant application be dismissed with costs.
14. The 3rd, 4th and 5th Respondents did not participate in the Application.
15. The application was disposed of by way of written submissions in which the Petitioner/Applicant vide her Submissions dated 10th June, 2025 summarized the factual background of the matter and framed her issues for determination as follows:
 - i. Whether the court has jurisdiction to vary/set aside its directions issued on 10th February 2025.
 - ii. Whether the court has jurisdiction to entertain the entire suit.
 - iii. Whether the directions issued on 10th February 2025 should be set aside and whether it is appropriate to close the court file at this point.
16. On the first issue for determination as to whether the court had jurisdiction to vary/set aside its direction of 10th February 2025, she placed reliance on the provisions of Sections 1A, 3 and 3A of the Civil Procedure Act and Order 45 of the Civil Procedure Rules to submit that the said provisions gave the court sufficient jurisdiction to review its directions that had been issued on 10th February 2025 and that that the Double Oxygen Principle should apply in her favour on this matter.
17. That the matter had been escalated to the court after numerous reports had been issued by the Land Registrar and filed in court wherein the Land Registrar's report of 8th March 2022 had conclusively exhausted the jurisdiction of the Land Registrar at that point. She thus submitted that there had therefore been a mistake or apparent error on the face of the record when the court stated that it had no Jurisdiction to handle the instant matter where redress lay with the Land Registrar, before it could be escalated to the Court.



18. On the second issue for determination as to whether the court had jurisdiction to entertain the entire suit, she submitted that pursuant to the content of Order No. 4 of the court's directions herein issued on 10th February 2025, to submit that the apparent error was that the court was unaware of the fact that the Land Registrar had already exercised his jurisdiction on the issue, even before the court case had been filed which thus constituted an apparent error on the face of the record.
19. She explained that in order No. 1, the court had directed that the matter should be dealt with by the Land Registrar and the County Surveyor in line with the provisions of Section 18(2) of the [Land Registration Act](#). It was her submission that Annexure NM1 in the Notice of Motion's Supporting Affidavit being various reports that had been issued by the Land Registrar and the County Surveyor had fully demonstrated that the two had exercised their jurisdiction under the provisions of Section 18(2) of the [Land Registration Act](#) hence the instant matter was ripe to be escalated to court.
20. That indeed, Annexure NM2 had sought to confirm that even after the Land Registrar had gone back to the ground, the issue had persisted meaning that the instant matter was ripe for court's action. That further, the 1st and 2nd Respondents had invaded the Petitioner's land and moved boundaries. She explained that other than the boundaries issue, there were other causes of action in the suit which include trespass, damage to property amongst others hence the court had jurisdiction.
21. On the third issue for determination, the Applicant's submission was that it was not appropriate to close the court file at this point hence the directions that had been issued on 10th February 2025 should be set aside for the following reasons:
 - i. Orders of such a magnitude required a formal application to be made and the parties be given adequate time and chance to canvass the application. That terminating a case was a serious outcome which could not be taken lightly. That in this case, an oral application was made and the Petitioner/Applicant was not given enough time to respond to the said oral application thus contravening the right to a fair hearing as required under [the constitution](#) and the procedural requirements around a mention date to the effect that no far-reaching orders could be made during a mention date, let alone without a formal application.
 - ii. That on 10th February 2025, the matter was coming up for a mention, not a hearing thus it was not clear why such far reaching orders were given. That during the said mention date, an oral application had been made, heard and determined, to the detriment of the Petitioner/Applicant thus the said orders should be set aside. She explained that there was no ruling that had been delivered on the said date, just the orders.
 - iii. That the orders of the court that had been issued on 30th September 2024 had remained unimplemented despite service. That the said orders had directed the county surveyor and the Land Registrar to resurvey the parcels of land and file a report in court. That since court orders were not issued in vain, it had been important for the court file to remain open for the relevant reports to be filed in court and the matter be heard to enable the Petitioner move the court accordingly if the orders continue to remain unimplemented.
22. In conclusion, she submitted that the Applicant had demonstrated that the impugned orders were issued in circumstances warranting the same to be set aside taking into consideration the facts, law, procedure and circumstances. She thus prayed that the Honorable Court allows the Notice of Motion dated 13th March 2025, set aside Orders 2 and 4 issued on 10th February 2025 and allow the matter to proceed to full hearing. She also prayed that costs be in the cause.



23. In response, the 1st and 2nd Respondents through their submissions dated 10th June 2025 summarized the factual background of the matter before framing their issues for determination as follows:
- i. Whether the dismissal of the Petition was proper and final;
 - ii. Whether the Honorable Court can reinstate a Petition that was struck out for lack of jurisdiction;
24. On the first issue for determination as to whether the dismissal of the Petition was proper and final, they submitted in the affirmative and asserted that the dismissal for Lack of Jurisdiction was proper and not a mere technicality since jurisdiction was not a procedural issue that could be cured or waived. Reference was made to the case of Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] KLR 1 to submit that the Petition had been dismissed not on a technicality, but because the Court lacked the legal authority to hear it in the first place.
25. That since a court could not breathe life into a matter where it had no jurisdiction, the dismissal for lack of jurisdiction had rendered the proceedings a nullity ab initio and the Petitioner's attempt to reinstate the same was futile. Reliance was placed in the decided case of Paul Muraya Kaguri v Simon Mbaria Muchunu [2015] KEELC 180 (KLR) where the court had held that it was now trite law that where a statute establishes a dispute resolution mechanism, that mechanism must be followed in the absence to which they could not be heard to say that their rights had been denied.
26. That from the pleadings before the court, the issue in dispute was the ascertainment of the boundary between the Petitioner/Applicant's Parcel of land and the 1st and 2nd Respondents land and whether there was encroachment on the Petitioner's land by the 1st and 2nd Respondents. They placed reliance on the provisions of Sections 18 and 19 of the Lands Registration Act, 2012 on the role of the Surveyor and the Land Registrar in ascertaining boundaries, to submit that it was clear that boundary disputes were to be resolved by the Land Registrar. That indeed, the Petitioner's claim had emanated from the report of the Land Registrar and the County Surveyor, the 3rd and 4th Respondents herein.
27. Reliance was also placed on the provisions of Section 40 of the Land Registration (General) Regulations, 2017 that provides for the procedure to be followed in determination of boundary disputes by the Land Registrar and how to Appeal the Registrar's decision, to submit that the court's jurisdiction with regard to boundary disputes was as an appellate court. That in any case, the Petitioner's Petition was an Appeal which had been disguised as a Constitutional Petition to defeat the limitation of time.
28. On the second issue for determination, the 1st and 2nd Respondents submitted that the Honorable Court could not reinstate a Petition that had been struck out for lack of jurisdiction as there had been no sufficient grounds to warrant its reinstatement.
29. That the Petitioner had not demonstrated any mistake, inadvertence, excusable error, or sufficient cause to justify the setting aside of the dismissal order as what she had expressed was mere dissatisfaction. That instead of seeking review or appeal of the dismissal order through proper channels, the Petitioner had opted to revive a Petition that the Court had already found to be incompetent, improperly before the court, and incurable by amendment. That the court could not reassume Jurisdiction it did not have and resuscitate a Petition it lacked jurisdiction to entertain in the first place since Jurisdiction was conferred by *the Constitution* and statute not by consent of parties or discretion of the court. That subsequently, to reinstate the Petition would be to violate the clear provisions of the *Land Registration Act* and encourage circumvention of statutory processes.



30. That accordingly, the present application was frivolous, vexatious, and amounts to an abuse of court process it being an attempt to have a second bite at the cherry. That the application should be dismissed with costs to them.

Determination.

31. Having considered the Application herein dated the 13th March, 2025, the response thereto, the Submissions, the authorities cited and the applicable law, it is clear that the Applicant herein seeks to have the orders of 10th February 2025 where the court had found that it was bereft of jurisdiction to deal with the matter and referred it to the Land Registrar and the Land Surveyor in accordance to the provisions of Section 18 (2) of the *Land Registration Act*, thus closing the file, set aside.
32. The reasons therein advanced being that there having been various reports issued by the Land Registrar and the County Surveyor, they had fully exercised their jurisdiction under the provisions of Section 18(2) of the *Land Registration Act* hence the instant matter was ripe to be escalated to court.
33. That whereas she was the registered proprietor of Land Title Number Naivasha/Mwichiringiri Block 4/2931 measuring approximately 4.412 Hectares, the 1st and 2nd Respondents were the registered proprietors of Naivasha/Mwichiringiri Block 4/2643 which neighbored her parcel of land. That she had initiated a constitutional Petition to challenge the Land Registrar's report dated 8th March 2022, which had been issued without her participation and where the same had recommended that approximately two acres of her land be allocated to the 1st and 2nd Respondents due to an alleged "boundary shift."
34. The Petitioner argues that the Land Registrar's work has been "inconclusive, unfair, unprocedural and oppressive." That it was therefore not in the interest of justice to close the file or even stipulate that the court had no jurisdiction since the Land Registrar had exercised their mandate incorrectly and unfairly and arrived at an incorrect decision. That further, the Land Registrar had also taken an undue period of time. That closing the file noting that the Land Registrar and Land Surveyor had exercised their mandated constituted an apparent error on the face of the record.
35. In response, the arguments of the 1st and 2nd Respondents in opposition of the Application is that the court's jurisdiction in a boundary dispute is appellate, and therefore the Petitioner ought to have filed an appeal against the Land Registrar's decision rather than a Petition. They argue that the Petitioner did not file an appeal against such decision owing to the fact that she was time barred hence the Petition before the honorable court was frivolous and was only done in bad faith. That the report from the Land Registrar and County Surveyor, dated 20th December 2023, was similar to the one done by the Petitioner's own surveyor. They also countered the Petitioner's claim of not being consulted by the Land Registrar, stating that her sister represented her at a meeting in November 2021. That based on the reports confirming the matter as a boundary dispute, they argue that the court cannot change the boundary by hearing witnesses and thus sought for the dismissal of the application.
36. I find the issue arising for my determination as follows.
- i. Whether there has been raised sufficient ground to set aside the order of 10th February 2025 where the court had found that it was bereft of jurisdiction to deal with the matter and referred it to the Land Registrar and the Land Surveyor thus closing the file.
37. The court is aware of the provisions of Article 50 of *the Constitution* which guarantees the right to a fair hearing for every person and which right is a non-derogable right. At the same time, the court is also aware that the moment it holds the opinion that it is without jurisdiction, that it must down its



tools and take no further steps in the matter as was held in the case of Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd [1989] eKLR.

38. It is on record that the Applicant filed her Petition on the 9th December 2022, seeking an order of certiorari to quash the Land Registrar’s decision contained in a letter dated the 8th March 2022 in regard to the suit properties herein. On the 27th March 2023, parties recorded a consent to stay implementation of the report dated 8th March 2022 so as to appoint a joint survey to review the map and boundaries of the disputed parcels of land and thereafter file a report and in default the Applicant herein and the 1st and 2nd Respondents shall each appoint their separate surveyors to file their respective reports.
39. On the 2nd October 2023, Counsel for the Applicant informed the court that the two reports had concluded that there was a problem on the ground which needed more work to be done. The court issued orders for the District Land surveyor Naivasha and the Land Registrar Naivasha to visit and review the parcels of land Naivasha/Mwichiringiri Block 4/2931 and 2643 and the neighboring parcels thereof to establish the size, location ,acreage and boundaries and file a report within 45 days.
40. The report dated 20th December 2023 was subsequently filed wherein the recommendation of the surveyor was as follows;

“That after the resolution of the land dispute between the properties above, the boundaries of parcel no. Naivasha / mwichiringiri block 4/2643 were aligned and fenced to conform to an approximate map position. See the overlay map attached (Annex 1)

That the existing boundary/fences of parcel no. Naivasha /mwichiringiri block 4/2931 was picked as fenced and an overlay of the ground position on the map shows a discrepancy on the map position. See map annex 1

That an overlay of the ground boundaries of parcel no. mwichiringiri block 4/2931 and land parcels originating from the subdivision of original land parcel Naivasha / mwichiringiri block 4/4013, appear to overlap. This affects the acreages of both parcels currently on the ground. See Map attached. (Annex 1)

Please note that the dispute before the court is as a result of a shift in land parcel positions due to incorrect demarcation during occupation of these affected parcels of land. That the loss of land between parcels Naivasha / mwichiringiri block 4/2931 & Naivasha / mwichiringiri block 4/4013 can be corrected through a court order. This order should be to re-survey and the re-parcellation of land parcels affected by the shift in position of the existing roads and land parcels while maintaining and respecting developments. See marked parcels on the registry map attached. (Annex 3)

That a court Order be issued to amend the map to conform to the existing ground boundaries in line with the development.”

41. Section 18(2) of the *Land Registration Act* provides as follows’;
- (2) The court shall not entertain any action or other proceedings relating to a dispute as to the boundaries of registered land unless the boundaries have been determined in accordance with this section.”
42. Subsection (2) herein above is clear that a court cannot hear a boundary dispute “unless the boundaries have been determined in accordance with this section.” This does not mean the court is barred



from hearing a case at all but implies that the court's role is to facilitate the determination of those boundaries.

43. The Surveyor's report, highlighted a "shift in land parcel positions due to incorrect demarcation," and therefore provided the technical and factual basis for the dispute, which the court can then adjudicate only upon the resolution of the said dispute to rectify a factual problem.
44. The court, specifically the Environment and Land Court (ELC), is the superior court established to hear and determine disputes related to the use, occupation, and title to land and therefore the court has the power to order the Land Registrar to rectify the registry map (often referred to as a Registry Index Map or RIM) to reflect the true position on the ground to establish the correct boundaries on the ground which is a common and necessary step in resolving boundary disputes. Indeed, the [Land Registration Act](#) and its regulations provide for the rectification of the register by a court order.
45. From the foregoing it is clear that where there is any uncertainty as to the position of any boundary, the Registrar is enjoined to determine and indicate the position of the uncertain or disputed boundary.
46. In the case of *Azzuri Limited v Pink Properties Limited* [2017] eKLR, Justice Angote, while making a decision relating to general boundaries stated;

‘ In his paper, “The Role of the Registry Index Map (RIM) in Land Management in Kenya”, Peter K. Wanyoike has stated that the Registered Index Map is a very useful document in registration and management of land in Kenya within the context of “General Boundaries” or “approximate boundaries.”

47. The paper defines “General Boundaries” as follows:

“ A boundary of which the precise line is undetermined in relation to the physical features which demarcate it ... However, it is clear on the ground where the parcel is situated and where the boundaries are, for they are clearly visible and unmistakable physical features, though they do not indicate the exact location of the line within the breadth which such physical features necessary process.”

48. In the case of *Ali Mohamed Salim vs Faisal Hassan Ali* (2014) eKLR it had been held as follows:

“ The type of survey that generated the Registry Index Map is what was known as “general boundaries” which has been defined in Section 18(1) of the [Land Registration Act, 2012](#) to mean “the approximate boundaries and the approximate situation only of the parcel.” Indeed, most of the titles under the repealed Registered [Land Act](#) were issued on the basis of the general boundaries, meaning that such parcel of land had no fixed beacons. On the other hand, land registered under the Registration of Titles Act required a cadastral survey to be prepared, which is based on a fixed boundary principle. Such a survey has an accurate linear and angular measurements to aid the registration of a title of a plot. The boundaries of land registered under the Registration of Titles Act can easily be identified by any Surveyor because of the fixed nature of its beacons.”

49. In the case of *Samuel Wangau Vs. AG & 2 others* (2009) eKLR, it was held as follows:

“ However, it is common ground that such maps (R.I.M) are not authorities on boundaries. Both the District Land Registrar and the District Land Surveyor said as much.....It means therefore that when and where there is a dispute as to the position and location of a



boundary as in this case, unless the same is a fixed boundary, one has to go beyond the R.I.M in solving the dispute.”

50. Indeed, for one to determine a dispute in respect to general boundaries, the physical features existing on the ground are very critical. Such features include rivers, hedges, fences, roads etc. Because general boundaries are identifiable by using the existing physical features, and by interviewing the owners of the adjacent plots, the law requires disputes relating to such boundaries to be handled by the Land Registrar, and not Surveyors or even the court.
51. On the third issue as to whether the court has jurisdiction to hear the matter before it, I find that the jurisdiction of this Court flows from Art 162(2) (b) of *the Constitution* as read with the provisions of Section 13(2) of the Environment and *Land Act*. The latter provides as follows;

“In exercise of its jurisdiction under Article 162(2) (b) of *the Constitution*, the Court shall have power to hear and determine disputes—

- a) relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
- b) relating to compulsory acquisition of land;
- c) relating to land administration and management;
- d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and
- e) any other dispute relating to environment and land

52. For avoidance of doubt Section. 13 of the Environment and *Land Act* in my view does not oust the jurisdiction of the court to determine boundaries. However, when it comes to general boundaries Section 18(2) of the *Land Registration Act* provides in mandatory terms that the dispute should be submitted to the Land Registrar.
53. Having found that it is only after the Land Registrar has determined the dispute that the matter can be escalated to this Court, the court found itself bereft of the jurisdiction to determine the Petition as it was, wherein vide its order of 10th February 2025, directed for the matter to be addressed by the Land Registrar before it could escalate to the court.
54. In *Estate Sonrisa Ltd & another v Samuel Kamau Macharia & 2 others* [2020] KECA 734(KLR), the Court of Appeal sitting in Mombasa had held as follows:

“...It is the *Land Registration Act* that makes provisions relating to the determination of boundaries. Those provisions are found in sections 16 to 19. Specifically, for this dispute, the Registrar is empowered, after giving notice to all the affected parties, in this case, the 1st appellant and 1st respondent, indeed as well as any owner whose land adjoins the boundaries in question, and with the assistance of the surveyor, to ascertain and fix the disputed boundaries.....

Under that Act, the Registrar carries out his functions without any restrictions and may rely on any other relevant document and existing records in order to resolve any dispute between landowners. Because a title deed is only prima facie evidence of the matters shown therein, the Registrar’s investigations, of necessity must encompass all entries in the register, rely on



any other relevant document and existing records, conduct proceedings in accordance with section 14(1) and cause a survey to be carried out and determine the dispute. With respect, we reiterate that the learned Judge did not restrict the Registrar's discretion in the conduct of an inquiry into the dispute...It is only after determining the dispute can parties move to court to challenge it..."

55. In yet another case, in *Azzuri Limited v Pink Properties Limited* [2018] KECA 392 (KLR), the Court of Appeal sitting in Malindi held as follows

"This his means that under the aforesaid provisions, boundary disputes pertaining to lands falling within general boundary areas must be referred to the Land Registrar for resolution; while disputes pertaining to lands with fixed boundaries may be investigated and possibly resolved simply through a surveyor. It was in appreciation of this provision that the learned Judge went on to hold in part that:

"Having found an existing dirt road, which is a physical feature, and the Defendant's wall in place, it was incumbent on the Plaintiff, to report any issue of encroachment by its neighbours to the Land Registrar so that he could fix the boundaries and ascertain if indeed there was encroachment.

Instead, the Plaintiff resorted to reporting the issue to the Assistant County Commissioner, Malindi who summoned the Defendant vide his letter dated 30th December, 2014.

When the efforts by the County Commissioner to resolve the dispute failed, the Plaintiff involved the District Surveyor who prepared a report, which is the basis of the current suit. The filing of the current suit before referring the dispute to the Land Registrar was *contra-statute*".

From this analysis of the law, it should be clear from the above that, we are in agreement with the learned Judge's conclusion that the dispute ought to have been heard by the Land Registrar as stated in the statute. Jurisdiction is everything. It has been said many times before, that, without it a court has no powers to make one more step, irrespective of the strength and nature of evidence in the parties' possession."

56. The Supreme Court in *Samuel Kamau Macharia & another vs Kenya Commercial Bank Limited & 2 others* (2012) eKLR while discussing the issue of jurisdiction rendered itself as follows:

"A Court's jurisdiction flows from either *the Constitution* or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by *the constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law... the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings.... Where *the Constitution* exhaustively provides for the jurisdiction of a Court of law, the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation. Nor can Parliament confer jurisdiction upon a Court of law beyond the scope defined by *the Constitution*. Where *the Constitution* confers power upon Parliament to set the jurisdiction of a Court of law or tribunal, the legislature would be within its authority to prescribe the jurisdiction of such a court or tribunal by statute law."



57. Lastly, it must be understood that the phrase "order to close a file" is not a formal legal term of art in the way "dismissal" is. Rather, it is a colloquial or administrative term used in the context of court management and record-keeping. It typically denotes a preliminary procedural step or an administrative action, not a formal judicial resolution. This concept is most often seen in the context of clearing case backlogs, a significant challenge for judiciaries worldwide.
58. The court finds no error apparent on the face of the record and or its orders of 10th February 2025 and proceeds to dismiss the application dated the 13th March, 2025 with cost.

DATED AND DELIVERED VIA MICROSOFT TEAMS AT NAIVASHA THIS 25TH DAY OF SEPTEMBER 2025.

M.C. OUNDO

ENVIRONMENT & LAND – JUDGE

