



REPUBLIC OF KENYA



Muturi & another v Thuku & another (Environment and Land Case 50 of 2012) [2025] KEELC 6771 (KLR) (9 October 2025) (Judgment)

Neutral citation: [2025] KEELC 6771 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND CASE 50 OF 2012**

**MAO ODENY, J
OCTOBER 9, 2025**

BETWEEN

PAUL MAINA MUTURI 1ST PLAINTIFF

PETER KAMAU NGUMBA 2ND PLAINTIFF

AND

JOHN KIHATHO THUKU 1ST DEFENDANT

TAYARI FARMERS COMPANY LIMITED 2ND DEFENDANT

JUDGMENT

1. The Plaintiffs herein sued the Defendants vide plaint dated 5th November, 2012 seeking the following orders:
 - a. An order of injunction to issue against the 1st defendant from entering, building, tilling or in any way interfering with the plaintiffs' parcel of land as they are on the ground. (sic)
 - b. An order that the 2nd defendant recalls the surveyor to correct the mistakes in the cadastral map so that the said map matches with the position of parcels Mau Summit/molo Block 7/376, 379 and 378 on the ground.
 - c. Costs of suit.
2. The Defendants filed a counter-claim dated 17th December, 2014, seeking the following orders:
 - a. An order that the Plaintiffs deliver up possession of and vacate Mau Summit/molo Block 7/378 and an eviction order be issued against the said plaintiffs removing them, their servants and agents with all their belongings, structures and other properties or items from the land aforesaid.
 - b. Kshs 40,800/= being the cost of the fence.



- c. Costs of this suit.

Plaintiffs Case

3. PW1 Paul Maina Muturi, stated that he has lived in Molo, Tayari Farm, since 1977. He further testified that he is a shareholder of the 2nd Defendant where he has two plots, of which he bought the first one Plot No. 381, from the 2nd Defendant and the second one Plot No. 379, from the 2nd Defendant's shareholder, Serah Wambui.
4. PW1 testified that he balloted for Plot No. 381, which he bought from Serah Wambui in 1984, where he has built and is cultivating on Plot No. 379. He further gave evidence that the 1st Defendant bought a nearby plot around 1990 and settled on it, and that they did not have any disputes between them when they bought the plots.
5. PW1 testified that around 2012, the 1st Defendant started claiming a portion of his plot and part of his neighbor's plot (the 2nd Plaintiff), and that the 1st Defendant was not agreeable to have the plots resurveyed. PW1 testified that they have the original title deed of plot No 381 in court, issued on 5th July, 2012, which he produced a copy of plot Mau Summit/Molo Block 7/381 (Tayari) as PExhb 1 after the court perused the original.
6. PW1 further testified that each share from the 2nd Defendant would entitle a member to one and a half acres (1.5 acres), and since he had two shares, he was entitled to three acres. It was PW1's further evidence that he lost almost 1.5 acres of his land after the 1st Defendant encroached on part of his land. PW1 stated that someone apparently came to the plot claiming to be from the Land's Office, with a map in the presence of the 1st Defendant, but he was not given any prior notice.
7. It was PW1's testimony that when they were allocated the plots, survey was done and were shown their boundaries, but later on another survey was done to determine the boundaries of access roads and to stop encroachment to the roads. He further stated that vide a letter dated 16th October, 2001, the 2nd Defendant's Secretary pointed out that there were mistakes, and that the survey was however, not redone.
8. PW1 went on to testify that he has a map which shows the position of his Plot No. 381, and the same is very different from the position on the suit properties. He testified that on the suit parcels, the plots are supposed to be square-shaped however, in the map, the plots have taken a different shape.
9. It was PW1's testimony that in the new map, the 1st Defendant's plot has taken part of his plot, the 2nd Plaintiff's and a plot belonging to a lady called Nyambura. PW1 prayed that the court orders that the plots be properly surveyed, as the 2nd Defendant failed to attend to his complaints and the map was first shown to him when the 1st Defendant came to be shown the boundaries.
10. PW1 further testified that he filed a further witness statement dated 19th December, 2017, which he adopted it as part of his evidence in chief, and testified that the first survey was done in 1977 and the second survey was done by Mr. Muritu in 1980. PW1 testified that he has lived on Plot No. Mau Summit Molo Block 7/379 and 381 since the first survey was done. Further that there were no changes in the plots between the first and the second survey.
11. It was his evidence that the 1st Defendant's plot was initially facing the lower road while his plot was facing the upper road, and after the second survey by Mr. Muritu, the 1st Defendant's plot encroached on his and the 2nd Plaintiff's plots. He testified that after the second survey, his plot No 379, size was reduced to 0.4826 hectares.



12. PW1 further testified that he was present when the Land Registrar came to the plots upon invitation by the 1st Defendant. He testified that the Registrar pointed out to the 1st Defendant his boundaries, and discovered that his plot was different from what was depicted on the site. He informed the court that, that is when the dispute arose. He testified that he has sued the 2nd Defendant since it was in-charge of the allocations and urged the court to grant the orders as prayed in the plaint.
13. Upon cross-examination by Mr. Karanja, PW1 stated that he is a member of the 2nd Defendant and does not have any evidence to show the same. He referred to PExhb 1 and stated that the title is dated 5th July, 2012. He informed the court that he had another title for plot 379, in his name. He stated that he bought parcel number 379 from Serah Wambui and he did not bring the sale agreement to court. PW1 further stated that the 1st Defendant's plot has encroached onto both plots 379 and 381, and that he had produced a sketch map that was prepared by Mr. Muritu, showing the extent of the 1st Defendant's encroachment.
14. PW1 stated that his title was issued pursuant to the survey by Mr. Muritu which was the second one done in 1980, and he has been on the suit parcels since 1977.
15. PW1 informed the court that he does not have any map prepared by Olweny & Associates to show the difference between his map and Mr. Muritu's, and that he was not aware of any dispute concerning the 2nd Defendant's plot. He stated that he knows Mr. Mbugua Thuo, who is a member of the 2nd Defendant but, he is not aware that he filed any case against the 2nd Defendant, or why titles were not issued according to Olweny's survey.
16. PW1 stated that a new survey was arranged after it was agreed in a meeting that access roads need to be opened up, as people had encroached upon the roads and were farming on them. It was his evidence that he is not occupying the 1st Defendant's land.
17. Upon re-examination by Ms. Njoroge, PW1 referred to PMFI-3 and testified that it was given to him by a director of the 2nd Defendant in Molo. He testified that he had a big map and he gave him a copy of only the area where the plot is. PW1 testified that before the 1st Defendant came to the site with the Registrar and the Surveyor, he was content with what he had and further that he had produced his title deed to show that he owns the suit plot.
18. PW1 testified that he was in the meeting where it was agreed that a second survey be conducted, for purposes of opening up and expanding the roads. He testified that Mr. Muritu did not open up the roads but ended up altering the boundaries of the plots.
19. PW2, Peter Kamau Ngumba, adopted his witness statement dated 5th November, 2012, as part of his evidence in chief and testified that he is a member of the 2nd Defendant and has a title deed for Tayari Farmers (Mau Summit/ Molo Block 7/376) in his name. He testified that the suit land belonged to his brother in law who sold it to him. He testified that each member was allocated 1.5 acres per share.
20. PW2 testified that in July 2012, the Land Registrar came to the land and told them that they would show them the plots. He testified that his plot was reduced to 1.1 acres but he was entitled to 1.5 acres. PW2 also stated that the 1st Defendant who had encroached on his parcel of land, is the one who called the Land Registrar.
21. PW2 stated that the 1st Defendant's land was supposed to be 1.5 acres, but his title indicates that it is approximately 0.4682 hectares and the 1st Plaintiff's parcel is plot Mau Summit/Molo Block 7/381 is measuring 0.5636 hectares which was also affected. PW2 produced his title deed as PExhb No 2 and prayed for the parcel to be resurveyed to correct the cadastral anomaly.



22. Upon cross-examination by Mr. Karanja Mbugua, PW2 stated that he knows the 1st Defendant and he is aware that he died in 2021 and does not know how he procured his title.
23. PW3 Peter Wanyama, the Regional Surveyor, Rift Valley, stated that he was summoned to produce the map for Mau Summit/Molo Block 7 (Tayari Farmer) which is sheet 1. PW3 testified that he is able to identify parcel 376, 378, 379 and 381 from the area map, which he produced as PExhb No7. He testified that the acreage of parcel No 376 is 0.4278 hectares, which translates to 1.06 acres, and that plot No 378's acreage is 0.88522 hectares, which is 2.1 acres.

Plaintiff's Submissions

24. Ms. Njoroge, counsel for the Plaintiff filed submissions dated 8th July, 2025. Counsel relied on Section 16 (1) and 17 (1) of the [Land Registration Act](#) and the case of Esther Njeri Ndungu & 2 others vs District Land Surveyor & 5 others [2021] eKLR.
25. Counsel urged the court to direct the Regional Surveyor to visit the three parcels of land, Mau Summit/molo Block 7/379, 376 And The Defendant's Parcel Mau Summit/molo Block 7/378 (tayarI) and place them as depicted on the site. Counsel prayed that the court find that the 2nd Defendant did not offer any evidence thus the Plaintiff's suit against the 2nd Defendant is uncontroverted. Counsel submitted that the suit against the 1st Defendant abated and asked the court to grant prayer (b) in the plant and allow the prayer for resurveying.

Analysis And Determination

26. The issue for determination is whether this court should order the 2nd defendant to recall the surveyor to correct the mistakes in the cadastral map so that the said map matches the position of parcels Mau Summit/molo Block 7/376, 379 and 378 as depicted on the site.
27. On 2nd July, 2025 the case against the 1st Defendant was marked as abated as counsel for the 1st Defendant informed the court that he had died on 11th May, 2021. The 2nd Defendant filed a statement of defence and counterclaim but did not tender any evidence, hence the case was marked as closed.
28. It is the Plaintiffs' case that sometimes on 26th July, 2012, the Land Registrar Nakuru on invitation by the 1st Defendant, visited their parcels of land and pointed out different boundaries in respect of parcels 375, 376 and 379. It is the 1st Plaintiff's case that the effect of the new boundaries affected the acreages of their parcels of land therefore losing over ½ acre of land where he has planted trees which have matured and occupied the premises for over 11 years.
29. It is the 2nd Plaintiff's case that he also lost over ¾ acres of his land due to the survey that was redone as he was entitled to 2 acres. The Plaintiffs blamed the defendants for engaging a surveyor who demarcated the land and produced a cadastral map which had omissions and mistakes. The Plaintiffs list the particulars of negligence on the part of the 2nd Defendant as:
 - a. Allocating the survey work to a surveyor and failing to have him rectify the mistakes which came into their knowledge in the year 2002.
 - b. Not ensuring the surveyors did march the cadastral map with the position of the parcels on the ground.
 - c. Failing to ensure the mistakes done by the surveyor were rectified before title deeds were issued.
30. The law applicable to boundaries is provided for under Sections 16 to 19 of the [Land Registration Act](#) which state as follows.



16. Power to alter boundary lines and to prepare new editions;

- “(1) The office or authority responsible for the survey of land may rectify the line or position of any boundary shown on the cadastral map based on an approved subdivision plan, approved combination plan or any other approved plan necessitating the alteration of the boundary, in the prescribed form, and in accordance with any law relating to subdivision of land that is for the time being in force.
- (2) Whenever the boundary of a parcel is altered on the cadastral map, the parcel number shall be cancelled and the parcel shall be given a new number.
- (3) The office or authority responsible for the survey of land may prepare new editions of the cadastral map or any part thereof, and may omit from the new map any matter that it considers obsolete.
- (4) Any rectification to the cadastral map in accordance with this section shall be notified to the Registrar by the submission of the rectified cadastral map and all the approvals that necessitated the amendments”.

17. Approval for further surveys

- “(1) Further surveys may be made for any purpose connected with this Act, but such surveys shall be used to amend the cadastral map only if it is approved by the office or authority responsible for the survey of land.
- (2) This section shall not preclude the Registrar from keeping in the registry records of cadastral information and maps approved by the office or authority responsible for survey.
- (3) The office or authority responsible for the survey of land shall submit to the Commission a copy of the cadastral maps relating to public land and the Commission shall be a depository of the maps”.

18. Boundaries

- “(1) 1) Except where, in accordance with section 20, it is noted in the register that the boundaries of a parcel have been fixed, the cadastral map and any filed plan shall be deemed to indicate the approximate boundaries and the approximate situation only of the parcel.
- (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.
- (3) Except where, it is noted in the register that the boundaries of a parcel have been fixed, the Registrar may, in any proceedings concerning the parcel, receive such evidence as to its boundaries and situation as may be necessary: Provided that where all the boundaries are defined under



section 19(3), the determination of the position of any uncertain boundary shall be done as stipulated in the *Survey Act* (Cap. 299)".

19. Fixed boundaries

- “(1) If the Registrar considers it desirable to indicate on a filed plan approved by the office or authority responsible for the survey of land, or otherwise to define in the register, the precise position of the boundaries of a parcel or any parts thereof, or if an interested person has made an application to the Registrar, the Registrar shall give notice to the owners and occupiers of the land adjoining the boundaries in question of the intention to ascertain and fix the boundaries.
- (2) The Registrar shall, after giving all persons appearing in the register an opportunity of being heard, cause to be defined by survey, the precise position of the boundaries in question, file a plan containing the necessary particulars and make a note in the register that the boundaries have been fixed, and the plan shall be deemed to accurately define the boundaries of the parcel.
- (3) Where the dimensions and boundaries of a parcel are defined by reference to a plan verified by the office or authority responsible for the survey of land, a note shall be made in the register, and the parcel shall be deemed to have had its boundaries fixed under this section”.

31. The evidence on record which is uncontroverted, indicates that in 1981, the 2nd Defendant commissioned a survey firm of Muritu & Associates to further resurvey the suit parcels of land and ensure each member who had settled on their parcels remained the same and would not be shifted therein. This survey is the subject of the Plaintiffs’ problems where their parcels of land were affected and reduced in acreage.
32. This court finds that the accuracy of the cadastral maps is a key aspect in asserting one rights in respect of land. Where there is a variance in what is depicted on the map and what appears on the site, the first point of call is to look at the surveying process.
33. I have considered the pleadings, the evidence on record, the submissions by counsel together with the relevant judicial authorities and find that the Plaintiffs have proved their case against the 2nd Defendant. I therefore issue the following orders:
- a. The 2nd defendant shall recall the Surveyor to correct the mistakes in the cadastral map so that the said map matches with the position of parcels Mau Summit/molo Block 7/376, 379 and 378 on the site.
 - b. Costs of suit are awarded to the Plaintiffs against the 2nd Defendant.
 - c. The Defendants Counterclaim is hereby dismissed with no orders as to costs.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 9TH DAY OF OCTOBER 2025.

M. A. ODENY
JUDGE

