



**Nyakenanda v Onsarigo & another (Environment and Land Appeal
E001 of 2025) [2025] KEELC 6516 (KLR) (1 October 2025) (Judgment)**

Neutral citation: [2025] KEELC 6516 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA
ENVIRONMENT AND LAND APPEAL E001 OF 2025
DO OHUNGO, J
OCTOBER 1, 2025**

BETWEEN

PETER MORURI NYAKENANDA APPELLANT

AND

MORACHA ONSARIGO 1ST RESPONDENT

VINCENT MAKORI 2ND RESPONDENT

*(Being an appeal from the judgment and decree of the Chief
Magistrate's Court at Keroka (C. Ombija, Senior Resident Magistrate)
delivered on 10th April 2024 in Keroka MCCC No. 224 of 2012)*

JUDGMENT

1. The background of this appeal is that the Appellant moved the Subordinate Court through Plaintiff dated 20th December 2012 which was later replaced with Amended Plaintiff amended on 26th August 2019. Moracha Onsarigo (Moracha) passed away in January 2018 prior to the filing of the Amended Plaintiff and was replaced by his son Albert Bagwasi Moracha (Albert) through the amendment.
2. The Appellant averred in the Amended Plaintiff that he purchased the parcel of land known as East Kitutu/Mwamag'era/1250 (suit property) sometime in 1973 and later transferred it to his wife who later passed away. That Moracha purchased an adjacent parcel of land which he later sold to the Second Respondent.
3. The Appellant further averred that soon after the burial of Moracha in January 2018, Albert invaded the suit property and proceeded to erect structures with impunity. That after the said sale of land, the Respondents started erecting structures on the suit property in disregard of previously existing boundary features and that they destroyed the features and encroached on the suit property.
4. The Appellant therefore sought judgment against the Respondents jointly and severally for:



- A. A permanent injunction restraining the defendants, from interfering with the boundary features and encroaching into the plaintiff's parcel of land and/or from putting up any structures on the plaintiff's land.
 - B. An order requiring the defendants to remove any structures put on the plaintiff's land or in the alternative, the plaintiff to remove the said structures and recover the costs for the removal from the defendants.
 - C. Costs of the suit with interest.
5. Prior to the filing of the Amended Plaint, Moracha filed Statement of Defence dated 23rd January 2013. He denied the Appellant's averments and urged the Subordinate Court to dismiss the case with costs. Similarly, the Second Respondent filed Statement of Defence dated 23rd January 2013. He, too, denied the Appellant's averments and averred that the Appellant's was incompetent and bad in law. He urged the Subordinate Court to dismiss the case with costs.
 6. Upon hearing the matter, the Subordinate Court (C. Ombija, Senior Resident Magistrate) delivered judgment on 10th April 2024 in which it held that the Appellant's case was premature and proceeded to dismiss it with no order as to costs.
 7. Dissatisfied with the outcome, the Appellant filed this appeal through Memorandum of Appeal dated 7th May 2024. The appeal was initially filed in the High Court at Nyamira but was later transferred to this Court through an order made by the High Court on 6th February 2025. The Appellant prayed in the Memorandum of Appeal that the appeal be allowed, that the judgment of the Subordinate Court be set aside and be replaced with judgment in his favour as he had prayed.
 8. The following grounds of appeal are listed on the face of the Memorandum of Appeal:
 1. The Learned Trial Magistrate erred in Law and in fact in finding that the appellant's suit was a boundary dispute which ought to have been settled by the Land registrar.
 2. The Learned Trial Magistrate erred in Law and in fact in failing to find that the appellant's suit was founded on a cause of action based on tort for trespass and the Land Registrar had no powers to grant the injunction sought.
 3. The Learned Trial Magistrate erred in Law and in fact in finding that the Land Registrar had powers to hear and determine the dispute filed by the appellant who was not seeking for fixing or establishing of a boundary.
 4. The Learned Trial Magistrate erred in Law and in fact in ignoring and not considering the appellants' evidence, documents, pleadings and submissions in dismissing the suit.
 9. The appeal was canvassed through written submissions. The Appellant filed submissions dated 7th April 2025 in which he identified two issues for determination: whether the dispute before the Subordinate Court was a pure boundary dispute or it included the tort of trespass and whether the appeal is merited.
 10. The Appellant submitted that although the suit property and the Respondents' parcel shared a common boundary, the boundaries were not general boundaries which require fixing under Sections 18 and 19 of the *Land Registration Act*. That the parcels in contention had been subdivided and therefore fell under Section 19 (3) of the *Land Registration Act* which provides for fixed boundaries.
 11. The Appellant went on to submit that boundary dispute was not the only issue that was before the Subordinate Court and that he had raised other complaints against the Respondents such as



encroachment and removal of structures from the suit property, which aspects the Land Registrar had no jurisdiction over. He concluded by contending that the dispute did not solely revolve around rectification of boundaries and that this appeal is therefore merited. Consequently, he urged this Court to allow the appeal.

12. In reply, the Respondents filed submissions dated 24th June 2025 in which they identified two issues for determination: Whether the Subordinate Court erred in finding that the matter was a boundary dispute as opposed to a tort and who should bear costs.
13. The Respondents submitted that the genesis of the matter was a boundary dispute which the Appellant reported in the year 2011 but was not concluded since the Appellant had not obtained letters of administration in respect of the estate of his late wife who was the registered proprietor of the suit property. They further contended that the Appellant did not offer any evidence to support his allegations of trespass or destruction of boundary features and that what was before the Subordinate Court was a boundary dispute which ought to have been resolved by the Land Registrar. Relying on the cases of *George Kamau Macharia v Dexka Limited* [2019] eKLR and *Wills Ocholla v Mary Ndege* [2016] eKLR, the Respondents submitted that the Appeal is without merit and urged this Court to award them costs.
14. This is a first appeal. The mandate of a first appellate court was restated by the Court of Appeal in *Abok James Odera T/A A.J Odera & Associates v John Patrick Machira T/A Machira & Co. Advocates* [2013] eKLR thus:

This being a first appeal, we are reminded of our primary role as a first appellate court namely, to re-evaluate, re-assess and reanalyse the extracts on the record and then determine whether the conclusions reached by the learned trial Judge are to stand or not and give reasons either way. See the case of *Kenya Ports Authority versus Kuston (Kenya) Limited* (2009) 2EA 212 wherein the Court of Appeal held inter alia that:

“On a first appeal from the High Court, the Court of Appeal should reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in that respect. Secondly that the responsibility of the court is to rule on the evidence on record and not to introduce extraneous matters not dealt with by the parties in the evidence”

15. I have carefully considered the grounds of appeal, the entire record and the parties’ submissions. The issues that arise for determination are whether what was before the Subordinate Court was a boundary dispute and who should bear costs.
16. There is no dispute that the matter that was before the Subordinate Court concerned adjoining parcels of land. On one hand there was land parcel number East Kitutu/Mwamag’era/1250 (the suit property) which the Appellant averred was owned by his deceased wife and on the other, land parcel number East Kitutu/Mwamag’era/1373 which the Appellant averred and testified that Moracha purchased and later sold to the Second Respondent. Both parcels were registered land and copies of title documents and certificates of search are on record to confirm registration.



17. Section 18 (2) of the [Land Registration Act](#) provides:

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.

18. The Appellant averred in the Amended Plaint that Albert invaded the suit property and erected structures thereon in disregard of previously existing boundary features, destroyed the boundary features and encroached on the suit property. Thus, the Appellant's complaint was founded on allegations of invasion and encroachment. According to him, both the alleged invasion and encroachment emanated from the side of parcel number East Kitutu/Mwamag'era/1373.

19. The term "boundary dispute" refers to a disagreement between neighbouring landowners or parties with claims to adjoining parcels on the location of the dividing lines between the parcels. Thus, any invasion or encroachment in the present case could only be established by reference to the actual position of the "dividing line(s)" or boundaries of the two parcels and the extent of offending activities beyond those lines or boundaries. The Appellant's entire case rested on establishing whether the offending activities were conducted on the suit property. Even the reliefs of permanent injunction and removal of offending structures which the Appellant sought could neither be granted nor enforced without a precise ascertainment of the boundary.

20. The Appellant has argued that the boundaries were fixed. That argument is inconsistent with material on record which shows that he invited the Land Registrar to establish the boundary and that the process was not completed since the Appellant lacked letters of administration in respect of the estate of his deceased wife who was the proprietor of the suit property.

21. The procedure of determining or fixing boundaries is provided under Section 19 of the [Land Registration Act](#) as follows:

- (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.

22. A perusal of the copies of titles and the certificates of search on record does not show existence of any entry in the respective registers indicating that the boundaries were ever fixed. The simple answer, therefore, is that what was before the Subordinate Court was a boundary dispute over registered parcels whose boundaries had not been fixed. In line with Section 18 (2) of the [Land Registration Act](#), the Subordinate Court lacked jurisdiction to hear and determine the case. It cannot be faulted for dismissing it.

23. I find no merit in this appeal. Consequently, I dismiss it with costs to the Respondents.



DATED, SIGNED, AND DELIVERED AT NYAMIRA, THIS 1ST DAY OF OCTOBER 2025.

D. O. OHUNGO

JUDGE

Delivered in the presence of:

No appearance by the Appellant

No appearance by the Respondents

Court Assistant: B Kerubo

