

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT NYERI

ELC PETITION NO. E001 OF 2020

GLADYS WAMUYU WAHOME..... INTERESTED PARTY /APPLICANT

VERSUS

PETER MUTHEE KIRIGI PETITIONER/ 1ST RESPONDENT

THE NYERI DISTRICT LAND REGISTRAR 2ND RESPONDENT

THE ATTORNEY GENERAL 3RD RESPONDENT

RULING

1. By the Notice of Motion dated 20th March 2024, Gladys Wamuyu Wahome (the Applicant) prays for the following:

1) That this Honourable Court be pleased to order the District Land Registrar Nyeri to visit parcels No.s LR No. Kabarungonde Block II Ngatha/740 and LR No. Kabarungonde Block II Ngatha/709 and put the beacons and solve the boundary dispute between the Applicant and the 1st Respondent;

2) That this Honourable Court be pleased to order the 1st Respondent one Peter Muthee Kirigi to vacate and remove all his structures from LR No. Kabarungonde Block II Ngatha/740 registered in the

names of the Applicant Gladys Wamuyu Wahome which he is illegally occupying;

- 3) That this Honourable Court be pleased to order the area OCS to maintain peace and order during the site visit by the Nyeri District Land Registrar and ensure that the 1st Respondent one Peter Muthee Kirigi has vacated and removed his structures from LR No. Kabarungonde Block II Ngatha/740 registered in the names of the Applicant;**
- 4) That this Honourable Court be pleased to issue any other order that it may deem fit; and**
- 5) That the costs of this Application be borne by the Respondent.**

2. The application is supported by an Affidavit sworn by the Applicant and is premised on the ground that the Respondent has interfered with the boundary of her parcel of land and has illegally occupied and built permanent structures thereon.
3. Peter Muthee Kirigi (the 1st Respondent) is opposed to the application. In his Replying Affidavit sworn on 13th October, 2024, the 1st Respondent terms the application as frivolous,

vexatious and premature. It is the 1st Respondent's case that there is an appeal pending between the parties following a judgment delivered on 9th December 2022 and if the said orders are granted the said appeal will be rendered nugatory and the 1st Respondent will suffer extreme prejudice.

4. I have carefully perused and considered the application as well as the response thereto. I have similarly perused and considered the submissions filed herein by the Learned Advocate representing the 1st Respondent. There were no other submissions file by the other parties.
5. By a Petition dated 19th October, 2020 as amended on 17th February 2022, the 1st Respondent had sought a number of declarations in regard to the parcels of land known as Kabarungonde Block II Ngatha/709 as well as Kabarungonde Block II Ngatha/740 and 741. It was the Petitioner's case that he is the registered proprietor and in actual occupation of the Title No. Kabarungonde/Block II/709. The Petitioner accused the Nyeri District Lan Registrar of causing the said parcel of land to be secretly sub-divided in the year 2008 upon which a

portion thereof was transferred to the Interested Party/Applicant herein.

6. In response to the Petition, the Interested Party asserted that she holds a genuine title deed to her parcel of land which she had acquired procedurally. It was the Interested Party's case that the Petitioner was the one who had failed to obtain his title properly and accused him of wrongfully dragging the Nyeri District Land Registrar (the 2nd Respondent) into a problem of the Petitioner's own making.
7. Having heard the matter and in a judgment rendered on 9th December 2022, the court was not persuaded that the Petitioner had any valid rights to the suitland and/or that any of his rights had been violated by any of the Respondents. On those grounds the Petition was dismissed with costs.
8. Slightly over a year after the said judgment was delivered the Interested Party instituted the present application urging the court to direct the 2nd Respondent to visit LR No. Kabarungonde Block II Ngatha/709 and Kabarungonde Block II Ngatha/740 and to put beacons and solve a boundary dispute between the Interested Part and the Petitioner. The Interested

Party further urged the court to order the eviction of the Petitioner who according to her was illegally occupying Kabarungonde Block II Ngatha/740.

9. From the material placed before the court, it was apparent that parcel No. 709 claimed by the Petitioner and parcel No. 740 claimed by the Interested Party are adjacent to each other. It was also clear from her application herein that according to the Interested Party, the Petitioner has interfered with the boundaries and built structures on her portion.
10. While that may as well be so, the Interested Party has not tendered any evidence that they had hitherto attempted to fix the boundary or resolve the dispute in regard thereto through the 2nd Respondent's office as required by law. Section 18 of the Land Registration Act, 2012, provides for the jurisdiction to determine such disputes as follows:

“(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.”

11. In the circumstances herein, I did not think it was open for the Interested Party to revisit the Petition that was already determined and to seek for an order therein that the court directs a resolution of their boundary dispute and to make further orders on issues that were not previously before the court for determination.

12. In the premises, it was clear to me that the Motion dated 20th March 2024 was misconceived. I dismiss the same with no orders as to costs.

Ruling dated, signed and delivered in open court and virtually at Mombasa this 16th day of October, 2025

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J.O. OLOLA
JUDGE

In the presence of:

- a) Ms. Firdaus Court Assistant.
- b) No Appearance for the Interested Party/Applicant
- c) No Appearance for the Petitioners/1st Respondent