



REPUBLIC OF KENYA



KENYA LAW
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**Kazi v Makokha (Environment and Land Case E030 of 2025)
[2025] KEELC 7175 (KLR) (22 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7175 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT AND LAND CASE E030 OF 2025**

CK NZILI, J

OCTOBER 22, 2025

BETWEEN

EDWARD GEMENET KAZI PLAINTIFF

AND

FAUSTINE MAKOKHA DEFENDANT

RULING

1. The application before the court is dated 14/7/2025. The applicant seeks a temporary order of injunction barring and restraining the defendant, her agents, servants, or any other person acting under his authority from entering, ploughing, interfering with, or in any other manner tampering with the boundary beacons or any other portion of the plaintiff's parcel No. Saboti/Saboti Block 5-Koykoy/202, pending hearing and determination of the suit.
2. The grounds are set out on the face of the application and in a supporting affidavit sworn by Edward Gemenet Kazi on 14/7/2025. The applicant deposes that he bought the land in 1995, as per the attached title deed as EGK-1, measuring 1.3818 Ha, where he has lived peacefully until 2020 when his neighbour, the respondent, started encroaching onto the land by 2 feet, removed the sisal beacons, and began cultivating it without his consent.
3. The applicant deposes that despite a letter dated 22/4/2022 from the land office directing the conduct surveyor to conduct boundary verifications, the respondent rushed to bring a private surveyor in his absence. The letter is attached as annexure marked EGL-2.
4. Further, the applicant deposes that the County Surveyor had scheduled a visit for 17/5/2022, but the respondent interfered with the process by unilaterally altering the boundaries as per a letter attached as EGK-3.



5. The applicant deposes that he made a report to the District Officer, who summoned both parties for a meeting on 18/6/2025, but in vain, and was advised to obtain a court order as per the annexed letter marked EGK-4.
6. The applicant deposes that unless the court intervenes, he will suffer loss of user, farming disruption, and disturbance of peaceful possession as the respondent continues to cultivate, interfere or distort the boundary, thus violating his rights.
7. The application is opposed through a replying affidavit of Faustine Makokha Biketi, sworn on 4/8/2025. He deposes that she owns parcel No. Saboti/Saboti Block 5-Koykoy/203, as per a title deed issued on 26/2/2013, attached as annexure FM-1, which was surveyed, a mutation form generated, and beacons erected, which are distinct, hence he has not trespassed onto the plaintiff's land as alleged. Attached was a surveyor's report marked FM-2.
8. The respondent admits receiving the County Surveyor's letter attached as FM-3. Intending to visit the suit parcels of land, but the exercise did not take place as he had not been served with the letter. The respondent deposes that she was the first to be issued with the title deed since the one for the applicant came later on 25/10/2016, and as such, if at all the applicant's land on the ground measures less than what he purchased, he should lay his claim against the vendor and to him. He attached the two title deeds as annexure marked FM-4.
9. Again, the respondent rebuts annexure marked EGK-3; otherwise, the applicant has not demonstrated whether he ever paid survey fees. The respondent deposes that he invited his private surveyor to carry out the exercise and establish beacons to put to rest the false allegations by the applicant on the alleged trespass, where the applicant failed to show up, though the exercise proceeded.
10. The respondent deposes that the applicant has not demonstrated the injury she will be subjected to that cannot be compensated by way of damage in the event the application is not allowed to deserve the prayers sought.
11. Further, the respondent deposes that the D.O. officiated the boundary dispute, but the applicant seemed to have had a formed mind to take a share of his land, hence the filing of this suit.
12. The applicant relies on written submissions dated 30/7/2025, that he has met the conditions for the grant of a temporary injunction as set out in *Giella -vs- Cassman Brown & Co. Ltd* [1973] EA 358, *Mrao Ltd -vs- First American Bank of (K) Ltd and Others* [2003] KLR 125, *Paul Gitonga Wanjau -vs- Gathuthi Tea Factory Co. Ltd & Others* [2016] eKLR, *Kenleb Cons Ltd -vs- New Gatitu Services Station Ltd & Another* [1990] KRL 557.
13. A party seeking a temporary injunction has to meet the conditions set in *Giella -vs- Cassman Brown & Co. Ltd* (supra), by demonstrating a prima facie case, showing that it will suffer irreparable loss or damage, and lastly, that the balance of convenience tilts in favour of granting the orders sought.
14. A prima facie case was defined in *Mrao Ltd -vs- First American of Kenya* (supra) as established, where, looking at the material presented to the court, there exists a right that has been infringed or violated to call for a rebuttal from the opposite side.
15. Irreparable damage refers to one that cannot be monetarily quantified or compensated through damages. See *Paul Gitonga Wanjau -vs- Gathuthi Tea Factory Co. Ltd & Others* (supra).
16. Balance of convenience refers to the inconvenience to be suffered by the applicant being more, compared to what the respondent would suffer if the injunction is granted and the suit ultimately



- dismissed, as opposed to if the injunction is not granted and the suit ultimately is successful on the part of the applicant. See Pius Kipchirchir Kogo -vs- Frank Kimeli Tenai [2018] eKLR.
17. On assessing whether a prima facie case is established, the court does not conduct a mini-trial but will look at the affidavits before it without making a definitive finding on facts and the law, to see to it that some rights or interests exist or the applicant has raised an arguable point or question to be determined at the main hearing. See Nguruman Limited -vs- Jan Bonde Nielsen & 2 others [2014] eKLR
 18. In Kenleb Cons Ltd -vs- New Gatitu Services Station Ltd & Another (supra), the court held that where a party is in possession and is being threatened with dispossession, without due process, the balance of convenience lies with preserving the status quo.
 19. In this suit, what the applicant is saying is that he has a title deed attached as EGK-1, showing that he is entitled to the proprietary ownership as per Section 26(1) of the Land Registration Act. The applicant says that the boundary of his parcel of land with that of the defendant has been tampered with through encroachment by the defendant, who has also frustrated efforts to have the land surveyor intervene to establish, fix, and restore the boundary.
 20. The applicant says that he has suffered disruption of farming and peaceful possession, which, if not stopped, the defendant is likely to cause further boundary disruption, incapable of any monetary compensation.
 21. The applicant has attached the correspondence that the office of the Land Surveyor shared with the parties to attend to the identification of the beacons and the demand letter.
 22. The respondent denies interfering with the boundary as alleged or at all. He says that a private surveyor was contracted, but the plaintiff did not show up.
 23. The jurisdiction to identify, fix, mark, restore, and resolve a boundary dispute rests with a Land Registrar under Sections 14-19 of the Land Registration Act. Any aggrieved party under Rule 40 of the Land Registration General Regulations may apply to the Registrar for ascertaining a missing boundary or a boundary dispute under Section 18(3) of the Act.
 24. The Registrar, upon receiving the application under Form LRA 23, shall issue a notice to all persons appearing in the register likely to be affected and require their attendance. The Land Registrar, in determining the boundary dispute, shall be guided by the recommendations of the office responsible for the survey of land.
 25. Upon giving all such persons an opportunity to be heard, the Land Registrar determines the dispute. Any aggrieved party by the decision is entitled to move to court within 30 days of the decision. Rule 41 thereof relates to ascertaining and fixing boundaries. The Registrar, upon application under Section 19(1) of the Land Registration Act, may issue a notice to all affected parties and is entitled to decide based on the procedure under Rule 40 above.
 26. Section 19 of the Land Registration Act provides that it is an offense to deface, remove, injure, or otherwise impair a boundary feature or any part of it unless authorized to do so by the Registrar. Under Section 16 thereof, the office or authority responsible for the survey of land is the one entitled to rectify the line or position of any boundary shown on the cadastral map.
 27. Section 18(2) of the Land Registration Act bars a court from handling actions related to disputes over registered land boundaries unless those boundaries have been determined as specified above. In *Azzuri Ltd -vs- Pink Properties Ltd* [2018] KECA 392 [KLR], the court held that boundary disputes about land falling within a general boundary area must be referred to the Land Registrar for resolution, while disputes on land with fixed boundaries may be investigated and possibly resolved through a surveyor.



28. The court said that jurisdiction is everything, and where a statute or constitution proscribes a procedure for redress of any particular grievance, that procedure should strictly be followed. The court affirmed the finding of the trial court that the filing of the suit before referring the dispute to the Land Registrar was contrary to statute.
29. In Estate Sonrisa Ltd -vs- Samuel Kamau Macharia [2020] KECA 734 [KLR], the Court of Appeal said that under the [Land Registration Act](#), the Registrar carries out his functions without any restriction and may rely on other relevant documents and existing records to resolve any dispute between land owners. The court held that it is only after the execution of the Registrar's powers that an aggrieved party may move to court under Sections 79, 80, 86, and 91 of the Act, for the court to intervene.
30. In Samuel Kamau Macharia & Another -vs- Kenya Commercial Bank Limited & Others [2012] eKLR, the court observed that a court of law only exercises jurisdiction as conferred by the C Constitution or statutes. The court said it could not expand its jurisdiction through judicial craft or innovation. Without jurisdiction, a court down its tools as held in Motor Vessel "Lillian S" -vs- Caltex Oil (Kenya) Ltd [1989] eKLR
31. Both parties herein have admitted that the Land Registrar has not acted on the matter. They must subject themselves to the jurisdiction of the Land Registrar and the Surveyor, who invited them to attend a site visit as per the letter dated 22/4/2022 and 10/5/2022.
32. Until the Land Registrar makes a decision, this court lacks jurisdiction to entertain the dispute on boundaries. Though there are other reliefs sought in the plaint regarding declaration on owners, trespass, eviction, and a permanent injunction, still, until the Land Registrar exercises its powers under Sections 14-19 of the [Land Registration Act](#), the court will be unable to determine the issues without such a decision.
33. In the interest of justice, the court stays the suit for 3 months and refers the parties to submit to the jurisdiction of the Land Registrar, who shall furnish the court with a report. The court, until the report is availed, declines to issue any interim orders of injunction.
34. Orders accordingly.

RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 22ND DAY OF OCTOBER 2025.

HON. C.K. NZILI

JUDGE, ELC KITALE.

In the presence of:

Court Assistant – Dennis

Nakitare for defendant present

Nabwire for plaintiff present

