

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT
KAKAMEGA
ELC CASE NO. E005 OF 2022 (OS)

**EDSON KULUNDU MASIEYI & 2
OTHERS.....APPLICANTS**

VERSUS

**MARTHA CHEBET &
ANOTHER.....RESPONDENTS**

RULING

Introduction

1. On 25th February 2025, the court having noted that the Originating Summons herein mentioned existence of a boundary dispute between the parties herein, the court *suo moto* directed parties to file submissions and address it on the question of whether or not this court has jurisdiction to hear and determine this dispute.
2. The parties filed their respective submissions. On record are submissions filed by the applicants and submissions filed by the respondents.

Applicants' submissions

3. Counsel for the applicants relied on Article 162 of the Constitution as well as sections 4 and 13 (2) (e) of the Environment and Land Court Act, section 150 of the Land Act and section 101 of the Land Registration Act and contended that this court has jurisdiction to here and determine the dispute herein. Reliance was placed on the case of **Omokwe & 10 Others v Kanyi & Another [2024] KEELC** for the contention that this court has power to determine disputes concerning access road.
4. Counsel further argued that there are consent orders dated 22nd August 2024 by this court allowing a second survey to be done. Reference was made to the cases of **Windsor Commercial Land Company Ltd & Others v Century National Merchant Bank Trust Ltd SCCA 114/2005** and **Housing Finance Company of Kenya Ltd & Another V Sharok Kher Mohammed Ali Hirji & Another [2021] e KLR** for the proposition that a consent binds the parties and cannot be set aside unless it is shown that it was obtained by collusion or fraud. Counsel submitted that this court has jurisdiction to hear this case.

Respondents' submissions

5. Counsel for the applicant relied on sections 18 and 19 of the Land Registration Act and submitted that the Law grants the Land Registrar the mandate to determine disputes concerning general boundaries. Counsel submitted that the suit properties have the same origin and abut each other having common boundaries hence the dispute herein ought to be determined by the Land Registrar.
6. It was further contended by counsel for the applicants that this is a settled matter having been settled in Mumias Land Disputes Tribunal Claim Bo. 08 of 2008. On costs, counsel referred to the case of **Jasbir Singh & 3 Others v Tarlochan Singh Rai & 4 Others [2014] e KLR** and submitted that the respondents should be awarded costs as costs follow the event.

Analysis and determination

7. The court has duly considered the pleadings herein together with parties' rival submissions and the single issue that the court ought to address is whether it has jurisdiction to hear and determine this matter.

8. Jurisdiction is the power of the court to hear and determine an issue or a suit. Jurisdiction is everything, hence, before a court undertakes the determination of a dispute, it must first be satisfied that it has the requisite jurisdiction to hear and determine such dispute.

9. In the case of **Owners of Motor Vessel "Lilian S" v Caltex Oil (Kenya) Limited [1989] KLR 1**, the court stated as follows;

"Jurisdiction is everything. Without it a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings."

10. The jurisdiction of a court flows from the Constitution or statute or both and a court cannot arrogate itself jurisdiction it does not have and neither can the parties by consent confer jurisdiction on a court where none exists.

11. In the case of **Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others [2012] eKLR**, the Supreme Court of Kenya held that:

“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. We agree with counsel for the first and second Respondents in his submission that 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.”

12. In the instant matter, the Originating Summons herein states that the respondents should enter appearance to the summons on an application by the applicant who claim that “the respondents have interfered with the boundaries to their parcels of land and blocked access to their land” and that the court should determine among other prayers that the 1st and 2nd respondents have blocked or interfered with the applicants access to his land Nos. South Wanga/ Ekeru/1812, 2140 and 2141; that the respondents be

ordered to care for and maintain all the features demarcating their common boundaries with the applicants; that the respondents do open access road and that in default, the applicants with the assistance of Kakamega County Land Registrar and surveyor do effect the opening thereof at the respondents expense. Although the respondent referred the court to a consent for resurvey of the suit properties, it is trite that where a court lacks jurisdiction a consent meant to confer jurisdiction in such a case, will be irrelevant as jurisdiction is conferred by law and not by consent. Therefore, the consent dated 22nd August 2024 did not and could not have the import of conferring jurisdiction on this court.

13. The suit properties herein are parcel No.s South Wanga/ Ekeru/ 1812, 1813, 2140 and 2141, which were titled under the repealed Registered Land Act Cap 300. The maps used in the said titling created general boundaries and not fixed boundaries.
14. Section 18 of the Land Registration Act bars this court from hearing and determining disputes relating to

general boundaries and vests that jurisdiction in the Land Registrar. That section provides as follows;

18. Boundaries

- (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).**

20. Regulation 40 of the Land Registration (General) Regulations (Legal Notice No. 278 of 2017) provides

for re-establishing a missing boundary or ascertaining a boundary in a dispute as follows;

Application for re-establishing a missing boundary or ascertainment of a boundary in dispute;

- 1. An interested person may apply to the Registrar for the ascertaining of a missing boundary or a boundary in dispute under section 18(3) of the Act in Form LRA 23 set out in the Sixth Schedule.**
- 2. The Registrar shall issue a notice in Form LRA 24 set out in the Sixth Schedule to all persons appearing in the register that may be affected or such other persons as the Registrar may deem necessary for resolution of the dispute if a person has complied with paragraph (1).**
- 3. The Registrar shall notify the office responsible for survey of land of the intended hearing of a boundary dispute and require their attendance if a person has complied with paragraph (1).**
- 4. In determining a boundary dispute lodged in accordance with paragraph**

(1), the Registrar shall be guided by the recommendation of the office responsible for survey of land.

- 5. The Registrar shall, after giving all persons appearing for the hearing in accordance with the notifications sent under paragraphs (1) and (2) an opportunity to be heard, make a determination of the dispute and inform the parties accordingly.**
- 6. Any party aggrieved by the decision of the Registrar made under paragraph (5) may, within thirty days of the date of notification, appeal the decision to the Court.**
- 7. Upon expiry of thirty days, the Registrar shall—**
 - a. Cause to be defined by survey the precise position of the boundaries in question;**
 - b. File a plan approved by the authority responsible for survey of land containing the necessary particulars; and**
 - c. Make a note in the register that the boundaries have been fixed, and**

thereupon the plan shall be deemed to define accurately the boundaries of the parcel.

8. A dispute for determination of a boundary and or parcel shall, unless in the case of special circumstances, be completed within a period not exceeding six months from the date of filing the application.

21. In the case of **Nzau v Kemei & 2 others (Environment & Land Case 70 of 2023) [2025] KEELC 526 (KLR) (12 February 2025) (Ruling) Neutral citation: [2025] KEELC 526 (KLR)**, the court held that the Environment and Land court had no original jurisdiction to determine a boundary dispute concerning general boundaries.

22. As the dispute herein is a boundary dispute concerning general boundaries, by dint of provisions of section 18 of the Land Registration Act as read with Regulation 40 of the Land Registration (General) Regulations (Legal Notice No. 278 of 2017), I find and

hold that this court lacks original jurisdiction to determine the dispute herein. I therefore strike out the applicants' suit with costs to the respondents.

23. It is so ordered.

**DATED, SIGNED AND DELIVERED AT KAKAMEGA
IN OPEN COURT/VIRTUALLY THROUGH
MICROSOFT TEAMS VIDEO CONFERENCING
PLATFORM THIS 29TH DAY OF OCTOBER, 2025**

**A. NYUKURI
JUDGE**

In the presence of;

Ms. Mideva for the plaintiff

Ms. Cherono holding brief for Mr. Nandwa for the respondent

Court Assistant: Delphine