



**Oyaro v Saitabu & 3 others (Environment and Land Case
745 of 2017) [2025] KEELC 7559 (KLR) (29 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7559 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND CASE 745 OF 2017
MD MWANGI, J
OCTOBER 29, 2025**

BETWEEN

EVANS OMARI OYARO PLAINTIFF

AND

BRITISH MESILA SAITABU 1ST DEFENDANT

DAVID LKARERE LESILALA 2ND DEFENDANT

THE LAND REGISTRAR (KAJIADO) 3RD DEFENDANT

AGNES LEPASO 4TH DEFENDANT

RULING

1. I have taken time to study this file in terms of the pleadings filed and the proceedings recorded that form the record of the court. I do note that on 24th October 2024, the parties recorded a consent before my predecessor Hon. Mr. Justice Gicheru in the following terms;

“By consent the District Land Registrar to determine the boundaries between L.R. 18619, 18620 & 18378. The 4th Defendant to co-operate. Plaintiff to pay the Registrar’s costs. All parties to be present.”

2. On 11th June 2025, parties confirmed to this court that the Land Registrar had indeed undertaken the exercise of boundaries’ determination in accordance with the dictates of the above consent order.
3. On 24th July 2025, learned State Counsel, Ms. Kubai raised the issue that the court lacked the jurisdiction to entertain this matter in view of the fact that it was a boundary dispute.
4. Mr. Ndung’u, Advocate for the 4th Defendant agreed with the sentiments of the State Counsel. He affirmed that the court had already found that it lacked the jurisdiction. He reminded the court that



the parties had already recorded a consent referring the matter to the Land Registrar rendering this court functus officio.

5. The Advocate for the 1st Defendant however requested time to see the report that had been filed by the Land Registrar before he could respond on the issue. The Plaintiff's Advocate Mr. Irumba urged the court to first allow the 1st Defendant peruse the report filed. The court then set down the matter for further directions on 28th October 2025.
6. On 28th October 2025, Ms. Kubai reiterated her earlier sentiments insisting that the court lacks the jurisdiction to entertain the matter. Messrs. Mbabu and Ndung'u, Advocates for the 1st and the 3rd Defendants respectively, concurred with the position of Ms. Kubai.
7. Mr. Irumba, Advocate for the Plaintiff informed the court that the report he had earlier informed the court about was that of the Surveyor and not the Land Registrar. He further insisted that the Survey report had brought out other issues beyond the scope of the Land Registrar's mandate under section 18(2) of the [Land Registration Act](#).

Determination.

8. Under Section 18(2) of the [Land Registration Act](#), the jurisdiction to hear and determine boundary disputes is vested on the Land Registrar. This is a matter that is well settled beyond peradventure by various decisions of the Superior Courts of this country.
9. The Court of Appeal in *Azzuri Limited –vs- Pink Properties Limited* (2018) eKLR, was categorical on the issue stating that;

“Under the aforesaid provisions, boundary disputes pertaining to lands falling within general boundary areas must be referred to the Land Registrar for resolution”.
10. In *George Kamau Macharia –vs- Dexka Limited* (2019) eKLR, Kemei J held that;

“It is manifestly clear that the above Section 18(2) of the [Land Registration Act](#) gives the mandate to the Land Registrar to resolve boundary disputes of land with general boundaries...the framers of Section 18(2) of the [Land Registration Act](#) placed this matter before the Land Registrar who has the technical advice and resources of the District Land Surveyor to determine and ascertain the boundaries.”
11. Section 18(2) enjoins the court not to entertain any action or other proceedings relating to a dispute as to the boundaries of registered land unless the boundaries have been determined by the Land Registrar.
12. By jurisdiction is meant the authority which the court or tribunal has to decide matters that are litigated before it. As pronounced by the Supreme Court of Kenya in the case of *Samuel Kamau Macharia & another –vs- Peri Pesi Tobiko and 2 others* (2013) eKLR, a court's jurisdiction flows either from [the constitution](#) or legislation or both. The Supreme Court of Kenya emphasized that that a court cannot arrogate to itself jurisdiction exceeding that which is conferred on it by the law. The issue of jurisdiction goes to the heart of any matter because without it, the court cannot entertain any proceedings.
13. Undoubtedly, the gravamen of the Plaintiff's case is a boundary dispute. He was indeed seeking to compel the Land Registrar to undertake his statutory responsibilities under the provisions of section



18(2) of the *Land Registration Act*. The substance of the Plaintiff's case is elaborated at paragraph 8 of the plaint whereof the Plaintiff asserts that;

“on diverse dates between the year 2008 and 2013, the Plaintiff called upon the Land Registrar, Kajiado to determine the boundaries of the suit property in relation to the neighbouring land title number Kajiado/Kitengela/18378 and 18619 belonging to the 1st and 2nd Defendants respectively.”

14. The plaintiff at paragraph 11 asserts that his claim therefore is for an order compelling the 3rd Defendant to determine the boundaries....However, he has sought other reliefs other than that order without having explained their basis on the body of the plaint. The obvious intention is to couch and give his case a semblance of a 'suit beyond the boundary dispute' in an attempt to confer jurisdiction on this court through draftsmanship and legal craftsmanship. In the case of *Orange Democratic Movement – vs- Yusuf Ali Mohammed and 5 others* (2018) eKLR, the Court of Appeal had occasion to pronounce itself on the issue of jurisdiction where it stated that;

“...a party cannot through its pleadings confer jurisdiction to a court where none exists. In this context, a party cannot through draftsmanship and legal craftsmanship couch and convert an election petition into a constitutional petition and confer jurisdiction upon the High Court. Jurisdiction is conferred by law not through pleading and legal draftsmanship. It is both the substance of the claim and relief sought that determines the jurisdictional competence of a court.”

15. The substance of the Plaintiff's claim in this matter is the boundary dispute. The inclusion of the peripheral prayers whose basis has not been explained in the plaint cannot confer jurisdiction on this court to determine what is clearly a boundary dispute. Consequently, the court finds and holds that it lacks the jurisdiction to entertain this matter. The consent by the parties referring the matter to the Land Registrar was an acknowledgement that it was the proper forum to handle this matter. This file ought to have been closed at that juncture; after the recording of the consent. There was nothing more for the court to do.

16. Any party dissatisfied with the decision of the registrar can approach the court by way of an appeal in accordance with the provisions of rule 40 of the Land Registration (General) Regulations 2017.

17. The upshot is that the Plaintiff's suit herein is struck out for want of jurisdiction.

18. I make no orders as to costs considering the stage at which the suit had reached and in a bid to promote reconciliation between the parties who are neighbours. Each party shall bear its own costs.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 29TH DAY OF OCTOBER 2025.

M.D. MWANGI

JUDGE

In the virtual presence of:

Mr. Ndung'u h/b for Mr. Kabiru for the 4th Defendant

Ms. Kubai for the 3rd Defendant

N/A by the Plaintiff, the 1st and 2nd Defendants



Court Assistant: Mpoye

M.D. MWANGI

JUDGE

