

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

ELC CASE NO. 47 OF 2023

KILANGA OLE SEKENTO.....
.....PLAINTIFF

-VERSUS-

MEITIAKI OLE SAYO.....1ST
DEFENDANT

THE COUNTY SURVEYOR, KAJIADO COUNTY.....1ST INTERESTED
PARTY

THE HONOURABLE ATTORNEY GENERAL.....2ND INTERESTED
PARTY

RULING

(On whether the court has the jurisdiction to entertain and determine the matter)

1. From the reading of the Plaintiff's amended plaint amended on 29th April 2025, it is pretty clear that the dispute between the Plaintiff and the Defendant is a boundary dispute between their respective parcels of land abutting each other being KAJIADO/EWUASO-KEDONG/2787 and KAJIADO/EWUASO-KEDONG/1665. The Plaintiff laments that efforts to mediate and

resolve the boundary dispute have been frustrated by the Defendant. The Plaintiff consequently prays for an order directing the County Surveyor in charge of Kajiado West Sub- County to proceed to the ground and mark the boundaries by erecting beacons on land parcels number Kajiado/Ewuaso-Kedong/1665 and 2787.

2. Learned State Counsel Ms. Chimau representing the Hon. Attorney General who is the 2nd Interested Party in this matter pointed out to the court that it lacks the jurisdiction to determine boundary disputes. Mr. Njagi, Advocate for the Defendant agrees with the state counsel. The Plaintiff's Advocate, Mr. Mbeche on the other hand, while conceding that the dispute between the parties herein is a boundary dispute stated that there is the aspect of encroachment that falls within the court's jurisdiction.

Determination.

3. 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.

4. 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”.

5. 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.”

6. **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.

7. From the foregoing, it is evident that this court lacks the jurisdiction to entertain this suit. The issue of encroachment is peripheral and subject to the determination of the boundary dispute.

8. 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.

9. In the case of **Orange Democratic Movement -vs- Yusuf Ali Mohammed and 5 others (2018) eKLR**, the **Court of Appeal** too 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.”

10. The substance of the Plaintiff’s claim in this matter is the resolution of the boundary dispute. The inclusion of the peripheral prayer of injunction to refrain the Defendant from interfering with the boundary or encroaching into the Plaintiff’s land 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 Plaintiff has the liberty to approach the Land Registrar in accordance with the provisions of ***Section 18(2) of the Land Registration Act*** as read together with ***rule 40 of the Land Registration (General) Regulations 2017. Rule 40***, as this court has held previously is self-executing. It not only provides

for the mode of application for re-establishing a missing boundary, or ascertainment of a boundary in dispute but also for the implementation of the decision of the Land Registrar.

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

12. 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 28th Day of October 2025.

**M.D. MWANGI
JUDGE**

In the virtual presence of:

Mr. Mbeche for the Plaintiff

Ms. Chimau for the 2nd Interested Party

N/A by the Defendant and the 1st Interested Party

**M.D. MWANGI
JUDGE**