



**Muchiri v Walunda & 2 others (Environment and Land Case
353 of 2017) [2025] KEELC 7768 (KLR) (5 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 7768 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT AND LAND CASE 353 OF 2017
A NYUKURI, J
NOVEMBER 5, 2025**

BETWEEN

GICHUKI MUCHIRI PLAINTIFF

AND

WASIKE WALUNDA & 2 OTHERS RESPONDENT

RULING

1. Before court is a notice of motion dated 10th January 2025 filed by the plaintiff seeking that a mandatory injunction be issued to compel the respondents ascertain and fix the boundaries of land parcel No. Kakamega/Sango/ 148 measuring 12.7 Hectares within 14 days of the date of the order of court. He also sought orders that the OCS Likuyani Police station to provide security during the fixing of boundaries between parcel No. Kakamega/Sango/ 148 and Kakamega/Sango/ 149 and for five subsequent days as a permanent fence is erected on the said boundary. He also sought costs.
2. The application is anchored on the affidavit sworn by the applicant sworn on 10th January 2025. The applicant's case is that he sought injunction against the respondent in the suit before court. That an order was issued on 7th February 2011 directing the District surveyor to determine the boundary and a report was made on 12th February 2012. That boundaries were fixed and owners advised to plant and respect the boundary. That the suit was determined in favour of the applicant and no appeal has been preferred. That on 15/04/2021, his advocate wrote to the Land Registrar to establish the boundary. That the boundary was fixed on 6th December 2021 and boundaries planted. That his efforts to maintain the boundaries have been impossible due to the respondents' hostilities. That the respondents ought to be forced to participate in ascertaining the boundary. He attached the Land Registrar's report dated 6/7/2012 and the judgment dated 9/12/2020, decree, a letter and notice from the Land Registrar.
3. The application was not opposed. The only issue that arises for the court's determination is whether the applicant deserves the orders sought.



4. The record shows that this matter was instituted by way of plaint whereof the plaintiff's only prayer was injunction to restrain the defendants from interfering with his land parcel Kakamega/ Sango/ 148. In the judgment of this court made on 9th December 2020, the plaintiff's suit was allowed as prayed. According to the applicant herein, the respondents have removed the boundaries and therefore boundaries should be ascertained. The applicant having sought and been granted an injunction, cannot now change her pleadings and turn the suit into a new cause of action of a boundary dispute. If a party has disobeyed a court decision as alleged by the applicant who states that boundaries were ascertained but later interfered with by the respondent, the recourse can never be to seek fresh orders. This court is now functus officio and cannot determine whether or not the parties' boundaries should be ascertained as that is a new cause of action. In any event, by dint of section 18 of the Land Registration Act, this court has no original jurisdiction to hear and determine a boundary dispute. For those reasons, I find and hold that this court is functus officio and I dismiss the application dated 10th January 2025 with no order as to costs.

5. It is so ordered.

DATED, SIGNED AND DELIVERED AT KAKAMEGA IN OPEN COURT/VIRTUALLY THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM THIS 5TH DAY OF NOVEMBER 2025

A. NYUKURI

JUDGE

In the presence of;

Ms. Chesire for the plaintiff

No appearance for the respondent

Court Assistant- Delphine

