



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT MALINDI

ELC NO. E008 OF 2025

SUN PALM

LIMITED.....PL

PLAINTIFF

-VERSUS-

SAID SEIF

SIKA.....1ST

DEFENDANT

SAUD SEIF

SIKA.....2ND

DEFENDANT

ALI SEIF

SIKA.....3RD

DEFENDANT

RULING

- 1.** Application dated May 23, 2025, requests an order directing the Land Registrar Kilifi, with the assistance of the OCS Watamu Police Station, to undertake the placement of beacons on the defendant's suit property known as Title No. Kilifi/Jimba/669 within 7 days of the court's ruling. The costs of the application are also to be covered.
- 2.** The application is opposed.
- 3.** The court directed that the application be argued through written submissions. I acknowledge receipt of submissions from learned counsel for the applicant, Mr. Ondabu, and Mr. Sausi for the respondent, with profound appreciation for their valuable contributions, which have been instrumental in guiding the court's decision on the issues raised in the application.
- 4.** Based on the materials presented to me, the issues I submit for the court's decision are whether this court should refer the matter to the Land Register Kilifi to mark the beacons as requested, with the assistance of the OCS Watamu, and who should bear the costs of the application.
- 5.** According to the applicant, the property underlying the suit before this court is Title No. Kilifi/Jimba/408, registered in the

plaintiff's name. However, the defendants claim they have no interest in that property. They are the registered owners of property known as Title No. Kilifi/Jimba/669, which is separate and distinct from Title No. Kilifi/Jimba/408.

- 6.** While the defendants have no interest in the plaintiff's property, known as Title No. Kilifi/Jimba/408, the plaintiff has no interest in the defendants' property, known as Title No. Kilifi/Jimba/669.
- 7.** The defendants argue that they have provided this honorable court with a copy of the survey map confirming that Kilifi/Jimba/408 and Kilifi/Jimba/669 are adjacent.
- 8.** The defendants argue that this case only involves a boundary dispute because the plaintiff's property, Title Deed No. Kilifi/Jimba/408 borders the defendants' property, Title No. Kilifi/Jimba/669. The court can verify from the submitted documents that the plaintiff and defendants hold different title deeds; therefore, this court lacks jurisdiction to hear and decide the case under Section 18(2) of the Land Registration Act, read together with Rule 40(6) of the Land Registration (General) Regulations, 2017. Mr. Ondabu believes there is already a court decision that resolved ownership issues

concerning land title 669, which belongs to the defendant. Therefore, this court cannot hear and decide on matters related to that case, as doing so would violate the doctrine of res judicata, which prohibits the same matter from being relitigated between the same parties.

9. Mr. Sausi, on the other hand, contends that the supporting affidavit was sworn by counsel Ombati Peterson Onywoki, who is not well acquainted with the issues concerning the suit properties. This contravenes the provisions of Order 51, Rule 4, as read with Order 19, Rule 3, of the Civil Procedure Rules.

10. Additionally, there are multiple suits involving the parties, and notably, the Kadhis Court declared that the two suits are owned equally by the parties; therefore, the suit is properly before this court.

11. The court reiterates its respect for the legal process and the jurisdictional boundaries set by the law. The initial jurisdiction for handling boundary disputes related to general or unclear boundaries lies with the Land Registrar, with the Environment and Land Court (ELC) serving as the appellate court. This reinforces the "*exhaustion doctrine*," highlighting that courts should not assume original jurisdiction when a specific

statutory procedure exists for dispute resolution, especially since boundary issues are outside this court's jurisdiction. See Court of Appeal Case of **Azzuri Limited v Pink Properties Limited [2018] eKLR**.

12. The Superior Court stated the following regarding the application of Section 18 of the Land Registration Act.

“This means that under the aforesaid provisions, boundary disputes pertaining to lands falling within general boundary areas must be referred to the Land Registrar for resolution.....From this analysis of the law, it should be clear from the above that we are in agreement with the learned Judge’s conclusion that the dispute ought to have been heard by the Land Registrar as stated in the statute. Jurisdiction is everything. It has been said many times before, that, without it a court has no powers to make one more step, irrespective of the strength and nature of evidence in the parties’ possession,”

13. See also **George Kamau Macharia & Dexka Limited (2019) eKLR**, where Kemei J stated as follows:

“From the above provisions of the law, it is manifestly clear that the above section gives the mandate to the Land Registrar to resolve boundary disputes of land with

general boundaries. Registry index map (RIM) only indicates approximate boundaries and the approximate situation on the ground. Even if this court was to hear and determine this matter it will still require the input of the Land Registrar. 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 surveyor to determine and ascertain the boundaries. It is trite law that where the law has given a legal obligation to a department of government, it is important for the court to let that department proceed to meet its legal obligations. In this case, the office of the land registrar is mandated to deal with the general boundary dispute first before the same is escalated to the court. It is the view of this court that the dispute is prematurely before the court”.

14. I reaffirmed this stance in **Shari v Daniel & 4 others [2025] KEELC 5021 (KLR)**, where I stated the following:

“The court hereby affirms that the positions of the Land Registrar and the Land Surveyor are crucial in the adjudication of boundary disputes. Nevertheless, the responsibilities attributed to these offices are as prescribed by law, specifically governed by sections 18 and 19 of the Land Registration Act in the context of this

case. In particular, pursuant to sections 19 (1) and (2), the interested party seeking to establish and demarcate the boundary between their property and that of the respondent must formally apply to the Land Registrar for such determination.

8. The procedure for establishing a missing boundary or resolving a boundary dispute under sections 18 and 19 of the Land Registration Act is more specifically detailed in the Land Registration (General) Regulations, 2017, Regulations 40 and 41, which state as follows:

(40)(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 the resolution of the dispute if a person has complied with paragraph (1).

(3) The Registrar shall notify the office responsible for the 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.

41. (1) An interested person may apply to the Registrar for the ascertaining and fixing of boundaries of 19 (1) Act, in Form LRA 23 set in the Sixth Schedule

. (2) The notice issued by the Registrar under section 19(1) of the Act shall be in Form LRA 24 set out in the Sixth Schedule

. (3) When making a decision under section 19 (1) of the Act, the Registrar shall follow the procedure outlined in Regulation 40.”

Based on the preceding discussion regarding the boundary fixing procedure, the process may be initiated either by the Land Registrar or by the individual seeking resolution of a boundary dispute through the Registrar. Failure to adhere to the procedures outlined for determining and establishing boundaries renders the court, pursuant to section 18(2) of the Land Registration Act, incapable of entertaining any actions or proceedings related to boundary disputes involving the specific parcels of land in question. Additionally, under Regulation 40(6) of the Land Registration (General) Regulations, 2017, the court's jurisdiction concerning boundary disputes is appellate. It is the court's view that such jurisdiction cannot be invoked at the initial stage as contemplated by the plaintiff.”

- 15.** While I agree with the procedure concerning the boundary issue, as I have detailed before, the respondents state in their plaint and submissions that this is not solely a boundary dispute but also involves ownership. From the plaint, it appears there is a dispute over rent. This court cannot instruct the parties on how to proceed; the respondents believe that the matter involves ownership of the two properties in question.
- 16.** This court has been made aware of other cases in different courts involving the same properties, but how these issues relate to the boundary dispute here is unclear.
- 17.** In short, the application dated May 23, 2025, is hereby dismissed with costs.

**Dated, signed, and delivered electronically in Malindi on
6th November, 2025.**

E. K. MAKORI

JUDGE

In the presence of:

Mr. Ondabu for the Applicant

Mr. Sausi for the Respondent

Happy: Court Assistant

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