

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**

**ELC. CASE NO. 26 OF 2006**

**DANIEL MASILA MUTISO:.....:PLAINTIFF/APPLICANT**

**VERSUS**

**BEN MWEU:.....:1<sup>ST</sup> DEFENDANT/RESPONDENT**

**JULIUS WAMBUA KITHOME:.....:2<sup>ND</sup> DEFENDANT/RESPONDENT**

**JAMES KIOKO:.....:3<sup>RD</sup> DEFENDANT/RESPONDENT**

**HENRY KITHOME:.....:4<sup>TH</sup>**

**DEFENDANT/RESPONDENT**

**FRED NZIOKI:.....:5<sup>TH</sup> DEFENDANT/RESPONDENT**

**JOSEPH MUNYAO KITHOME:.....:6<sup>TH</sup> DEFENDANT/RESPONDENT**

**RULING**

The application is dated 28<sup>th</sup> August, 2024 and is brought under order 51 Rule 1 of the Civil Procedure Rules 2010, Section 1A, 1B and 3A of the Civil Procedure Act (Cap 21 Laws of Kenya), Sections 18, 19 and 101 of the Land Registration Act (2012), Regulations 40, 41 and 42 of the Land Registration Regulations (2017) and Articles 40 and 63 of the Constitution of Kenya seeking the following orders;\_

1. That the Machakos County Surveyor do establish the boundaries for the parcel of land known as L.R. No. Mbiuni/Kabaa/910 and L.R. No. Mbiuni/Kabaa/973 and files a report in court on the same.
2. That the Officer Commanding Station (OCS) in Mbiuni Police Station do enforce the court's orders.
3. That cost of this application be borne by the Defendants/Respondents.

It is based on the grounds that the Plaintiff is the owner of the parcels of land known as L.R. No. Mbiuni/Kabaa/910 and L.R. No. Mbiuni/Kabaa/973. That this court via the Judgment delivered on 10<sup>th</sup> July, 2017 declared the Plaintiff/Applicant as the sole registered owner of the aforesaid parcel of land. That the Defendants/Respondents are the owners of the parcels of land known as L.R. No. Mbiuni/Kabaa/699 and L.R. No. Mbiuni/Kabaa/972 respectively. Both parcels of land border the Plaintiff's/Applicant's parcel of land. That the Defendants/Respondents have illegally trespassed into the Plaintiff's land known as L.R. No. Mbiuni/Kabaa/910 and L.R. No. Mbiuni/Kabaa/973 in which they have destroyed vegetation, cultivated and grazed livestock. That the Defendants have even put a fence round the Plaintiff's pieces of land. That due to illegal occupation of the said piece of land by the Defendants, the Plaintiff has been denied gainful use of his land. That Plaintiff has on various dates requested the Defendants to have the boundaries of their respective parcels of land established

and aligned but they have ignored the same. That the Defendants/Respondents have resorted to using violence and local police officers to intimidate and prevent the Plaintiff from using his parcels of land and occupying the same. That the Plaintiff needs to have the boundaries of his two parcels of land established which will inform him the next cause of action against the Respondents. That it will be fair and just that this court issues an order for the establishment and alignment of the boundaries of the said parcels of land.

This court has considered the application and the supporting affidavit. The application was served and the applicants failed to file any response. The Applicant states that this court via the Judgment delivered on 10<sup>th</sup> July, 2017 declared the Plaintiff/Applicant as the sole registered owner of parcels of land known as L.R. No. Mbiuni/Kabaa/910 and L.R. No. Mbiuni/Kabaa/973. He has attached the certificates of title marked DMM-1 and a decree marked DMM-2 dated 29<sup>th</sup> December 2018. I find that this application is not opposed and I grant it as prayed. There will be no orders as to costs as the same was undefended.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 26<sup>TH</sup> DAY OF  
NOVEMBER 2025.**

**N.A. MATHEKA**

**JUDGE**

ORIGINAL