

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT SIAYA

ELC LAND APPEAL NO. E002 OF 2025

DICKSON OKOTH

AGOGO.....APPELLANT

-VERSUS-

JOHN OMONDI JASSOR.....

RESPONDENT

JUDGEMENT

1. Aggrieved by the judgment and decree of **Hon. L. N. Sarapai, P.M Ukwala** in **Ukwala CM ELC 67 of 2020** delivered on **30th January 2024**; the Appellant preferred this Appeal seeking the following reliefs vide the memorandum of appeal dated **27.01.2025**;

(i) That the Appeal be allowed with costs.

(ii) That the judgment delivered on 30th January 2024, be set aside and substituted with an order allowing the plaintiff's prayer directing the Land Surveyor Ugunja sub county and Ugenya/Ugunja district Land Registrar to visit parcel number **South Ugenya/Ambira 2669** that borders **South Ugenya/ Ambira 2669** and reinforce the

public access road that runs across the said parcels.

(iii) Any other relief the Honorable Court may deem fit and just to grant.

2. The Appellant raised a total of 9 grounds of appeal set out as follows; -

(i) That the learned trial magistrate erred in law and fact by failing to make an order for the resurvey and correction of the boundary in land parcel number; **South Ugenya/Ambira 2669** that borders **South Ugenya/Ambira 4108, 4109** and **2668**.

(ii) That the learned trial magistrate erred in law and fact by failing to establish the actual parcel of land belonging to the appellant by not involving the Land Registrar and the Surveyor who were supposed to confirm the same.

(iii) That the learned trial magistrate erred in law and fact by making a finding that she could not identify the parcel number **South Ugenya/Ambira 2669** as exhibited in the map.

(iv) That the learned trial magistrate erred in law and fact by failing to recognize that it was the duty of the Registrar and the Surveyor to establish and correct the boundaries and the access road that was in dispute.

(v) The learned trial magistrate erred in her analysis and appreciation of the law and fact thereby arriving at a wrong decision by dismissing the suit.

(vi) That the learned trial magistrate erred in law and fact by failing to read and analyze the evidence and submissions by the appellant thereby arriving at a wrong decision.

(vii) That the learned trial magistrate erred in law and fact by failing to recognize and appreciate that the parties were self-represented and hence could have assisted them where there was a technicality.

(viii) That the learned trial magistrate erred in law and fact by failing to summon the Lands Registrar and Ugunja Sub County Surveyor to verify the two numbers of the parcels of land which were duplicated on the map thereby arriving at a wrong conclusion and findings.

3. On the strength of the above grounds the Appellant sought the reliefs set out at paragraph 1 of this judgment.
4. Leave was granted on 27/01/2025 under Misc. E018/2025 to file this appeal out of time and upon admission of the appeal, directions were issued for filing of written submissions so as to dispose off the appeal.
5. Messrs Dan Ochieng & Co. Advocates for the appellant filed their submissions dated 27/06/2025, while the Respondent Mr. John Omondi Jassor appearing in person filed his submissions dated 7/07/2025.

APPELLANTS SUBMISSIONS

6. The Appellant submitted on 5 issues for determination as follows;-
7. On issue number 1, as to whether there exists a boundary dispute between the parties and whether the same has been resolved; The Appellant submits on the existence of a boundary dispute between parcel number **South Ugenya/Ambira 2669** and relates to where an access road exists on the ground and a complaint had been registered before the land registrar.
8. That various site visits had been scheduled and were frustrated by the Respondent hence the appellants decision to file the application before the trial court so as to obtain orders for the Land Registrar to fix the boundary.
9. On issue number 2, the Appellant submits that the court had powers to order for the fixing of boundary by the Land Registrar and surveyor under section 19 of the Land Registration Act.
10. On issue number 3, the Appellant submits that boundary disputes can only be settled by the Land Registrar under Section 19 of the Land Registration Act. The Appellant invites the court to do its first duty as a first Appellate Court to reanalyse and reconsider the evidence, so as to reach its own conclusion and award costs to the Appellant.

RESPONDENT'S SUBMISSION

11. The respondent at paragraph 13 of his submissions refutes that there exists a boundary dispute between the parties herein and that the Appellant aimed at fixing his own boundary.
12. The respondent submits that the court has no power to order the Land Registrar to conduct site visit and determine any such dispute and urges the court to uphold the trial courts judgment and dismiss the appeal with costs.

ISSUES FOR DETERMINATION

13. The court having considered the above, Record of Appeal, the submissions as well as the law, identifies the following as issues for determination.

(i) Whether or not the Appeal is merited? In deciding this the court shall analyse whether or not there is a boundary dispute that was presented before the trial court for the Land Registrar to fix and ultimately whether the plaintiff's case before the trial court was merited.

(ii) What reliefs ought to issue who bears the costs of the appeal.

ANALYSIS AND DETERMINATION

14. The court as a first appellate court has the duty to reconsider, re-evaluate, reassess and re-analyse the evidence adduced before the trial court so as to come up with its own conclusion as was restated in **Giture vs**

Ngugi & Another ELC Appeal No. E001 Of 2023 (2024) KEELC 6191 cited by Counsel for the Appellants

15. So was there a boundary dispute presented before the trial court for the court to refer to the Land Registrar for determination. In his application dated 30th December 2019, the Appellant as Applicant alluded to the need to ascertain the boundary of **South Ugenya/Ambira/2669**.
16. The Appellant as Applicant exhibited a copy of a title deed in respect of the suit property as well as a map sheet both appearing at pages 7 and 8 of the record of appeal.
17. Further in paragraph 4 & 5 of his plaint dated 30th December 2019 the Appellant as plaintiff pleaded that the Respondent as Defendant, intended to create a road on the suit property and thus was interfering with his peaceful possession and stay on the suit property.

He sought an order directing the District Land Surveyor to determine the boundary in relation to parcel **South Ugenya/Ambira/2669**.
18. The Record of Appeal does not exhibit a defence by the Defendant and the Lower Court record equally does not reveal filing of defence, but replying affidavits in respect of the application dated 30/12/2024 and another application dated 13.6.2022.
19. The proceedings reveal a joinder of an interested party though no formal application for joinder was filed.

20. On 28.01.2022, the trial court after hearing the applications reserved its ruling and scheduled to hear the main suit on 14.11.2022, and after hearing both parties, Judgment was delivered on 23.10.2024 which judgment provoked the present appeal.
21. In her findings, the learned trial Magistrate observed that there were two parcels with the same number . **South Ugenya/Ambira/2669** but dismissed the suit as there was no report from the Land Register.
22. Turning to the issue as to whether there was a boundary dispute the trial court noted that **South Ugenya/Ambira/2669** did not border **South Ugenya/Ambira 4108 and 4109.**
23. Having found that there were two parcels with the same number on the map sheet, the identification of the said parcels ought to have been ordered so as to determine and fix the boundaries as well as the correct position on the ground of parcel number **South Ugenya/Ambira/2669.**
24. That identification and fixing of the boundary is the work of the Land Registrar and the surveyor under **section 18** and **19** of the Land Registration Act and is what the plaintiff was essentially seeking before the court.
25. The Court thus finds that there was justification for the identification of fixing of boundaries of **South**

Ugenya/Ambira/2669 as there were two same numbers existing on the map.

26. Accordingly, the plaintiff suit was merited and the Appeal herein has merits.

27. In answer to issue No. 1 the appeal herein is merited.

28. In respect to reliefs sought, the Appeal being merited is allowed in the following terms;-

1. The Land Registrar Ugenya/Ugunja District and Ugunja District Land Surveyor Ugunja to visit the suit property **South Ugenya/Ambira/2669** that borders South Ugenya/Ambira 4108,4109 and 2669

a) To identify the same on the map.

b) Fix its boundaries including any access road to the said parcels.

c) Amend the RIM in order to place it in the correct position, so as to avoid having two parcels with the same number in the registration unit.

2. The Appellant shall have costs of this appeal as well as costs in the lower court.

Orders accordingly.

Dated at Siaya this 29th Day of January, 2026

HON. JUSTICE A. E. DENA

JUDGE

29/1/2026

**Judgment delivered virtually through Microsoft Teams
Video Conferencing Platform in the Presence of:**

Dan Ochieng for the Appellant

Saki Divine Omondi -Respondents Son.

Court assistant: Ishmael Orwa

ORIGINAL