



REPUBLIC OF KENYA



**Wanjala v Majani (Environment and Land Case E056 of 2025)
[2026] KEELC 628 (KLR) (11 February 2026) (Ruling)**

Neutral citation: [2026] KEELC 628 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT AND LAND CASE E056 OF 2025**

CK NZILI, J

FEBRUARY 11, 2026

BETWEEN

GRACE LUGALI WANJALA PLAINTIFF

AND

MANESEH LUMWAGI MAJANI DEFENDANT

RULING

1. In an application dated 18/11/2025, the applicant sought orders to maintain the status quo; a temporary injunction restraining the respondent, his agents, servants, or anyone from cutting down trees and vegetation along the boundary of L.R. No. 2073/5 and L.R. No. 2073/11, or trespassing or interfering with the applicant's land, pending the application and the main suit. The applicant also sought to have the officer in charge of Kiungani Police Station ensure compliance.
2. The grounds are that a survey was conducted on 4/11/2025 by the County Surveyor to establish and align the boundaries between the two parcels of land. Subsequently, it is averred that the applicant fenced off her parcel at the common border, only for the respondent to issue threats to her workers, stopping the exercise.
3. Through a letter dated 11/11/2025, it is deposed that the respondent requested the county forest conservator to authorise the cutting down of trees and vegetation along the boundary of the suit parcels, which would occasion irreparable damage to the applicant.
4. In a replying affidavit sworn on 21/11/2025, the respondent terms the application is misconceived, vexatious, frivolous, and lacking merit, since the dispute falls under the powers of the land registrar.
5. Attaching the deed plan as annexure marked MLM-1, the respondent deposes that the boundary is a fixed boundary delineated in 1952 and has never been altered. Further, the respondent deposes that the applicant served the letter dated 25/7/2025, and marked as annexure MLM-2, informing him that a



- surveyor had confirmed the beacons between the suit parcels, but indicated that the boundary was not clear, and the trees along the boundary ought not to be cut down until the boundary was straightened.
6. The respondent deposes that the applicant unilaterally reported the matter to the county surveyor to fix the boundary, who, through a letter dated 24/10/2025 and annexed as MLM-3, requested the Chief-Barton Location for security during the exercise.
 7. Through a letter dated 29/10/2025 and attached as MLM-4, the respondent deposes that he requested a formal notice for the exercise, proper records, and data from the Director of Surveys, and the use of a theodolite for accuracy. It is deposed that the surveyor confirmed the survey for 4/11/2025, which the applicant did not consent to, as expressed in MLM-5 and MLM-6. Instead, the applicant deposes that vide a letter attached as MLM-7, demanded non-interference with the fencing of her land as indicated in annexures marked MLM-8 and 9.
 8. The respondent deposes that the suit is premature; there are no pending disputes as alleged; he has not threatened anyone, and there are no police reports. The respondent deposes that the applicant has not established a prima facie case; the injury is compensable by way of damages; and no prejudice shall be occasioned if the matter is heard and determined by the land registrar.
 9. Simultaneously, the respondent filed a preliminary objection and grounds of opposition, both dated 21/11/2025. He objects to the jurisdiction of the court to hear and determine the suit by dint of Sections 14 and 19 of the [Land Registration Act](#), and that the suit is an abuse of the court process.
 10. In the grounds of opposition, the respondent opposes the jurisdiction of the court since the suit relates to identifying, fixing, marking, restoring, resolving, and determining the boundary between the suit parcels.
 11. There is no prima facie case that is likely to succeed; the applicant can be adequately compensated in damages; the balance of convenience favours maintenance of the status quo; the survey conducted on 4/11/2025 was biased, unilateral, unreliable, and without legal basis.
 12. For an issue to be considered as a preliminary objection, as held in *Mukhisa Biscuit Manufacturing Co. Ltd -vs- West End Distributors Ltd (1969) EA 696*, it must be a pure point of law which has been pleaded, or arises by clear implication out of pleadings, and which if argued as a preliminary point, it may dispose of the suit.
 13. In *Oraro -vs- Mbaja [2005] 1 KLR 141*, the court observed that a preliminary objection must not be blurred with factual details liable to be contested and, in any event, to be proved through evidence. Any assertion that claims to be a preliminary objection, yet it bears factual aspects calling for proof, or seeks to adduce evidence for its authentication, is not, as a matter of legal principle, a true preliminary objection that should be allowed to proceed.
 14. Therefore, a preliminary objection must be a pure point of law; it must be pleaded by one party and admitted by the other; it must be a matter of law which is capable of disposing of the suit; it must not be blurred by factual details calling for evidence, and finally, it must not call upon the court to exercise discretion.
 15. In the plaint dated 18/11/2025, the plaintiff is seeking, inter alia, to have the survey report dated 5/11/2025 adopted as an order of the court and a permanent injunction restraining the defendant from interfering with the re-established and aligned boundary.
 16. In the grounds of opposition, the respondent argues that the boundary has been in position since 1952. He dismisses the survey exercise conducted on 4/11/2025. He urges the court to maintain the status quo prevailing pending the determination of the dispute by the land registrar.



17. Among the roles of the land registrar under Sections 14, 18, and 19 of the [Land Registration Act](#) is to deal with general boundaries. The deed plan issued in October 1952 indicates the boundary between the two suit parcels. From the survey report, the county land registrar was not among those in attendance.
18. The applicant had engaged surveyors to align the boundary, an exercise which was conducted on 4/11/2025. Although the respondent was present, he disputes the contents of the survey report. It was on the basis of the survey report that the applicant embarked on fencing, which was interrupted by the respondent.
19. The dispute arose upon the request of the respondent, who sought to cut trees on the boundary, and the applicant embarked to fence of her parcel.
20. Neither party comes out clearly to state whether the fencing and the cutting down of trees at the boundary are an encroachment or trespass on either of the parcels of land.
21. The applicant urges the court to restrain the respondent from felling trees, terming it as an irreparable loss. Looking at the report, the trees are not indicated on which side of the boundary they fall. Similarly, there is no indication as to whether the applicant's fence aligned with the boundary.
22. Jurisdiction is everything, as held in Owners of Motor Vessel "Lilian S" -vs- Caltex Oil (Kenya) Limited (1989) KLR 1, and without which a court must not make any step further. It is either conferred by [the Constitution](#) or by statute, and courts cannot arrogate to themselves jurisdiction. See Samuel Kamau Macharia & Another -vs- Kenya Commercial Bank Limited & Others (2012) eKLR.
23. Regulation 40 of the Land Registration (General) Regulations (Legal Notice 278 of 2017) provides for reestablishing a missing boundary or ascertaining a boundary in dispute.
24. 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. 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).
25. 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). In determining a boundary dispute lodged in accordance with paragraph (1), the Registrar shall be guided by the recommendation of the office responsible for the survey of land.
26. 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, decide on the dispute and inform the parties accordingly.
27. 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. Upon expiry of thirty days, the Registrar shall:
 - (a) Cause to be defined by surveying the precise position of the boundaries in question;
 - (b) File a plan approved by the authority responsible for the 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 accurately.



28. A dispute for the 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.
29. In *Nzau -vs- Kemei & 2 others* (Environment & Land Case 70 of 2023)[2025] KEELC 526 (KLR) (12 February 2025) (Ruling), the court held that a dispute regarding general boundaries, the same cannot be determined by a land surveyor or by this court. It can only be determined by the Land Registrar, whose decision is appealable before the court.
30. In the premises and on that basis, I find that the applicant has not met the threshold to warrant injunction orders. In the interest of justice, the status quo prevailing before the survey conducted on 4/11/2025, be maintained.
31. Orders accordingly.

RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 11TH DAY OF FEBRUARY 2026.

In the presence of:

Court Assistant - Dennis

Nabwile for the defendant present

Kimani for the plaintiff present

HON. C.K. NZILI

JUDGE, ELC KITALE.

