

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

ELC CASE NO. 70 OF 2020

TOORYAN ENE SELEMPO.....

PLAINTIFF

-VERSUS-

JOHN LONGEREU OLE NCHOKI.....1ST

DEFENDANT

KAJIADO DISTRICT LAND SURVEYOR.....2ND

DEFENDANT

ATTORNEY GENERAL.....3RD

DEFENDANT

RULING

(On the import of the order of 25th April 2023)

1. The decision by my predecessor M.N. Gicheru J, of 25th April 2023, literally threw a spanner in the works in this case.

Upon the close of the Plaintiff's case, the Learned Judge stated that;

“Upon consideration of the Plaintiff's evidence and also upon perusal of the witness statements by Julius K. Kibuba, District Surveyor dated 27/4/2015, I find that this case is essentially a boundary dispute between L.R. No. Kajiado/Loodariak/870 and Kajiado/Loodariak/63. Consequently, I direct that the District Land Registrar determines the boundary dispute between the two parcels and file a report within 90 days. Parties to be present with their own private surveyors and advocates if they so wish”.

2. Subsequently, on 14th May 2024, a further order was recorded as follows;

“By consent, parties may file new evidence in reaction to the surveyor's report dated 16/6/2023”.

3. I find the above directions intriguing. As I have stated elsewhere, the decision of the Land Registrar on boundary determination is subject to an appeal before this court should any of the parties be aggrieved. By directing that the decision of the Land Registrar be filed as a report before the court, the court patently takes away the statutory right of appeal of any aggrieved party.
4. The procedure of boundary determination under **Rule 40** of the **Land Registration (General Regulations, 2017)** is self-executing, all the way from the lodging of an application to execution of the decision.
5. The best that the court could do, having referred the dispute to the Land Registrar for determination of the boundary dispute, which I hereby do, is to stay further proceedings in this case awaiting the completion of the boundary determination exercise under Rule 40. Thereafter, the parties can come back and prosecute the claim for general damages for trespass sought in the plaint.
6. Therefore, the court hereby stays any further proceedings in this matter awaiting the completion of the boundary

determination exercise under Rule 40. This case will be temporarily closed. Either party is at liberty to move the court accordingly.

It is so ordered.

Dated Signed and Delivered at Kajiado Virtually this 19th Day of February 2026.

**M.D. MWANGI
JUDGE**

In the virtual presence of:

Mr. Namena h/b for Mr. Nyarango for the Plaintiff
Mr. Kuria h/b for Mr. Taliti for the 1st Defendant
N/A by the 2nd Defendant
Court Assistant: Mpoye

**M.D. MWANGI
JUDGE**