



**Waini v Gaturu & 4 others (Environment and Land Case
E028 of 2025) [2026] KEELC 1288 (KLR) (4 March 2026) (Ruling)**

Neutral citation: [2026] KEELC 1288 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA
ENVIRONMENT AND LAND CASE E028 OF 2025**

JM KAMAU, J

MARCH 4, 2026

BETWEEN

MWANGI KAMAU WAINI PLAINTIFF

AND

**SAMUEL WACHIRA GATURU & 4 OTHERS & 4 OTHERS & 4
OTHERS DEFENDANT**

RULING

1. The plaintiff, in the plaint dated 22/9/2025 seeks the following prayers:-
 - a. A Declaration that his parcel of land Nyandarua/malewa /246 measures approximately 9.8 Hectares and that the 1st, 2nd and 3rd Defendants' parcel of land Nyandarua/ Malewa/245 measures approximately 3.7. Hectares.
 - b. A Declaration that the 1st, 2nd and 3rd Defendants have illegally encroached and trespassed onto the Plaintiff's property and have been illegally utilizing 1.75 Hectares of the Plaintiff's property.
 - c. A permanent Injunction do issue restraining the Defendants, their servants, workmen, licensees, agents or any other persons acting on their behalf or instructed by them from interfering with the boundary between Nyandarua/ Malewa/246 and Nyandarua/ Malewa/245 and from interfering whatsoever with the quiet and peaceful possession of the Plaintiff on his parcel of land.
 - d. A mandatory Injunction do issue against the 4th and 5th Defendants compelling the same to enforce the boundary and demarcation between the 2 properties-Nyandarua/ Malewa /246 And Nyandarua/ Malewa/245 as per the R.I.M.
 - e. General damages for trespass.
 - f. Costs of this suit.



- g. Any other relief that this Honourable Court shall deem fit and proper to grant.
8. The Plaintiff avers that the measurements he has indicated for his property above is what is in the Title Documents and the 1st, 2nd and 3rd Defendants' 3.7 Hectares is evidenced in official search.
 2. The Plaintiff purchased the land in the year 1971 from one Samwel Mbogo but his neighbours, 1st, 2nd and 3rd Defendants have been interfering with the boundary by extending it into the Plaintiff's property thus illegally enlarging their portion and have encroached into the Plaintiff's land in the tune of approximately 1.75 Hectares.
 3. The dispute had been referred to the 4th Defendant for determination but who neglected to consider the evidence of the parties and directed that the boundary be maintained as it exists and to continue to serve as the recognized boundary.
 4. Contemporaneously, the Plaintiff filed an Application under Certificate of Urgency seeking that pending the Hearing and determination of the main suit, the Court do issue an order of temporary Injunction restraining the Respondents, their servants, workmen, licensees, agents or any other persons acting on their behalf or instructed by the said Respondents from interfering with the boundary between the properties Nyandarua/ Malewa/246 and Nyandarua/ Malewa/245 and from interfering whatsoever with the said properties.
 5. He repeated the averments in the Plaint and further stated that the 1st, 2nd and 3rd Respondents are the beneficial owners of Nyandarua/ Malewa/245 which is adjacent to his land, Nyandarua/ Malewa/246 and that unless the orders sought herein are granted, the Respondents shall continue to occupy the 1.75 Hectares of the Plaintiff's property and will be illegally interfering with his quiet enjoyment of the same.
 6. He further fears that there is imminent risk that the 1st, 2nd and 3rd Respondents will proceed to develop the said property and/or potentially dispose of the same to the Plaintiff's detriment unless they are restrained.
 7. In the Supporting Affidavit of Mwangi Kamau Waini, sworn on even date an official search and a copy of Title Deed are attached showing that Nyandarua/ Malewa/246 measures 9.8 Hectares. There is also attached a copy of Report of the observations and Hearing of the boundary dispute by S,W Githinji, Land Registrar same dated 9/5/2025 and an R.I.M.
 8. In the Replying Affidavit of Beth Waithira Gatimu sworn on 10/10/2025, the 3rd Respondent depones that she is the administratrix of the Estate of the late Gatimu Wachira vide Grant of letters of Administration intestate issued on 22/8/2019 by the Chief Magistrate's Court, Nyahururu. She says that the Notice of Motion dated 22/9/2025 is incompetent, misconceived, unmerited and an abuse of the Court process and that the same should be dismissed with costs since it does not meet the legal requirements enunciated in Giella -vs Cassman Brown case. She depones that Gatimu Wachira is the registered proprietor of L.R Nyandarua/ Malewa/245 which was allocated to him in 1963 and she has attached to the Replying Affidavit a copy of the allotment letter of parcel No. 1568 dated 21/8/1968 but which does not indicate the acreage of the land.
 9. This is where he lived until his demise on 7/12/2017 and that the boundary on the ground has been in existence since 1971, when the Applicant purchased his land Nyandarua/malewa/246 and erected the current boundary. The 1st, 2nd and 3rd Defendants have buried both parents on the disputed 1.75 Hectares where also their matrimonial home was. There are trees planted thereon together with old stamps. She depones that the boundary dispute was heard by the Land Registrar on 11/3/2025 and found in their (3rd Respondent's) favour and that the Applicant was in agreement with the Decision



and the current claim is thus baseless. She further denies that the Respondents are interfering with the boundary and that they are not interested in the 1.75 Hectares belonging to the Applicant. They agree that the Applicant has not demonstrated that the 1.75 Hectares are being disposed of and that therefore the Application is untenable. She says that the orders issued by this Court on 30/9/2025 suffice and that there has been no demonstration of a prima facie case on the part of the Applicant.

10. Both sets of parties have filed their respective submissions which I have considered before writing this Ruling
11. I have considered the Application and in order not to complicate the matter further I order that since boundary issues are very sensitive the boundary between L.R. No. Nyandarua/malewa/246 and Nyandarua/malewa/245 should not be interfered with and remain as it has always been until further orders of this Court and that the Defendant should not encroach onto the Plaintiff's land L.R. No. Nyandarua/malewa/246. In case it is not certain where the boundary has always been any party is at liberty to move this Court so that the Court can send someone to ascertain the same. The parties herein should also comply with Order 11 of the Civil Procedure Rules within the next 15 days so that the Court can set an early Hearing date. Mention date on the 19/3/2026 for purposes of setting a Hearing date. Status quo to be maintained.

RULING DATED AND DELIVERED AT NYANDARUA THIS 4TH DAY OF MARCH, 2026.

MUGO KAMAU

JUDGE

In the presence of:

C/A Samson.

Plaintiff..... Mr. Rukwaro

Defendant.....Mr. Gicheha.

