



# THE JUDICIARY



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MURANG'A**  
**ELCA NO E006 OF 2025**

**GERISHON MACHARIA MBUI .....APPELLANT**  
**VERSUS**  
**THE LAND REGISTRAR, MURANG'A.....1<sup>ST</sup> RESPONDENT**  
**BENSON NJENGA MARUBU.....2<sup>ND</sup> RESPONDENT**

***(Appeal against the Ruling of the Land Registrar Murang'a in a Boundary Dispute Involving Land Parcels Nos. Loc.11/Muchungucha/265 and Loc.11/Muchungucha/1886 delivered on 22<sup>nd</sup> January, 2025).***

## **JUDGMENT**

- (1) In the memorandum of appeal dated 11-2-2025, the Appellant prays for the following orders.
- 1) **This appeal be allowed.**
  - 2) **The ruling of the 1<sup>st</sup> Respondent dated 22-1-2025 and all consequential orders be set aside and the dispute be determined afresh and or the correct boundary reflecting the correct acreage/size of each parcel as contained in the respective title deeds be determined and maintained.**
  - 3) **In the alternative to the foregoing the court do issue any other order it may deem fit to secure the ends of justice.**
  - 4) **The costs of this appeal be borne by the Respondents.**
- (2) There are eight grounds of appeal.
- i. **The 1<sup>st</sup> Respondent erred in law and in fact by finding and holding that there was encroachment of the 2<sup>nd</sup> Respondent's land No. Loc. 11/Muchungucha/261 by the Appellant's L.R. No. Loc.11/Muchungucha/1886 to an extent of 0.216 hectares.**
  - ii. **The erroneous findings of the 1<sup>st</sup> Respondent that the Appellant's boundary had encroached on the 2<sup>nd</sup> Respondent's parcel led to the 1<sup>st</sup> Respondent unreasonably hiving off the Appellant's land parcel No. 1886 and reduced it by 0.1804 hectares.**

- iii. The erroneous finding of the 1<sup>st</sup> Respondent and the subsequent shifting of the existing boundary increased the 2<sup>nd</sup> Respondent's parcel No. 265 by an area of 0.0526 of an acre than it is supposed to be as per the Registry Index Map and the size of the title.**
- iv. The 1<sup>st</sup> Respondent erred in failing to ascertain the actual acreage of each of the two parcels of land as shown on the respective title deeds and ensure that the sizes of the parcels on the ground correspond to the sizes stated on the respective title deeds.**
- v. The 1<sup>st</sup> Respondent erred in law and in fact by failing to consider the existing boundary markers and historical documentation including the land adjudication maps, the area described on the Appellant's title deeds and therefore arriving at an erroneous decision.**
- vi. The 1<sup>st</sup> Respondent erred by not conducting a proper ground verification before authorizing the boundary changes and therefore arriving at the wrong decision.**
- vii. The 1<sup>st</sup> Respondent erred in law since his decision contravenes the provisions of Section 15, 18 and 20 of the Land Registration Act.**
- viii. The 1<sup>st</sup> Respondent did not adjudicate the dispute impartially and was influenced by extraneous factors.**

(3) The facts of the case according to the Appellant are as follows. Firstly, the Appellant is the registered owner of L.R. No. Loc. 11/Muchungucha/1886. It measures 1.13 Ha. Secondly on 10-12-2024, the 1<sup>st</sup> Respondent visited L.R. No. 1886 at the request of the 2<sup>nd</sup> Respondent who owns the adjacent parcel No. Loc.11/Muchungucha/265. Before this there was no reported dispute between the two parcels. Three, after visiting the ground, hearing the parties and carrying out a survey of the suit parcels as well other neighbouring parcels, the 1<sup>st</sup> Respondent prepared a report dated 22-1-2025. Dissatisfied with the report which proposed to reduce the size of the Appellant's land, the Appellant hired one Grishon Kamau Chege, a licenced surveyor to confirm the correctness of the exercise by the Government Surveyor. The surveyor hired by the Appellant noted he followed discrepancies. One, while the tile deed for parcel No. Loc.11/Muchungucha/349 shows the size to be 7.1 acres, the proposed adjustments would reduce its size to 6.940 acres. Parcel number 349 is the one that the Appellant's parcel No. 1886 mutated from. Two, L.R. No. 1886 which shares the biggest

boundary with L.R. No. 265 would lose 0.0526 Ha. to L.R. No. 265. Three, the size of L.R. No. 265 which according to the title deed is 4.1. acres would increase to 4.23 acres.

For the above stated reasons, the Appellant proposes that L.R No. 265 should relinquish 0.0526 Ha or 0.1300 acres to parcel No. 1886 to compensate for the reduction to bring the size of L.R No. 1886 to 1.002 Ha. which is arrived at by adding 0.9496 Ha to 0.0526 Ha.

- (4) The facts of the case according to the 2<sup>nd</sup> Respondent are as follows. Firstly, the Appellant was present during the boundary demarcation process and participated in the proceedings that culminated in the registrar's findings and marking of the boundaries. Secondly, before the determination of the boundary by the Land Registrar, the Appellant had already fenced his property and his land was within his fence and he took the appropriate action of removing the illegal fence that had been erected by the Appellant. Thirdly, the boundary dispute is not new because it existed before the 2<sup>nd</sup> Respondent's father's demise. The Appellant has previously opposed the findings by several surveyors. Finally, the orders sought by the Appellant are untenable because the decision of the Land Registrar dated 22-1-2025 was made in strict compliance with Sections 18 and 19 of the Land Registration Act.
- (5) On 9-2-2026, the Principal Surveyor from the Ministry of Lands Murang'a appeared before Court in obedience to summons issued by this Court, *suo moto*. His evidence was to the following effect. Firstly, L.R. No. 1886 had shorter measurements on the lower side in comparison to the Registry Index Map measurements. Secondly, it was necessary that the boundaries for L.R. Nos. 1886, 1887, 1143 and 1509 be reestablished because they are not in the correct position as compared to the Registry Index Map measurements. Thirdly he agrees that the size of L.R. No. 1886 has reduced and the size of L.R. No. 265 has increased.
- (6) Counsel for the parties filed written submissions dated 11-6-2025 and 21-7-2025. Both counsel are agreed on the issues for determination.
- (i) **Whether the 1<sup>st</sup> Respondent erred in law and fact by finding encroachment by the Appellant and acted in excess of jurisdiction in altering the registered acreage of the Appellant's parcel.**
  - (ii) **Whether the Registrar's ruling complied with the procedural requirements of the Land Registration Act.**

**(iii) Whether this Court should set aside the impugned ruling and grant the reliefs sought.**

(7) I have carefully considered the Appeal in its entirety including the grounds, the record of appeal, the proceedings of 9-2-2026, the written submissions by learned counsel for the parties, the issues raised therein as well as the law relied upon. I make the following findings on the three issues raised by the parties.

(8) On the first issue, I find that the 1<sup>st</sup> Respondent erred in making a finding that resulted in the

reduction of the size of the Appellant's land No. 1886 and an increase in size of the land belonging to the 2<sup>nd</sup> Respondent being L.R. No. 265. No justification has been given by the Land Registrar for such reduction and increment in the respective sizes of the two parcels. The registrar had the chance to ensure that neither party lost any land but chose to make the Appellant lose part of his land. The absence of reasons for this action of the registrar is what calls for the finding of error on the part of the 1<sup>st</sup> Respondent.

(9) As for the 2<sup>nd</sup> issue, I find that the absence of reasons for the reduction of the size of the Appellant's land means that the decision of the 1<sup>st</sup> Respondent cannot be justified under any known law. If there was any law allowing such action, it would have been mentioned in the ruling dated 22-1-2025.

(10) Finally, under **regulation 40 paragraph 6** of the **Land Registration (General) Regulations 2017** it is provided as follows.

**“ 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.”**

This is the provision which gives the Court power to adjudicate over a decision of the Land Registrar. Under **Article 47(2)** of the Constitution, it is a requirement that if a person's rights are adversely affected, there must be reasons given to the affected parties and such reasons must be written. In this case, no reasons were given by the 1<sup>st</sup> Respondent for the reduction in size of the Appellant's land.

(11) For the above stated reasons, I find merit in the appeal and I order as follows.

**(1) The Appellant's appeal dated 11-2-2025 is allowed.**

(2) The ruling of the 1<sup>st</sup> Respondent dated 22-1-2025 and all consequential orders are set aside and the dispute to be determined afresh and the correct boundary reflecting the correct size of each parcel as contained in the respective title deeds to be determined and maintained.

(3) The costs of this appeal to be borne by the Respondents.

It is so ordered.

Dated, signed and Delivered virtually at Murang'a this 23<sup>rd</sup> day of March, 2026.

**M.N. GICHERU**  
**JUDGE.**

**Delivered online in the presence of; -**

Court Assistant – Muturi

Appellant's Counsel – Mr Wanjohi

2<sup>nd</sup> Respondent's Counsel – Miss Wahito