

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA**  
**ELCLC No. E019 OF 2025**

**CHARLES OKEMWA NYARANGI .....**  
**PLAINTIFF**

**VERSUS**

**NICHOLAS ONSOMU OYARO .....**  
**1<sup>ST</sup> DEFENDANT**

**PRISKA KERUBO OKONGO .....**  
**2<sup>ND</sup> DEFENDANT**

**LUZARUS OYONDI NYAKERAKA .....**  
**3<sup>RD</sup> DEFENDANT**

**DAMARIS KEMUNTO ONDIEKI .....**  
**4<sup>TH</sup> DEFENDANT**

**HEZRON MARANGA OTWORI ..... 5<sup>TH</sup>**  
**DEFENDANT**

**JOSEPH KIANGOI OMBASA .....**  
**6<sup>TH</sup> DEFENDANT**

**JOHN OMBASA .....**  
**7<sup>TH</sup> DEFENDANT**

**LAND REGISTRAR NYAMIRA COUNTY ..... 8<sup>TH</sup>**  
**DEFENDANT**

**THE COUNTY SURVEYOR NYAMIRA COUNTY ..... 9<sup>TH</sup>**  
**DEFENDANT**

**THE ATTORNEY GENERAL ..... 10<sup>TH</sup>**  
**DEFENDANT**

**RULING**

1. The Plaintiff moved the Court through Plaint dated 26<sup>th</sup> June 2025 in which he averred that he together with his late “wife brother Sofia Ayiemba Charana” were the registered proprietors of the parcel of land known as West

Mugirango/Nyamaiya/3725 which was originally known as West Mugirango/Nyamaiya/1796 (suit property) and that during subdivision of the suit property, his family discovered massive encroachment thereon by the 1<sup>st</sup> to 7<sup>th</sup> Defendants.

2. The Plaintiff further averred that upon the discovery, they approached the 8<sup>th</sup> and 9<sup>th</sup> Defendants for assistance in establishing the correct boundaries and beaconing of the suit property, but the 8<sup>th</sup> and 9<sup>th</sup> Defendants declined to do so claiming that there was a pending matter being ELC No. 68 of 2021 Priska Kerubo Okongo v Kennedy Ongaga Morande & 2 Others. He averred that the claim was not true since the matter had been concluded. He therefore sought judgment against the Defendants for:

- 1. An order of eviction of the Defendants from a portion of L.R Number West Mugirango/Nyamaiya/3725 was originally L.R Number West Mugirango/Nyamaiya/1796.*
- 2. An order directing the County Surveyor to do a visit on L.R Number West Mugirango/Nyamaiya/3725 was originally LR Number West Mugirango/Nyamaiya/1796 and fix the boundary thereof.*
- 3. An order of permanent injunction against the Defendants by themselves and/or agents from use and occupation of L.R Number West Mugirango/Nyamaiya/3725 was originally LR Number West Mugirango/Nyamaiya/1796.*
- 4. General damages*

5. *Mesne profits.*

6. *Cost of this suit and interest thereon.*

3. Together with the Plaint, the Plaintiff filed Notice of Motion dated 26<sup>th</sup> June 2025, which is the subject of this ruling. The following orders are sought in the application:

1. *This Application be certified urgent be heard at first instance and service of summons be dispensed with.*

2. *Pending hearing and determination of this Application this Honorable (sic) Court be pleased to issue injunction to restrain the Defendants by themselves, their servants, auctioneers, receivers' agents or any of them or otherwise from transferring, trespassing, erecting structures and/or in whatsoever manner interfering with the suit property known as L.R Number West Mugirango/Nyamaiya/3725 was originally LR Number West Mugirango/Nyamaiya/1796.*

3. *Pending hearing and determination of the main suit, this Honorable (sic) Court be pleased to issue injunction to restrain restrain (sic) the Defendants by themselves, their servants, auctioneers, receivers' agents or any of them or otherwise from transferring, trespassing, erecting structures and/or in whatsoever manner interfering with the suit property known as L.R Number West Mugirango/Nyamaiya/3725 was originally L.R Number West Mugirango/Nyamaiya/1796.*

4. *The nearing (sic) Police Station in Nyamaiya to ensure compliance.*
  5. *The cost of this Application be borne by the 1<sup>st</sup> to 7<sup>th</sup> Defendants.*
4. The application is based on the grounds listed on its face and is supported by an affidavit sworn by the Plaintiff/Applicant. He deposed that that he together with his late “wife brother Sofia Ayiemba Charana” were the registered proprietors of the suit property. He rehashed the averments in the Plaint and added that it was in the interest of justice that the orders sought be granted.
  5. The 8<sup>th</sup> to 10<sup>th</sup> Defendants filed Grounds of Opposition dated 26<sup>th</sup> February 2026 raising the following grounds:
    1. *THAT this Honourable Court is devoid of jurisdiction to entertain the said Application by virtue of the mandatory provisions of section 18 (2) of the Land Registration Act (No. 3 of 2012) and as such, the same is a non-starter, incurably bad in Law and fatally defective.*
    2. *THAT the issuance of the orders sought in the Application is tantamount to interfering with the Statutory duties of the 8<sup>th</sup> and 9<sup>th</sup> Respondents set out in the Land Registration Act (No. 3 of 2012) and the Survey Act (Cap. 299, Laws of Kenya) respectively.*
    3. *THAT the injunctive orders sought in the Application contravene the mandatory provisions of Order 29, rule 2*

*(2) (d) of the Civil Procedure Rules, 2010 as read together with section 16 (2) of the Government Proceedings Act (Cap. 40 Laws of Kenya).*

*4. THAT the Applicant lacks the requisite locus standi to institute and maintain the present Application and suit since he is not the registered proprietor of the suit property known as L. R. No. West Mugirango/Nyamaiya/3725 and he has not acquired any lawful proprietary interest thereto.*

*5. THAT the Application is not supported by factual evidence and/or law.*

*6. THAT the Application lacks merit and amounts to a complete abuse of the Court process.*

6. The Plaintiff was given several opportunities to serve the 1<sup>st</sup> to 7<sup>th</sup> Defendants but did not provide satisfactory evidence of service. The affidavit of service filed in respect of the proceedings of 5<sup>th</sup> March 2026 which were the last proceedings before this ruling states that service was effected on “22<sup>nd</sup> October” but does not specify the year. It is noteworthy that the date of 5<sup>th</sup> March 2026 was given on 23<sup>rd</sup> February 2026 and that valid service in respect of the proceedings of 5<sup>th</sup> March 2026 could only be effected after 23<sup>rd</sup> February 2026. There being no valid service in respect of the 1<sup>st</sup> to 7<sup>th</sup> Defendants, the application is dismissed as against the said Defendants.

7. The application was canvassed through written submissions. The Plaintiff filed submissions dated 20<sup>th</sup> January 2026 while the 8<sup>th</sup> to 10<sup>th</sup> Defendants filed submissions dated 26<sup>th</sup> February 2026.
8. The Plaintiff submitted that the Court has jurisdiction and that the dispute is not a boundary dispute but one of encroachment. Reliance was placed on the case of **Githinji & another v Wairimu & 4 others (Land Case E179 of 2025) [2025] KEELC 7554 (KLR) (3 November 2025) (Ruling)**.
9. The Plaintiff further submitted that the 1<sup>st</sup> to 7<sup>th</sup> Defendants had encroached on the suit property, that he had established a *prima facie case* and he would suffer irreparable injury if the orders sought were not granted. He added that the balance of convenience tilted in his favour. Relying on the case of **Nguruman Limited v Jan Bonde Nielsen & 2 Others [2014] eKLR**, he urged the Court to allow the application.
10. On their part, the 8<sup>th</sup> to 10<sup>th</sup> Defendants submitted that the Plaintiff's case was premised on alleged encroachment on the suit property and that in a letter dated 9<sup>th</sup> September 2022 which the Plaintiff had annexed, the 8<sup>th</sup> Defendant referred to a boundary dispute. That in another letter dated 16<sup>th</sup> October 2024 which the Plaintiff had also annexed, there was a complaint by the Plaintiff that the 8<sup>th</sup> Defendant had failed to issue a report following a re-survey.
11. Consequently, the 8<sup>th</sup> to 10<sup>th</sup> Defendants submitted that the Plaintiff's case was a boundary dispute and that the Court

lacked jurisdiction in view of **Section 18 (2)** of the **Land Registration Act**. Reliance was placed on the case of **Geoffrey Muthinja & another v Samuel Muguna Henry & 1756 others [2015] eKLR** in support of those submissions.

12. The 8<sup>th</sup> to 10<sup>th</sup> Defendants further relied on **Giella -vs- Cassman Brown & Co Ltd [1973] EA 358** and **Nguruman Limited v Jan Bonde Nielsen & 2 Others [2014] eKLR** and submitted that the Plaintiff had failed to establish a *prima facie* case or even to demonstrate that he would suffer irreparable injury.

13. I have carefully considered the application, the grounds of opposition and the submissions. The issues that arise for determination are whether the Court has jurisdiction and if so, whether the reliefs sought in the application should issue.

14. The question of jurisdiction is one that pervades all judicial proceedings. As has often been restated by the Courts, jurisdiction is the entry point in any matter that a Court is called upon to determine. It is the very life and soul of any proceedings, without which the proceedings come to a certain end. See **Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] eKLR** and **Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others [2012] eKLR**.

15. Where there is no jurisdiction, the case itself and everything else in the proceedings are dealt a fatal blow. See **Phoenix of E.A. Assurance Company Limited v S. M. Thiga t/a**

**Newspaper Service [2019] eKLR.** It does not matter that the Court or parties proceed in good faith, even if in the hope of doing justice.

16. The holding of the Court of Appeal in **National Social Security Fund Board of Trustees vs. Kenya Tea Growers Association & 14 Others [2023] KECA 80 (KLR)** succinctly drives the point home thus:

***Jurisdiction, a mantra in adjudication connotes the authority or power of a court to determine a dispute submitted to it by contending parties in any proceeding. A Court of law is invested with jurisdiction to hear a matter when: (a) it is properly constituted as regards numbers and qualifications of members of the bench, and no member is disqualified for one reason or another; (b) the subject matter of the case is within its jurisdiction, and there is no feature in the case which prevents the Court from exercising its jurisdiction; and, (c) the case comes before the Court initiated by due process of law, and upon fulfilment of any condition precedent to the exercise of jurisdiction. The three ingredients must co-exist in order to infuse jurisdiction in a Court. Where a Court is drained of the jurisdiction to entertain a matter, the proceedings flowing from it, no matter the***

***quantum of diligence, dexterity, artistry, sophistry, transparency and objectivity injected into it, will be marooned in the intractable web of nullity.***

17. The 8<sup>th</sup> to 10<sup>th</sup> Defendants have contended that the Court lacks jurisdiction in view of **Section 18 (2)** of the **Land Registration Act**. The section provides:

***The court shall not entertain any action or other proceedings relating to a dispute as to the boundaries of registered land unless the boundaries have been determined in accordance with this section.***

18. The foregoing provision expressly bars this Court from entertaining any action or other proceedings relating to a dispute as to boundaries of registered land unless the boundaries have been determined in accordance with **Section 18** of the Act.

19. The Court of Appeal held in **Azzuri Limited v Pink Properties Limited [2018] eKLR** as follows regarding the application of **Section 18** of the **Land Registration Act, 2012**:

***[22] This means that under the aforesaid provisions, boundary disputes pertaining to lands falling within general boundary areas must be referred to the Land Registrar for resolution;***

***while disputes pertaining to lands with fixed boundaries may be investigated and possibly resolved simply through a surveyor. ...***

***In this case, reference of the dispute to the Environment and Labour Court at first instance was proscribed by statute and on that account alone, the appellant's case was a nonstarter. Although this matter would have rested on this point of jurisdiction, we will deal with the issue of evidence purely because counsel made submissions on the same and there was a determination by the Judge.***

20. A reading of paragraphs 5 and 7 of the Plaint herein reveals a boundary dispute. Specifically at paragraph 7, the Plaintiff averred that the 8<sup>th</sup> and 9<sup>th</sup> Defendants “declined to carry out the survey to establish the correct boundaries and beaconing” of the suit property. Prayer 2 of the Plaint leaves no doubt that this is a boundary dispute since it seeks an order for fixing of the boundary. The other prayers for eviction, permanent injunction, general damages and mesne profits are direct offshoots of the boundary dispute. They cannot stand on their own if the boundary dispute is not resolved. The Court lacks jurisdiction to hear and determine the suit and the application.

21. In view of my holding that the Court lacks jurisdiction, I strike out the suit with costs to the 8<sup>th</sup> to 10<sup>th</sup> Defendants.

**Dated, signed, and delivered at Nyamira, this 22<sup>nd</sup> day of April 2026.**

**D. O. OHUNGO  
JUDGE**

Delivered in the presence of:

Ms Amisi holding brief for Mr Osero for the Plaintiff

No appearance for the 1<sup>st</sup> to 7<sup>th</sup> Defendants

Mr Ndiritu for the 8<sup>th</sup> to 10<sup>th</sup> Defendants

Court Assistant: B Kerubo