

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NAKURU**  
**ELCA NO. E023 OF 2025**

EUNICE NJAMBI THUKU.....APPELLANT

VERSUS

ALL NATIONS SPRINGS

OF LIFE CHURCH.....RESPONDENT

*(Being an appeal from the decision of the Land Registrar N.N Nyangena delivered on  
1<sup>st</sup> April, 2025 in Nakuru Registry)*

**JUDGMENT**

1. This appeal arises from a ruling delivered on 1<sup>st</sup> April, 2025, by the Land Registrar N.N. NYANGENA in Nakuru Registry. The Appellant being aggrieved by the said decision, lodged an Amended Memorandum of Appeal dated 6<sup>th</sup> May, 2025, and listed the following grounds:

- 1) That the Land Registrar’s decision to retain scaled distances while amending the RIM to reflect the ground situation is inconsistent and prejudicial, as it fails to resolve discrepancies between the ground measurements and the RIM resulting in encroachment onto the Appellant’s land.*
- 2) That the Land Registrar erred in law and in fact by ordering the amendment of the RIM to reflect the ground without conducting a proper survey to verify the accuracy of the ground features*

*against the original cadastral records for Land Parcel No. BAHATI/ENGORUSHA BLOCK 1/780.*

- 3) That the decision to amend the RIM will prejudice the Appellant by altering the boundaries of Land Parcel No. BAHATI/ENGORUSHA BLOCK 1/780 in favour of the Respondent, thereby reducing the Appellant's lawful entitlement to 0 0368 Hectares as per the original title deed.*
- 4) That the Land Registrar erred in law and in fact by failing to consider evidence that the boundary between land parcel No BAHATI/ENGORUSHA 779 and 780 was altered without proper survey as per the RIM.*
- 5) The Land Registrar erred in law and in fact by failing to order a survey of the whole block comprising of parcel Nos 783,782,781,780, 779 and 938.*
- 6) The Land Registrar erred in law and in fact by failing to consider that the access road created to give access to parcel Nos 779 was never amended in the RIM.*
- 7) The Land Registrar erred in law and in fact, when she failed to make a determination that the access road created for parcel No779 had been curved out of the Appellant's parcel No 780.*
- 8) The Land Registrar erred in law and in fact by failing to make a finding that the respondent had encroached and or blocked the*

*access road leading to parcel No 799 780 which led to the creation of another access road and consequently encroaching onto the Appellant's land.*

*9) The Land Registrar erred in fact and in law in failing to find the Respondent had deliberately altered the boundaries of its land by encroaching onto the access road and blocking it thereby creating a larger parcel of land for themselves contrary to the measurements on their title deed and the RIM.*

*10) The Land Registrar erred in fact and in law when she failed to consider that parcel No. 780 already had another access road at the front and did not require another access road from the back and which access road had the effect of eating/encroaching into the appellants land.*

2. A brief background to this appeal is that the Appellant had filed a boundary dispute at the Nakuru Land Registry involving two parcels of land **Bahati/Engoshura Block 1/780** and **Bahati/Engoshura Block 1/938** belonging to the Appellant and Respondent respectively.

3. The Land Registrar and Regional Surveyor conducted a site visit and the matter was heard where the Land Registrar held that the Registry Index Map (RIM) is

to be amended to reflect the new road on the ground, which led to the filing of this appeal.

#### **APPELLANT'S SUBMISSIONS**

4. Counsel for the Appellant filed submissions dated 16<sup>th</sup> January 2026, gave a brief background to the Appeal and submitted that the Appellant filed a boundary dispute involving two parcels of land known as **Bahati/Engoshura Block 1/780**, and **Bahati/Engoshura Block 1/938**, belonging to the Appellant and the Respondent respectively before the Land Registrar.
5. Counsel stated that on 6<sup>th</sup> February 2025, the Land Registrar visited the ground, where the Appellant, Respondent, Surveyors from the Nakuru Regional Office and other people were present. It was counsel's submission that the Land Registrar made a decision after hearing the parties which is the subject of this appeal.
6. Counsel further submitted that the Appellant's main issue was the creation of the access road that was curved from the Appellant's parcel of land thus reducing its size, which road was never captured in the map. Further, the access road leading to parcel No. 779, has been blocked/encroached by the Respondent.

7. Ms. Gatei relied on Section 9 of the Public Roads and Roads Access Act and submitted that there was no evidence that due process was followed in creation of the road. Counsel further submitted that the Land Registrar went beyond her mandate and made an erroneous decision by allowing illegal creation of a road.
8. Ms. Gatei relied on the case of **Kipkirui Arap Koske V Philemon Kipigei Tangus & Another (2015) KEELC 295 (KLR)** and submitted that the Land Registrar erred in law and in fact when she confirmed that boundaries on the ground and ordered for the amendment of the RIM. Counsel also stated that the Land Registrar did not take into account that the boundaries were altered as a result of the illegal creation of the road thus altering the already existing boundaries.
9. It was counsel's further submission that the Land Registrar failed to consider that there was already an existing public access road leading to parcel 779 on the RIM thus arriving at an erroneous decision, by illegally creating another access road to Plot No 779.
10. Counsel also cited the case of **Leonard Roipa Rorian Pasha v Elijah Tiende Ole Kula & 3 others [2015] KEELC 775 (KLR)**, and submitted that the Land Registrar failed to take into account when the original boundaries were

created, and went on to confirm only what was on the ground without conducting an investigation on prior boundaries as existed when the land was delineated.

11. According to counsel, the Land Registrar's decision was prejudicial to the Appellant since she did not include all the parties affected by the decision in the proceedings. Further that the creation of the access road was done in 2008, in the absence of the Appellant, thus not having the opportunity to be heard, and relied on Section 4 of the Fair Administrative Action Act 2015. Counsel therefore submitted that the Land Registrar's decision should be set aside and another Land Registrar or Chief Land Registrar be ordered to revisit the dispute and determine the boundaries de novo.

#### **RESPONDENT'S SUBMISSIONS**

12. Counsel for the Respondent filed submissions dated 11<sup>th</sup> February 2026 and gave a background to the dispute. Counsel submitted that the Appellant did not adduce any evidence to show that the Respondent had encroached on her land. The Respondent stated that the access road was created by the administrative action of the Land Registrar and public demand.
13. Mr. Kamau submitted that this court has jurisdiction to hear and determine boundary issues as provided for under **Section 13** of the **Environment and**

**Land Act.** However, the Land Registrar on the other hand, had the jurisdiction to determine general boundaries dispute as stipulated under **Section 18(2)** of the **Land Registration Act.**

14. It was counsel's submission that the RIM indicates the approximate boundaries on the ground and if this court was to hear and determine such, it would require the technical advice from the Land Registrar and the District Surveyor who are not parties to the suit and relied on the case of **Agogo V Jassor (Environment and Land Appeal E002 of 2025) [2026] KEELC 414 (KLR).**
  
15. Mr. Kamau also submitted that the Appellant has not enjoined the Land Registrar in this suit who has the mandate to resolve the boundary dispute and whose ruling gave rise to the instant Appeal. Counsel further submitted that there was no evidence that the access road was created by the Respondent as the road was a creation of the law and cited the case of **Charter House Bank Limited V Frank N. Kamau [2016] eKLR** and **Sections 139 to 144** of the **Land Act.**
  
16. In conclusion, counsel urged the court to dismiss the Appeal with costs as it lacks merit.

### **ANALYSIS AND DETERMINATION**

17. This appeal arises from the decision of the Land Registrar dated 1<sup>st</sup> April 2025, whereby the Appellant contends that the same created an illegal access road curved from his parcel of land known as Bahati/Engoshura Block 1/780, without following due process.
18. The Respondent stated that the access road was created by the administrative action of the Land Registrar and public demand, therefore it was legal. The Respondent further stated that by virtue of the RIM indicating approximate boundaries, the court will need the technical expertise of a Surveyor and Land Registrar who are not parties to this case.
19. The issues for determination are whether the Land Registrar erred in law and fact when she confirmed the boundaries on the ground and ordered the amendment of the RIM. Whether the Land Registrar took into account the altered boundaries upon creation of the contested access road and whether there was an existing public access road leading to parcel No. 779 on the RIM. The other issue is whether non-joinder of a Land Registrar to this suit is fatal.

20. The background to the dispute is that the Appellant filed a boundary dispute involving two parcels of land known as **Bahati/Engoshura Block 1/780** and **Bahati/Engoshura Block 1/938**, belonging to the Appellant and the Respondent respectively before the Land Registrar. That on 6<sup>th</sup> February 2025, the Land Registrar visited the ground, whereby the Appellant, Respondent, Surveyors from the Nakuru Regional Office and other people were present, subsequently the Land Registrar made a decision which is the subject of this Appeal
  
21. The dispute was heard and determined by the Land Registrar N.N. Nyangena, and issued a report dated 1<sup>st</sup> April, 2025, whereby the Land Registrar found that the ground measurement by the Surveyor vis a visa the RIM scaled measurements did not tally. The land Registrar also found that implementation of the scaled distance would affect the already existing boundaries and displace parcel No. 779 that had a permanent house with no boundary issue, and therefore directed that the amendment of the RIM was to reflect the position on the ground.
  
22. Counsel for the Respondent raised a pertinent issue of non-joinder of the Land Registrar in this appeal as a person whose decision is being appealed against. The non-joinder of the Land Registrar as a party to this suit is a procedural irregularity but may not be fatal. This an appeal and not a judicial Review.

23. Sections 18 and 19 of the Land Registration Act, 2012, provide for establishment and fixing of boundaries whenever there is a dispute concerning the boundary of any land registered under the Act. Indeed Section 18(2) of the Act, divests Courts of jurisdiction to handle disputes relating to boundaries as follows:

***(2) 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.***

24. Section 19 of the Act provides in an elaborate manner the procedure the Land Registrar has to follow in the establishment and ascertainment of any disputed boundary, as follows:

***19. (1) if the Registrar considers it desirable to indicate on a field plan approved by the office or authority responsible for the survey of land, or otherwise to define in the register, the precise position of the boundaries of a parcel or any parts thereof, or if an interested person has made an application to the Registrar, the Registrar shall give notice to the owners and occupiers of the land adjoining the boundaries in question of the intention to ascertain and fix the boundaries.***

***(2) The Registrar shall, after giving all persons appearing in the register an opportunity of being heard, cause to be defined by survey, the precise position of the boundaries in question, file a plan containing the***

*necessary particulars and make a note in the register that the boundaries have been fixed, and the plan shall be deemed to accurately define the boundaries of the parcel.*

*(3) Where the dimensions and boundaries of a parcel are defined by reference to a plan verified by the office or authority responsible for the survey of land, a note shall be made in the register, and the parcel shall be deemed to have had its boundaries fixed under this Section.*

25. The above sections empower the Land Registrar to resolve boundary disputes, confirm and amend common boundaries. It is the Land Registrar's mandate to handle disputes relating to general boundaries, but must follow the laid down procedures, the law and in consultation with the survey office which has the technical expertise in survey.
  
26. It is not in dispute that there was a report by the Regional Surveyor Nakuru dated 12<sup>th</sup> February, 2025, where he recommended amendment of the RIM to reflect the existing boundaries on the ground. It is further not disputed that the Land Registrar was guided by the surveyor's report in arriving at her decision. It was the Land Registrar's observations, that the fences between the parcels of land were intact and that the access road that had been earlier created had not been captured in the RIM.

27. From the report the Land Registrar admitted that the RIM did not tally with what was on the ground and that there was a need to create a public access road administratively. In the case of **Abdalla Mohamed Salim & another v Omar Mahmud Shallo & another [2014] KEHC 5389 (KLR)** the court held as follows:

*“The type of survey that generated the Registry Index Maps is what was known as “general boundaries” which has been defined in section 18(1) of the Land Registration Act, 2012 to mean “the approximate boundaries and the approximate situation only of the parcel.” Indeed, most of the titles under the repealed Registered Land Act were issued on the basis of the general boundaries, meaning that such parcel of land had no fixed beacons.”*

28. Further, in **Samuel Wangau V AG & 2 others (2009) eKLR** the court held that:

*“However, it is common ground that such maps (R.I.M) are not authorities on boundaries. Both the District Land Registrar and the District Land surveyor said as much...It means therefore that when and where there is a dispute as to the position and location of a boundary as in this case, unless the same is a fixed boundary, one has to go beyond the R.I.M in solving the dispute.”*

29. It is trite law that general boundaries are indefinable using existing physical features and where the same is not present as in the present case, the views of the owners of adjacent plots must be included and consulted.

30. In the case of **Karanja v District Land Surveyor Nakuru District & another (Environment and Land Case 583 of 2013) [2025] KEELC 5179 (KLR)**, the court held that:

*“Section 18 of the repealed Registered Land Act Cap 300 Laws of Kenya, referred to the Registry Index Map, (RIM) to mean a map or series of maps prepared and maintained by the Director of Surveys for every registration district. Notably the Registry Index Map shows the outlines of individual parcels in a given area using general boundaries which are not coordinated. RIM on general boundaries give approximations regarding the positions of parcels of land which are demarcated by natural or man-made features like hedges, ditches, walls, pillars, fences, or stones, and whose boundary lines are inaccurate and not legally binding. In addition, it is used to identify on the ground a plot shown on the register; assist in the relocation of a boundary should it be lost and enable effecting subdivision.”*

31. The Appellant claimed that she was not present during the hearing and at the time the Land Registrar made her decision. She also claimed that the Land Registrar never heard all the parties affected thus her decision was contrary to the constitutional provisions of the right to fair administrative hearing.
32. The issue under review emanated from a boundary dispute which culminated in a decision that affected the Appellant's right where her land was reduced in size without following proper laid down procedures. The creation of an access, which purportedly reduced the Appellant's parcel of land, was prejudicial and erroneous.
33. Regulation 40 and 41 of the Land Registration (General) Regulations, 2017 lay the down the procedure to be followed in making an application for re-establishment of boundaries, as follows:
- “1. 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.***
- 2. 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 resolution of the dispute if a person has complied with paragraph (1).***

- 3. The Registrar shall notify the office responsible for survey of land of the intended hearing of a boundary dispute and require their attendance if a person has complied with paragraph (1).*
- 4. In determining a boundary dispute lodged in accordance with paragraph (1), the Registrar shall be guided by the recommendation of the office responsible for survey of land.*
- 5. 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, make a determination of the dispute and inform the parties accordingly.*
- 6. 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.*
- 7. Upon expiry of thirty days, the Registrar shall —*
  - (a) cause to be defined by survey the precise position of the boundaries in question;*
  - (b) file a plan approved by the authority responsible for 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.*

*8. A dispute for 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.”*

34. There is no evidence that this elaborate procedure was adhered to by the Land Registrar in handling the boundary dispute.
35. The upshot is that the appeal has merit and is therefore allowed as prayed with each party bearing their own costs. The Land Registrar’s decision is hereby set aside and a fresh hearing of the dispute is to be scheduled before another Land Registrar other than N. N. Nyangena within 30 days.

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 21<sup>ST</sup>  
DAY OF APRIL 2026.**

**M. A. ODENY  
JUDGE**