



REPUBLIC OF KENYA



KENYA LAW
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**Ooruko v Otenyo & 2 others (Environment and Land Case
221 of 2015) [2025] KEELC 5527 (KLR) (23 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5527 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT AND LAND CASE 221 OF 2015**

**A NYUKURI, J
JULY 23, 2025**

BETWEEN

JACKSON OMUYUNJI OORUKO PLAINTIFF

AND

ISAAC OTENYO 1ST DEFENDANT

LAND REGISTRAR 2ND DEFENDANT

THE ATTORNEY GENERAL 3RD DEFENDANT

RULING

Introduction

1. Before court is a Notice of Motion dated 7th October 2024 brought under sections 1A, 3 and 3A of the [Civil Procedure Act](#), and filed by the plaintiff seeking the following orders;
 - a. That as per the findings and recommendations of the Land Registrar the government surveyor/ and or the county surveyor do visit land parcel Nos Marama/Inaya/1219 and 1221.
 - b. That in the process of amending the map the county surveyor do consider among other things the land purchase agreement of the 1st defendant for what is now known as land parcel No. Marama/Inaya/1221 and the applicant's agreement for purchase of road access dated 18th February 2005
 - c. That costs hereof be in the cause
2. The application is predicated on the supporting affidavit sworn by the applicant on 7th October 2024. The applicant's case is that the Land Registrar visited parcel Nos. Marama/Inaya/1219 and 1221 and prepared a report. That the Registrar made a recommendation that "an amendment to be done by the government surveyor for the actual reflection on the ground to the map".



3. Further that the 1st defendant is owner of parcel No. Marama/Inaya/1219 measuring 0.02 hectares having purchased land measuring 10 feet by 100 feet from the original owner. That the applicant bought a road of access measuring “75 by 22” from the same land owner. That he was informed that the correct measurement ought to be 0.01 hectares and not 0.02 hectares, which fact is the source of the parties’ dispute herein. That therefore in amending the map, the surveyor should refer to the 1st defendant’s title deed, his purchase agreement and the agreement dated 18th February 2005 so as to resolve this suit expeditiously. He attached the Land Registrar’s report and the sale agreement.
4. The application was opposed. Isaac Otenyo, the 1st Defendant, swore a replying affidavit dated 1st April 2025 opposing the application. He stated that the application does not add value to the case and will not assist in resolving this matter. That the plaintiff’s case herein is based on allegations that the 1st defendant encroached on his parcel and closed a road of access and sought to permanently restrain the 1st defendant from interfering with parcel No. Marama/Inaya/1219. That by consent dated 6th March 2022, parties agreed to refer the dispute to the Land registrar and surveyor. That the mandate of the two officers was to visit parcel Nos. Marama/Inaya/1219 and 1221 and determine whether there is encroachment by either party and ascertain the extend of encroachment and then fix the boundaries of the two parcels. That this was done by the two officers who visited the two properties in the presence of both parties and prepared a report.
5. He stated that the Land Registrar found that the two parcels do not border each other and that therefore there is no encroachment. That the report by the county surveyor concluded that the two parcels of land do not border each other so there is no encroachment. That the main issue was the road of access to the two parcels Marama/Inaya/1219 and 1220 and that this was marked on the ground as per the map and copy of mutation. That parcel No. 1220 was owned by unknown person who is not party to these proceedings. He maintained that since there was no boundary between the plaintiff’s and 1st defendant’s parcels, there is no encroachment or trespass by the 1st defendant on the plaintiff’s land.
6. That the applicant has not given any reason why the county surveyor should visit the suit property the second time yet he has not appealed against the findings of the two officers. That the plaintiff is introducing matters not in the plaint or the consent herein. That this is an old matter which should be expeditiously determined in view of the reports filed herein.
7. The application was disposed by way written submissions. On record are submissions by the applicant dated 1st April 2025 which the court has duly considered

Analysis and determination

8. Having carefully considered the application, replying affidavit and submissions, the only issue that arise for the court’s determination is whether the applicant deserves the orders sought.
9. Section 3A of the *Civil Procedure Act* grants this court inherent powers to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.
10. Therefore, the question that this court ought to answer is whether granting the orders sought by the applicant is necessary for the ends of justice.
11. The plaintiff filed this suit in 2015 by way of plaint, which was later amended in 2019. The plaintiff has given a long and winding narration regarding his parcel of land and the parcel of land owned by the 1st defendant being parcels Marama/Inaya/1219 and 1221 respectively. He alleged that both the plaintiff and the 1st defendant purchased their parcels from the owner of parcel No. Marama/Inaya/594. According to the plaintiff, the 1st defendant purchased 10 feet by 100 feet and got title for



land measuring 0.02 hectares instead of his land measuring 0.01 hectares, which resulted in the current dispute. That upon visiting the suit properties purportedly to resolve the dispute, the 2nd defendant enlarged the 1st defendant's land in the map which led to the 1st defendant encroaching on the road reserve and other parcels bordering the 1st defendant's land.

12. That there is an access road leading to the plaintiff's home which he purchased from the owner of Marama/Inaya/594 and that unless the map and register are rectified, the 1st defendant will continue blocking the access road to the plaintiff's property. He sought orders for declaration that the 1st defendant's action of closing the access road was unlawful; that the 1st defendant's title be cancelled and a fresh one reflecting acreage of 0.01 hectares be issued and new boundaries be fixed by the 2nd defendant who should amend the map and the register and a permanent injunction to restrain the defendant from blocking the access road.
13. The record shows that on 6th March 2022, parties in this case entered into a consent which was adopted as an order of the court that both the land registrar and county surveyor Kakamega, to visit parcel Nos. Marama/Inaya/1219 and 1221 and determine whether there is any encroachment by either party and ascertain the extent of the encroachment and fix boundaries on the two parcels. The two officers were to file their report in 60 days. The record shows that the two officers visited the two parcels of land and prepared and filed a report dated 19th October 2023. It was the findings of the land registrar that the two parcels do not border each other and therefore there is no encroachment. The Registrar recommended that an amendment be done by government surveyor for the map to reflect the ground and that the marked access road be respected by both parties.
14. That report has not been challenged by the applicant. The recommendation by the Land Registrar was that the (Registry Index Map (RIM) should be amended to mirror the ground. The question of who bought what amount of land and the agreements held by the parties was not in issue, neither did it feature in the aforesaid report as the Land Registrar recommended that the RIM should be amended to reflect the ground. Hence the applicant's prayer that the amendment should consider the agreements and title deeds is a matter that did not arise.
15. For those reasons, I find no merit in the application herein dated 7th October 2024 which I dismiss with costs. This matter having been in court for 10 years, I direct that the same shall be fixed to be heard forthwith, expeditiously.
16. It is so ordered

DATED, SIGNED AND DELIVERED AT KAKAMEGA IN OPEN COURT/VIRTUALLY THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM THIS 23RD DAY OF JULY 2025

A. NYUKURI

JUDGE

In the presence of;

Mr. Jackson Omuyunji the plaintiff/applicant in person

Mr. Ashioya for the 1st defendant/respondent

No appearance for the 2nd and 3rd defendants

Court Assistant: M. Nguyai

