



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KAKAMEGA

ELC MISC. APP. NO. 60 OF 2017

JOSEPH OYONDI AMUMALA.....APPLICANT

VERSUS

SILA IYUNDO

RHODA LANYA

KEFA NANDI

APOLLO NANDI.....RESPONDENTS

RULING

This application is dated 22nd August 2017 and seeks the following orders:-

1. That this honourable court be pleased to order demarcation of boundaries between land parcels Kisa/Wambulishe/729, 735 & 736.
2. That the parties hereto do share the cost of the survey on a pro-rata basis.

It is premised upon the following main grounds that the applicant is the administrator of the estate of Malaka Amumala Nandwa (deceased) the proprietor of land parcel Kisa/Wambulishe/729. The administrator is desirous of completing the distribution of the estate of the deceased through confirmation of grant. The estate of the deceased comprising the land parcel Kisa/Wambulishe/729 has no clear boundaries and there is an apparent encroachment hence the need for clear demarcation. The applicant submitted that he is the administrator of the estate of Malaki Amala the proprietor of Land Parcel Kisa/Wambulishe/764 (see copy of grant annexed and marked JOA-1). That the said parcel border land parcel Kisa/Wambulishe/735, 736, 735 & 729 whose boundaries are not demarcated and it will be imperative that the same is done help the distribution of the deceased estate through succession. That there is an apparent encroachment on the land parcel Kisa/Wambulishe/764 whose extent he doesn't know until the District Land Surveyor/Registrar clearly demarcates the same. That the respondents are registered and/or beneficial owners of land parcel Kisa/Wambulishe/729, 735 and 736 (see copies of searches annexed and marked JOA – 2 (a) – (d)).

This court has considered the application and the submissions therein. It is an application dated 22nd August, 2017 which is for an order of survey for the purpose of demarcation of land parcel Kisa/Wambulishe/729 from the adjacent parcels registered in the names of the respondents and or beneficiaries owned by the respondents. The purpose of the application is to enable the distribution of the said land in Succession Cause No. 185 of 2016 which is pending because there are no clear boundaries between the said parcel and the adjacent parcels. The grounds of opposition filed are general in nature. **In Amos Mpeshe & 3 others v Salau Ole Sokon Modo [2015] eKLR** the Land and Environment **Judge held that:**

“Under section 18 of the Land Registration Act, 2012 the court is precluded from entertaining any action or any proceedings any action relating to a boundary dispute unless the boundaries have been ascertained/determined in accordance with the Act”.

Section 18 (2) of the *Land Registration Act, 2012* Act provides:-

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

I find this application is premature and an abuse of the court process. It is not merited and I dismiss it with costs.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 9TH DAY OF OCTOBER 2018.

N.A. MATHEKA

JUDGE