



REPUBLIC OF KENYA



KENYA LAW
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**Muriithi v Kibuchi & 3 others (Environment & Land Case 163 & 164 of 2016
(Consolidated)) [2025] KEELC 919 (KLR) (27 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 919 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA
ENVIRONMENT & LAND CASE 163 & 164 OF 2016 (CONSOLIDATED)
JM MUTUNGI, J
FEBRUARY 27, 2025**

BETWEEN

FRANCIS KANGANGI MURIITHI PLAINTIFF

AND

DANIEL NGIRI KIBUCHI 1ST DEFENDANT

JAMES KARIUKI KIBUCHI 2ND DEFENDANT

THE LAND REGISTRAR KIRINYAGA 3RD DEFENDANT

THE COUNTY SURVEYOR KIRINYAGA 4TH DEFENDANT

RULING

1. This Ruling relates to two consolidated matters being Kerugoya ELC No. 163 of 2016 and Kerugoya ELC No. 164 of 2016. In both matters the Plaintiffs who are different have concerns as regards the positioning of the boundaries of land parcel number Mutira/Kaguyu/3364 and 2363. The Plaintiffs claim their respective parcels have each been reduced on the ground by approximately 0.021 acres. They have each sought orders for the rectification of their parcels respective boundaries and restitution of the portion of land excluded from their present land parcels.
2. The parties acknowledged that the dispute in both matters related to the positioning of their respective land parcel boundaries. On 29th May 2023, the parties concurred in urging the Court to make an order of reference to the Land Registrar and the Surveyor to establish and fix the land parcel boundaries in accord with the law.
3. The Court in consequence issued directions/orders as follows:-
 1. That the Court hereby refers the dispute to the Land Registrar and the Surveyor and directs them to visit land parcels Mutira/Kaguyu/2021 and 2364 and establish and fix the parcel



boundaries of the two parcels of land on the ground in accordance with the [Land Registration Act 2012](#) Sections 18 and 19.

2. That the Land Registrar shall give notice to the parties of the date appointed for the exercise and the OCS Kagumo Police Station to provide security during the exercise and the area Chief to be in attendance.
 3. That any charges shall be shared equally by the parties.
 4. That the Land Registrar and the Surveyor will undertake the exercise and file a report within the next 90 days from today.
 5. That mention on 19/9/2023 to confirm compliance and for further direction.
4. The Land Registrar and the County Surveyor filed a joint report dated 21st November 2023 with attachments. The report noted a variance in regard to the registered area, Surveyed area and current occupied area in regard to the original land parcels Mutira/Kaguyu/705 and 706 which have now been subdivided to create land parcels 2010,2011, 2012,2020 and 2021 (from parcel 705) and parcels 2358 to 2364 (from parcel 706). The report noted there was an overlap of portions of parcels Mutira/Kaguyu/2362, 2363, 2364 and Mutira/Kaguyu/2012, 2020 & 2021 with the area in dispute being occupied by the proprietors of land parcels Mutira/Kaguyu/2012, 2020 and 2021.
 5. The report further made findings that the dispute relating to the boundary had been subject of previous litigations and had previously been adjudicated by the Land Registrar and the Courts. The Land Registrar concluded that as the dispute had been the subject of previous adjudication by the Land Registrar whose decision was adopted by the Provincial Appeals Committee and upheld by the Principal Magistrate's Court Nyeri in PMCC No. 30 of 1999 and an appeal therefrom dismissed by the High Court they could not overturn the decision of the Land Registrar and the Courts.
 6. At the invitation of the Court the parties filed submissions in regard to the Land Registrar's and the Surveyor's report as the parties were not agreed as to how the report should be treated by the Court.
 7. M/s Balisharma & Balisharma Advocates for the Plaintiffs in their submissions dated 24th June 2024 highlighted the observations and findings made in the report and raised concerns as to how the overlapping arose that resulted in the Defendants who derived their portions of land from land parcel Mutira/Kaguyu/705 occupying a larger portion of land on the ground. The Plaintiff therefore questioned how the alteration of the boundaries occurred and contended that was an issue that ought to be ventilated before the Court.
 8. Morris Njage & Co. Advocates for the 1st and 2nd Defendants in the consolidated suit filed his submissions dated 11th October 2024. The Defendants Advocates in their submissions contended that the report was faultless as it dealt with all the issues under the order of reference. They indicated the issue of the indicated overlap was considered and explained in the report and had been resolved in previous litigation as highlighted in the report. The Defendants Advocates were of the view that the report verified the status of the ground and ought to be adopted by the Court so as to bring this protracted litigation to a close.
 9. The Court has reviewed and has considered the report and the submissions by the parties. It is evident that there has been a long running dispute touching on the delineation of land parcels 705 and 706 and the resultant subtitles therefrom. Although the current Registry Index Map (RIM) supplied by the Surveyor indicates there was an amendment of the boundary between parcels 705 & 706 on 30th March 1992 it is not apparent what led to the amendment. Probably it was following this amendment that the overlap arose. If the amendment and the resultant overlap was a consequence of the previous



litigation referred to in the report, then the instant suit would be res judicata. In order for the Court to clarify under what circumstances the amendment of the boundary between parcels 705 and 706 was effected, it is necessary for the County Surveyor to attend Court to present the report and to explain the amendments effected to the Registry Index Map (RIM) as they touch and relate to land parcel Mutira/Kaguyu/705 and 706.

10. In the premises I direct that this matter be mentioned for directions on 8th April 2025 in regard to the attendance of the Surveyor to explain the report and shed light in regard to 1992 RIM Amendment.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT KERUGOYA THIS 27TH DAY OF FEBRUARY 2025.

J. M. MUTUNGI

ELC - JUDGE

