



**Ali & 2 others v Wang’ombe (Environment & Land Case
E032 of 2023) [2024] KEELC 4420 (KLR) (29 May 2024) (Ruling)**

Neutral citation: [2024] KEELC 4420 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE E032 OF 2023**

MN GICHERU, J

MAY 29, 2024

BETWEEN

AHMED OLOW ALI 1ST PLAINTIFF

AMINA MOHAMED WARFA 2ND PLAINTIFF

MOHAMMED OSMAN WARFA 3RD PLAINTIFF

AND

JOSEPH KIBUCHI WANG’OMBE DEFENDANT

RULING

1. This ruling is on the notice of preliminary objection dated 10/8/2023. The preliminary objection raises the following points.
 - i. The application and the suit relate to a boundary dispute as claimed by the plaintiffs.
 - ii. Section 18(2) of the [Land Registration Act](#), 2012 requires boundary disputes to be first settled by the Land Registrar.
 - iii. This court lacks jurisdiction to entertain this suit and/or application. The suit is premature and the court ought to disqualify itself from proceeding.
 - iv. The plaintiffs benefitted from the subdivision of LR Kajiado/Ole Kasasi;/560 which together with LR no 561 were the two subdivisions of LR 528 done in June 1990. Until now, there has never been a boundary dispute. Any attempts by the plaintiff to claim part of LR 561 is therefore time barred.
 - v. The defendant does not own LR 561. The land was subdivided and sold in February 2020. It does not therefore exist.



- vi. The suit should therefore be struck out with costs which should be paid within 30 days of the ruling.
2. Counsel for the parties were to file written submissions by 31/3/2024. The only submissions that were on record by 31/3/2023 and even as late as 30/4/2024 are only those of the defendant which were filed on 11/12/2013.
3. I have carefully considered the preliminary objection in its entirety as well as the record and I identify the issues as follows.
 - i. Whether the dispute relates to boundaries of registered land.
 - ii. Whether the dispute has been determined by the Land Registrar.
 - iii. Whether this court has jurisdiction.
 - iv. Whether the defendant is entitled to costs.
 - v. Whether the suit is time barred.
4. On the first issue, I find that the dispute relates to the boundaries of Land Parcels Kajiado/Ole Kasasi/561 on one hand and Kajiado/Ole Kasasi/665 and 675 on the other. The prayer at paragraph 22(b) of the plaint dated 15/3/2023 is clear proof of this. It reads as follows.

“In the alternative, an order compelling the defendant to return his boundary wall, and any other structure, to the confines of his property as per the survey report of the District Surveyor”.

The other reason for saying that it is a boundary dispute is that the plaintiffs’ own document namely the report A.K. Munyasya dated 18/10/2022 shows that a surveyor was called to identify the boundaries of the suit parcel. This surveyor filed the report which is plaintiff’s exhibit no 12.

5. Looking at the second issue, I find no evidence that the Land Registrar has written a report. Ordinarily it is the surveyor who files an interim report which the Land Registrar either endorses or fails to do so. This is as per Regulations 40(4) and (5) of the [Land Registration \(General\) Regulations 2017](#) which provides as follows.

(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 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”.

Since none of the parties has filed the registrar’s report determining the boundaries, it is safe to assume that such a report does not exist. The plaintiffs therefore jumped the gun by filing this suit. They should have waited for the Land Registrar’s report before coming to court.



6. On the issue of jurisdiction, I find that the court has none by dint of Section 18(2) of the [Land Registration Act](#) which provides as follows.

“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”.

This provision clearly ousts the jurisdiction of this court in a dispute concerning boundaries of registered land.

Regulation 40(6) of the [Land Registration \(General\) Regulations 2017](#) confirms that the only jurisdiction that the court has in boundary disputes is appellate and not original. It provides as follows.

“Any party aggrieved by the decision of the Registrar made under paragraph (5) may, within 30 days of the date of notification, appeal the decision to the court”.

Since this suit is not an appeal against the decision of the Land Registrar, then the court has no jurisdiction.

7. On the issue of time bar, I find that if the suit had not been bad for lack of jurisdiction, it would not have been time barred because under Section 26 of the [Limitation of Actions Act](#), time does not begin to run until the plaintiff discovers the mistake or fraud. In this case, it would seem that one of the plaintiffs acquired the land in the year 2014. The encroachment complained of seems to have occurred later even though the plaint and the witness statement by the 1st defendant are not specific on this.

8. On costs, I find that each party should bear its own because this dispute may still come back to this court in another form.

For the above stated reasons, I strike out the plaintiffs’ suit for lack of jurisdiction. No order as to costs.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 29TH DAY OF MAY 2024.

M.N. GICHERU

JUDGE

