



REPUBLIC OF KENYA



KENYA LAW
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Kioko v County Land Registrar Makeuni; Wambua (Interested Party) (Environment and Land Miscellaneous Application E002 of 2022) [2024] KEELC 4095 (KLR) (15 May 2024) (Ruling)

Neutral citation: [2024] KEELC 4095 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E002 OF 2022
TW MURIGI, J
MAY 15, 2024

BETWEEN

JOSEPH MAKAU KIOKO APPLICANT

AND

THE COUNTY LAND REGISTRAR MAKEUNI RESPONDENT

AND

JULIUS MULI WAMBUA INTERESTED PARTY

RULING

1. Before me for determination is the Notice of Motion dated February 20, 2023
 - a. That this Honourable Court do issue an order directing the Respondent to immediately and as required under Section 19 of the *Land Registration Act* upon hearing the parties concerned, cause to be defined by survey, the precise position of the boundaries in respect of the Applicant's property known as L.R No. Nzai/Ikangavya/552 and the Interested Party's property L.R No. Nzai/Ikangavya/351 in question and file a plan containing the necessary particulars and make a note in the register that the boundaries have been fixed and the plan be deemed to accurately define the boundaries of the said parcels.
 - b. That the costs of this application be provided for by the court directing that the costs, charges and expenses in connection with the investigations and the hearing to be held by the Registrar for purposes of resolution of this dispute be borne and paid for by all the parties in equal proportions.
 - c. That the Officer Commanding Kalamba Police Station does provide security for the Respondent and any other officer accompanying him/her.



2. The application is premised on the grounds appearing on its face together with the supporting affidavit of Joseph Makau Kioko sworn on even date.

The Applicant's Case

3. The Applicant averred that he is the Legal Administrator of the Estate of Kioko Ngaanga the registered proprietor of L.R No. Nzai/Ikangavya/552 while the Interested Party is the registered proprietor of L.R No. Nzai /Ikangavya/351
4. He further averred that his efforts to settle the boundary dispute out of court have not yielded any fruits because the Interested Party has refused to cooperate. He asserted that the Respondent has failed to conduct a hearing with regards to the boundary dispute between the parties herein. He urged the court to allow the application as prayed.

The Respondents Case

5. In opposing the application, the Interested Party filed a replying affidavit dated 15th March 2023. He denied the allegations that he was uncooperative and asserted that he had made efforts to have the boundary re-established long before the demise of the Applicant's father who refused to cooperate. He urged the court to dismiss the application with costs.
6. The application was canvassed by way of written submissions.

The Applicant's Submissions

7. The Applicant's submissions were filed on May 26, 2023. On his behalf, Counsel submitted that Sections 18 and 19 of the [Land Registration Act](#) confers upon the Land Registrar the mandate to determine boundary disputes falling within the general boundary areas. Counsel further submitted that the Applicant has sought the intervention of this court because the Land Registrar has failed to establish the boundaries between the two parcels of land. Concluding his submissions, Counsel urged the court to allow the application as prayed. To buttress his submissions, Counsel relied on the case of [Willis Ocholla v Mary Ndege](#) (2016)eKLR.

The Interested Party's Submissions

8. The Interested Party's submissions were filed on February 5, 2024. On his behalf, Counsel cited the provisions of Sections 18 and 19 of the [Land Registration Act](#) to submit on the law with regards to boundary disputes.
9. Concluding his submissions, Counsel conceded to the application in terms of Section 19 of the [Land Registration Act](#).

Analysis And Determination

10. Having considered the application, the respective affidavits and the rival submissions, the only issue that falls for determination is whether the Applicant is entitled to the orders sought.
11. It is not in dispute that the Estate of Kioko Ngaanga is the registered proprietor of L.R. No Nzai/Ikangavya/552 while the Interested Party is the registered proprietor of L.R. No. Nzai/Ikangavya/351. From the evidence presented by the parties herein, it is crystal clear that the boundaries between the two parcels of land have not been established.
12. Section 18(2) of the [Land Registration Act](#) provides that:-



- (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.
13. A reading of Section 18(2) of the *Land Registration Act* takes away the jurisdiction of this Court to deal with disputes regarding boundaries of registered land which have not been determined.
14. Section 19 of the *Land Registration Act* sets out the process the Land Registrar is required to adhere to in establishing and fixing boundaries 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 parcels 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 parcels.

From the record, it is crystal clear that both parties are desirous of having the boundaries between the two parcels of land established.

15. In the end, I find that the application dated February 20, 2023 is merited and the same is allowed as prayed.

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HON. T. MURIGI

JUDGE

RULING DELIVERED, DATED AND SIGNED VIA MICROSOFT TEAMS THIS 15TH DAY OF MAY, 2024.

In the presence of:

Court assistant Alfred.

Mbulo for the Applicant.

Munyasya for the Interested Party.

