



Republic v District Land Registrar, Kajiado & another; Kilisio (Exparte Applicant); National Land Commission & 4 others (Interested Parties) (Miscellaneous Judicial Review E010 of 2021) [2024] KEELC 4931 (KLR) (26 June 2024) (Ruling)

Neutral citation: [2024] KEELC 4931 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
MISCELLANEOUS JUDICIAL REVIEW E010 OF 2021**

MN GICHERU, J

JUNE 26, 2024

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO INSTITUTE
JUDICIAL REVIEW PROCEEDINGS IN THE NATURE OF MANDAMUS
BY JOSEPH KIPLANGAT KILISIO AGAINST THE DISTRICT LAND
REGISTRAR KAJIADO AND THE DISTRICT SURVEYOR KAJIADO**

AND

**IN THE MATTER OF ARTICLES 10, 23, 27, 48 AND
50 OF THE CONSTITUTION OF KENYA, 2010**

AND

IN THE MATTER OF LAND PARCEL NO. KAJIADO/KISAJU/70

AND

IN THE MATTER OF LAND PARCEL NO. KAJIADO/KISAJU/68,72 AND 76

AND

**IN THE MATTER OF SECTIONS 18 AND 19 OF THE
LAND REGISTRATION ACT, CAP 300 LAWS OF KENYA**

AND

**IN THE MATTER OF SECTIONS 9 OF THE LAW REFORM ACT, CAP 26,
LAWS OF KENYA AND ORDER 53 OF THE CIVIL PROCEDURE RULES**

BETWEEN

THE REPUBLIC APPLICANT

AND

THE DISTRICT LAND REGISTRAR, KAJIADO 1ST RESPONDENT

THE DISTRICT SURVEYOR, KAJIADO 2ND RESPONDENT



AND

JOSEPH KIPLANGAT KILISIO EXPARTE APPLICANT

AND

THE NATIONAL LAND COMMISSION INTERESTED PARTY

THE KENYA RURAL ROADS AUTHORITY INTERESTED PARTY

CLEAR RESOURCES LIMITED INTERESTED PARTY

WILSON OLOYIENDE NTAYIA INTERESTED PARTY

EDWARD GITAU NTAYIA INTERESTED PARTY

RULING

1. This ruling is on the Notice of Motion dated 28/8/2023. The motion which is by the *ex parte* applicant is brought under Section 18 of the *Environment and Land Court*, Sections 1A, 1B, 3, 3A, 63 (2) of the *Civil Procedure Act*, Articles 48, 50 and 159 (2) (d) of the *Constitution* of Kenya and all other enabling provisions of the law.
2. The motion seeks the following orders.
3. That pending the hearing and determination of the Judicial Review proceedings herein, a conservatory order be issued restraining the respondent and the interested parties acting either in person or through their servants, agents, employees or anyone else from removing, altering and or destroying the boundaries of the suit parcels being LR Kajiado/Kisaju/70, 68, 72 and 76.
4. That conservatory orders do issue preserving the existing boundaries over the suit parcels in their status quo pending the hearing and determination of the judicial review proceedings filed herein.
5. That the orders be served upon the sub county police commander, Isinya Police Division to ensure compliance.
6. That the court be pleased to issue any such further orders that it deems fit to grant for the best interest of justice to prevail.
7. That costs of this application be provided.
8. The motion is supported by a supporting affidavit by the *ex parte* applicant which has seven (7) annexures. It is also based on eight (8) grounds. The gist of the above material is as follows. The applicant is the registered owner of LR Kajiado/Kisaju/4815, 4817, 4818 and 4819 which mutated for LR 70. Secondly, the 3rd interested party is registered as the proprietor of LR Kajiado/Kisaju/68, 72 and 76. Thirdly, the applicant's parcels border the land belonging to the 3rd, 4th and 5th interested parties. Fourthly, the Land Registrar has been reluctant to resolve a boundary dispute between the applicant's parcel and those of his neighbours and this is why the applicant filed this suit. Fifthly, the District Land Registrar and the District Surveyor visited the land bordering the applicant's in April 2023 without disclosing to the applicant what they were up to. Sixthly, the 3rd interested party has started removing and destroying some of the boundary beacons separating the suit parcels. If this motion is not allowed, the suit will be rendered nugatory.



9. The motion is opposed by a director of the interested party, Peter Korir, vide an affidavit dated 8/9/2023 in which he deposes as follows. Firstly, the 3rd interested party owns LR Kajiado/Kisaju/68, 72 and 76. Secondly, it is not true that the interested party is removing the beacons as alleged and all it has done is to reinforce the perimeter fence. Thirdly, the applicant and the 1st and 2nd respondents recorded a consent on 21/2/2022 which determined the *ex parte* applicant's application dated 5/11/2021.

10. I have carefully considered the motion in its entirety including the affidavits, ground in support, annexures and the grounds in opposition. I find that the motion has no merit for one reason only. This dispute relates to boundaries of registered land. Under Section 18 (2) of the [Registered Land Act](#), the jurisdiction of this court in boundary dispute is ousted. It provides as follows.

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

If what the director of the 3rd defendant says is true about the applicant and the 1st and 2nd respondents recording a consent on 21/2/2022 is true, then this suit should not be pending in this court. The sole reason why it was filed was to compel the two respondents to visit the locus in quo and determine the dispute.

11. The only jurisdiction that this court has in boundary dispute is appellate as per Regulation 40 (6) of the [Land Registration \(General\) Regulations 2017](#) which provide 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”.

12. For the above stated reasons, I find on merit in the motion dated 28/8/2023. I dismiss it with costs.
It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 26TH DAY OF JUNE 2024.

M.N. GICHERU

JUDGE

