



Republic v Land Registrar, Narok & 2 others; Koonyo (Interested Party); Kenga & 160 others (Exparte Applicants) (Environment and Land Judicial Review Case E001 of 2023) [2024] KEELC 4545 (KLR) (6 June 2024) (Judgment)

Neutral citation: [2024] KEELC 4545 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E001 OF 2023**

CG MBOGO, J

JUNE 6, 2024

IN THE MATTER OF AN APPLICATION FOR JUDICIAL WRIT OF MANDAMUS

AND

IN THE MATTER OF LAW REFORM ACT (CAP 26 LAWS OF KENYA) AND ORDER 53 OF THE CIVIL PROCEDURE RULES

AND

IN THE MATTER OF THE LAND REGISTRATION ACT

AND

IN THE MATTER OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF THE FAIR ADMINISTRATIVE ACTION ACT

BETWEEN

REPUBLIC APPLICANT

AND

LAND REGISTRAR, NAROK 1ST RESPONDENT

THE DISTRICT SURVEYORS, NORTH & SOUTH DISTRICTS 2ND RESPONDENT

THE ATTORNEY GENERAL 3RD RESPONDENT

AND

STANLEY TININIA KOONYO & 160 OTHERS & 160 OTHERS & 160 OTHERS & 160 OTHERS INTERESTED PARTY

AND



JUDGMENT

1. Pursuant to leave granted on 16th October, 2023, the Ex-Parte Applicant filed the Notice of Motion dated 31st October, 2023 expressed to be brought under Order 53 Rule 3 of the Civil Procedure Rules, Sections 4 (1) & (2), 7 (1) & (2), 7 (1)(a), 10 (1) and 11 (1)(f) and (j) of the Fair Administrative Actions Act, no 4 of 2015, Section 8 & 9 of the Law of Reform Act, Section 18 and 19 of the Land Registration Act and Article 47 of the Constitution seeking the following orders:-
 1. That this honourable court do issue an order of mandamus compelling the 1st and 2nd respondents herein to ascertain and fix the boundaries between land parcel number CisMara/Olchoro/46 and CisMara/Olchoro/20 and its subdivisions.
 2. That the County Commander of Police, Narok County be compelled to provide security to the 1st and 2nd respondents during the exercise.
 3. That this honourable court be pleased to issue such further reliefs or orders that it deems fit.
 4. That the costs of this application be provided.
2. The motion is premised on the grounds on the face of the application, the statement of facts, and further as supported by the affidavit of the Ex-Parte applicant sworn on even date. In his supporting affidavit, the Ex-Parte applicant deposed that he is the treasurer of the Kenga family and that their land borders CisMara/Olchoro/20 which has been subdivided into land parcel nos. CisMara/Olchoro/516 to 958. He further deposed that during the course of subdivision, the Interested Parties annexed and occupied their land parcel no CisMara/Olchoro/46 thereby denying them access. That the matter was heard and determined by this court and in dismissing their case, they filed a boundary dispute with the Land Registrar on 26th May, 2022 and paid the requisite government fees and to date, the 1st Respondent has not heard the dispute and has never given him a reason for the inaction.
3. The Ex-Parte applicant deposed that the inaction by the 1st respondent breaches his constitutional right to have his dispute heard expeditiously, and it is also an abdication by the 1st respondent of its statutory duty to settle boundary disputes.
4. Despite being served, the Respondents and the Interested Parties herein did not file any response to the application. As it is, the notice of motion is unopposed.
5. The substantive motion was canvassed by way of written submissions. The Ex-Parte Applicant filed his written submissions dated 15th May, 2024 where he raised one issue for determination which is whether the orders sought should be granted or in other words whether the motion is merited.
6. On this issue, the Ex-Parte Applicant submitted that under Section 19 (1) and 86 of the Land Registration Act, the Land Registrar is empowered to determine boundary disputes. Further, that Section 4 of the Fair Administrative Action Act and Article 47 of the Constitution, grant him the right to an administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.
7. The Ex-Parte Applicant submitted that on 26th May, 2022, he filed a boundary dispute with the 1st Respondent and paid the requisite fees, but to date, the 1st and 2nd Respondents have not determined the dispute as they are bound to do so under Section 19 of the Land Registration Act.



8. I have considered the notice of motion and the written submissions filed by the Ex-Parte Applicant. In my view, the issue for determination is whether the ex-parte applicant is entitled to the orders of mandamus.
9. This court delivered judgment in ELC Case no 389 of 2017 on 19th May, 2022 where it was observed that there was need for determination of the boundary dispute by the Land Registrar. The Ex-Parte Applicant contended that based on this judgment, he registered a boundary dispute with the Land Registrar and paid for the requisite fees being ksh 5,500 on 26th May, 2022. To date, no action has been taken by the 1st Respondent as he has refused to hear and settle the dispute which is a breach of the Land Registration Act, The Fair Administrative Actions Act and Article 47 of the Constitution.
10. In the case of Kenya National Examinations Council v Republic Ex parte Geoffrey Gathenji Njoroge & Others Civil Appeal no 266 of 1996 [1997] eKLR the Court of Appeal held *inter alia* as follows:

“...The order of mandamus is of a most extensive remedial nature, and is, in form, a command issuing from the High Court of Justice, directed to any person, corporation or inferior tribunal, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. Its purpose is to remedy the defects of justice and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right or no specific legal remedy for enforcing that right; and it may issue in cases where, although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual. The order must command no more than the party against whom the application is legally bound to perform. Where a general duty is imposed, a mandamus cannot require it to be done at once. Where a statute, which imposes a duty, leaves discretion as to the mode of performing the duty in the hands of the party on whom the obligation is laid, a mandamus cannot command the duty in question to be carried out in a specific way... These principles mean that an order of mandamus compel the performance of a public duty which is imposed on a person or body of persons by a statute and where that person or body of persons has failed to perform the duty to the detriment of a party who has a legal right to expect the duty to be performed. An order of mandamus compels the performance of a duty imposed by statute where the person or body on whom the duty is imposed fails or refuses to perform the same but if the complaint is that the duty has been wrongfully performed i.e. that the duty has not been performed according to the law, then mandamus is wrong remedy to apply for because, like an order of prohibition, an order of mandamus cannot quash what has already been done...Only an order of certiorari can quash a decision already made and an order of certiorari will issue if the decision is without jurisdiction or in excess of jurisdiction, or where the rules of natural justice are not complied with or for such like reasons. In the present appeal the respondents did not apply for an order of certiorari and that is all the court wants to say on that aspect of the matter.(with emphasis)

11. Section 18 and 19 of the Land Registration Act provides guidelines on boundary disputes, and states as follows:-

“(1) Except where, in accordance with section 20, it is noted in the register that the boundaries of a parcel have been fixed, the cadastral map and any filed plan shall be deemed to indicate the approximate boundaries and the approximate situation only of the parcel.



- (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.
- (3) Except where, it is noted in the register that the boundaries of a parcel have been fixed, the registrar may in any proceedings concerning the parcel, receive such evidence as to its boundaries and situation as may be necessary;

Provided that where all the boundaries are defined under section 19(3), the determination of the position of any uncertain boundary shall be done as stipulated in the Survey Act.

- (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 precise 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 parcel.
- (3) Where the dimensions and boundaries of a parcel are defined by reference to a plan verified by the office or authority responsible for the survey of land, a note shall be made in the register, and the parcel shall be deemed to have had its boundaries fixed under this section.”

12. From the above, it is clear that pursuant to Section 19 (1), it is the responsibility of the Land Registrar to determine issues of boundaries between parties. The Ex-Parte Applicant has provided evidence through his letter dated 26th May, 2022 and the receipt which shows that he wrote to the 1st Respondent requesting him to determine a boundary dispute between him and the Interested Parties, and no action has been done. In the absence of any evidence to the contrary, I am satisfied that the evidence of the Ex-Parte Applicant is credible.

13. Article 47 of the *Constitution* provides that every person has a right to an administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair. Section 4 (1) of the *Fair Administrative Action Act* states as follows: -

- “ 1. Every person has the right to administrative action which is expeditious, efficient, lawful, reasonable and procedurally fair.”



14. In addition, Article 50 of the Constitution espouses the right to be heard which states that-

“Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body.”

15. It is clear from the above provisions of the law that to the extent that the Ex-Parte Applicant requested to have a dispute determined but which has never been done amounts to violation of his rights to have his dispute heard which is unlawful.

16. I find the Ex-Parte Applicant deserving of the order of mandamus and allow the notice of motion dated 30th October, 2023 in the following terms: -

- i. That an order of mandamus is hereby issued directing the 1st and 2nd respondents to ascertain and fix the boundaries between land parcel number CisMara/ Olchoro/ 46 and CisMara/ Olchoro/ 20 and its subdivisions.
- ii. That the County Commander of Police, Narok County is hereby directed to provide security to the 1st and 2nd respondents during the exercise.
- iii. That the 1st and 2nd respondents as well as the interested parties to bear the costs of this application.

Orders accordingly.

DATED, SIGNED & DELIVERED VIA EMAIL THIS 6TH DAY OF JUNE, 2024.

HON. MBOGO C.G.

JUDGE

06/06/2024.

In the presence of: -

Mr. Meyoki Pere – C. A

