



**Nzau v Kemei & 2 others (Environment & Land Case 70 of 2023)  
[2025] KEELC 526 (KLR) (12 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 526 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT & LAND CASE 70 OF 2023**

**A NYUKURI, J**

**FEBRUARY 12, 2025**

**IN THE PREMISES AND ON THAT BASIS, I FIND AND HOLD THAT  
THIS COURT HAS NO JURISDICTION TO HEAR AND DETERMINE  
THE APPLICATION DATED 6TH DECEMBER 2023, WHICH I  
PROCEED TO STRIKE OUT WITH COSTS TO THE RESPONDENTS.**

**BETWEEN**

**TERESIA WAYUA NZAU ..... PLAINTIFF**

**AND**

**LOICE JEPCHUMBA KEMEI ..... 1<sup>ST</sup> DEFENDANT**

**MACHAKOS COUNTY LAND REGISTRAR ..... 2<sup>ND</sup> DEFENDANT**

**MACHAKOS COUNTY SURVEYOR ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. Before court is a notice of Motion application dated 6<sup>th</sup> December 2023 filed by the plaintiff, seeking the following orders;
  - a. Spent
  - b. Spent.
  - c. That pending hearing and determination of this suit an injunction, be and is hereby issued to restrain the 1<sup>st</sup> respondent, whether by herself or by her servants or agents or any other person acting on her behalf, from dissipating, diminishing, occupying, using or in any other manner howsoever interfering with the applicants use, enjoyment, occupation and ownership of the suit property known as DONYOSABUK/KOMAROCK BLOCK 26456 or any part thereof.



- d. That the 2<sup>nd</sup> and 3<sup>rd</sup> respondents be compelled to file in court the final report from the ground visit of 29<sup>th</sup> September 2023 and 14<sup>th</sup> November 2023 and the same be availed to both the parties as well.
  - e. That the 2<sup>nd</sup> and 3<sup>rd</sup> respondents be compelled to visit the suit property at the disputed area and place the beacons permanently in their rightful places on the ground in order to reflect the exact acreage in line with the official area survey Map-sheet as per the law prescribed.
  - f. That the costs of this application be in the cause.
2. The application is supported by the affidavit of Teresia Wayua Nzau the applicant, sworn on 6<sup>th</sup> December 2023. The applicant's case is that she is the registered proprietor of the parcel of land known as Donyo Sabuk/ Komarock Block 1/26456 which she has been in possession since 1969. That the said land was acquired by her late grandfather and the extended family. Further that the said property was subdivided and she was given 20 hectares thereof. She also stated that she obtained a title deed thereof on 19<sup>th</sup> May 2015. She averred that in 2021, when she set out to fence her property, she invited the Land Surveyor from Machakos County Land Survey office to identify and point out to her the beacons marking the boundaries of her property, before fencing and that when the land surveyor visited, he realized that there was a discrepancy between the ground and the R.I.M Map sheet and promised to reconcile the anomalies and ensure that none of the parties was disadvantaged. That she was advised to continue with the fencing while the issue of the discrepancy would be dealt with later.
  3. The applicant stated that when she commenced fencing her property, the 1<sup>st</sup> defendant, who is her neighbour and owner of two parcels, namely, Donyosabuk/Komarock Block 1/ 80717 and 80718 stopped her from the fencing exercise and encroached into her property, which led to a boundary dispute between the two properties. She stated that the 1<sup>st</sup> defendant informed the County Land Surveyor of the dispute and invited him to visit the property to resolve the same. That the County Land Surveyor in the company of private surveyors and legal representatives for both parties visited the properties herein on 29<sup>th</sup> September 2022 and 14<sup>th</sup> November 2022 respectively for purposes of identifying the actual acreage and boundaries on the parties' properties. That the land surveyor confirmed that the 1<sup>st</sup> defendant had erected a fence on the plaintiff's property and informed the parties that their office will prepare a final report following the ground visit which shall be availed to both parties in two weeks, whereof the beacons would be placed on the property.
  4. She further stated that the County Surveyor prepared the report but to date he had not served the same on the parties and had failed to deal with the disputed boundary and to place beacons on the same. She claimed that the disputed area was her property and that it was being wasted. Further that the 1<sup>st</sup> defendant claims that the same is a seasonal river and has invited the Water Resources Authority, Machakos to stop the plaintiff from enjoying the use of her land. She argued that the failure by the Machakos County Surveyor to implement the report for more than a year has caused her psychological trauma and she is unable to enjoy her property. She also stated that the 1<sup>st</sup> defendant's actions are illegal. She claimed that the 2<sup>nd</sup> and 3<sup>rd</sup> defendants are statutorily mandated to resolve such disputes to enable her utilize the land and that she continues to suffer. She attached her title deed; a surveyor's report from the County Survey Office; letters from her advocates and photographs.
  5. The application is opposed. Loice Jepchumba Kemei, the 1<sup>st</sup> Defendant filed a replying affidavit dated 13<sup>th</sup> March 2024 in response to the application. She stated that she owned the parcels of land known as Donyosabuk/Komarock Block 1/ 80717 and 80518 which are adjacent to the plaintiff's parcel Donyosabuk/ Komarock Block 1/ 26456. She further averred that the parties' properties were separated by a seasonal



river called Kwa Nduku River and that there are beacons on the plaintiff's side abutting the river which were erected by the Water Resources Authority in August 2022.

6. She maintained that the dispute between the parties was purely a boundary dispute and did not touch on land ownership or title. That the official maps show that the parties' properties herein are separated by a river and that when fencing her land, the plaintiff trespassed into riparian land, a position confirmed by the area Chief and the Water Resources Authority. She stated that the Land Registrar had called for several meetings which the plaintiff failed to attend whereof the Registrar found that the plaintiff had trespassed on riparian land and the plaintiff ordered to remove her pan constructed along the boundary river. The 1<sup>st</sup> defendant denied trespassing on the plaintiff's land and stated that the fact that she had fenced her land three meters from the river did not entitle the plaintiff to the river's ownership.

### **Analysis and determination**

7. I have considered the application and the response. Two issues arise for the court's determination, namely;
  - a. whether the applicant has met the threshold for grant of orders of injunction.
  - b. Whether orders sought against the land Registrar and the land surveyor should issue.
8. In the dispute now before court, it is clear that the plaintiff owns parcel number Donyo Sabuk/ Komarock Block 1/26456 while the 1<sup>st</sup> defendant owns the neighbouring parcel numbers Donyosabuk/Komarock Block 1/ 80717 and 80718. There is a common boundary between the plaintiff and the 1<sup>st</sup> defendant's land. From the application and the response, and by the admission of both parties, it is clear that the dispute between the two main disputants herein is a boundary dispute. In view of the clear provisions of section 18 of the *Land Registration Act*, which bars this court from hearing and determining boundary disputes in the first instance and or in the exercise of its original jurisdiction, this court must first satisfy itself that it has jurisdiction to determine the dispute herein before embarking on considering the merits of the application before court. Jurisdiction is everything. Therefore, before a court considers the merits of a dispute, it must first be satisfied that it has the jurisdiction to determine the dispute.
9. In the case of Owners of Motor Vessel "Lilian S" v Caltex Oil (Kenya) Limited (1989) KLR 1 the Court of Appeal held as follows;

I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.
10. Jurisdiction flows from *the Constitution* or statute or both and a court cannot arrogate itself the jurisdiction it does not have. ( See Samuel Kamau Macharia & Another v Kenya Commercial Bank Limited & Others (2012) e KLR).
11. Having considered the title documents of the parties herein, it is clear that the land owned by both parties herein is registered under the *land Registration Act*, pursuant to the provisions of the repealed Registered *Land Act* cap 300 Laws of Kenya and its boundaries are not fixed boundaries, but the same are general boundaries.



12. Section 18 of the [Land Registration Act](#) vests the jurisdiction to determine boundary disputes regarding general boundaries in the Land Registrar, and states as follows;

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- (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](#) (Cap 299)

13. Therefore, where there is a boundary dispute regarding uncertain boundaries, just like in this case, such disputes ought to be heard and determined not by this court, but by the Land Registrar who takes evidence from the parties and makes a decision.

14. Regulation 40 of the Land Registration (General) Regulations ([Legal Notice 278 of 2017](#)) provides for reestablishing a missing boundary or ascertaining a boundary in dispute as follows;

Application for re-establishing a missing boundary or ascertainment of a boundary in dispute

1. An interested person may apply to the Registrar for the ascertaining of a missing boundary or a boundary in dispute under section 18(3) of the Act in Form LRA 23 set out in the Sixth Schedule.
2. The Registrar shall issue a notice in Form LRA 24 set out in the Sixth Schedule to all persons appearing in the register that may be affected or such other persons as the Registrar may deem necessary for resolution of the dispute if a person has complied with paragraph (1).
3. The Registrar shall notify the office responsible for survey of land of the intended hearing of a boundary dispute and require their attendance if a person has complied with paragraph (1).
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 the 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.



6. Any party aggrieved by the decision of the Registrar made under paragraph (5) may, within thirty days of the date of notification, appeal the decision to the Court.
7. Upon expiry of thirty days, the Registrar shall—
  - a. Cause to be defined by survey the precise position of the boundaries in question;
  - b. File a plan approved by the authority responsible for survey of land containing the necessary particulars; and
  - c. Make a note in the register that the boundaries have been fixed, and thereupon the plan shall be deemed to define accurately the boundaries of the parcel.
8. A dispute for determination of a boundary and or parcel shall, unless in the case of special circumstances, be completed within a period not exceeding six months from the date of filing the application.
15. Therefore, where parties are dissatisfied with the decision of the Land Registrar in a boundary dispute, they may appeal such decision by filing an appeal before this court within thirty days of the Land Registrar's decision, as provided for in Regulation 40 (6) of the Land Registration (General) Regulations. Hence, a boundary dispute concerning general or uncertain boundaries is not a dispute to be determined by the Land surveyor whose jurisdiction is restricted to fixed boundaries as provided for in Section 19 (3) of the *Land Registration Act*.
16. In this case, although the applicant has sued the Land Registrar, she is yet to file her complaint of a boundary dispute before the Land Registrar. She maintains that she has been dealing with the Land Surveyor whose report she requires to be filed in court. As this dispute is a dispute regarding general boundaries, the same cannot be determined by a land surveyor or by this court. It can only be determined by the Land Registrar; whose decision is appealable before this court. Therefore, in its original jurisdiction, this Court lacks jurisdiction to determine the dispute herein as the same is a boundary dispute in regard to general boundaries. In the premises and on that basis, I find and hold that this court has no jurisdiction to hear and determine the application dated 6<sup>th</sup> December 2023, which I proceed to strike out with costs to the respondents.
17. It is so ordered.

**DATED, SIGNED AND DELIVERED AT MACHAKOS VIRTUALLY THIS 12<sup>TH</sup> DAY OF FEBRUARY, 2025 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM**

**A. NYUKURI**

**JUDGE**

In the presence of;

Mr. Wasonga for the Applicant

Mr. Kinyanjui for 1<sup>st</sup> Respondent

Mr. Kuria for 2<sup>nd</sup> and 3<sup>rd</sup> defendants

Court Assistant: M. Nguyayi

