



**Gathecha v Alasabori & another (Environment & Land Case E005 of 2022)  
[2024] KEELC 13244 (KLR) (14 November 2024) (Judgment)**

Neutral citation: [2024] KEELC 13244 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT & LAND CASE E005 OF 2022  
LC KOMINGOI, J  
NOVEMBER 14, 2024**

**BETWEEN**

**JAMES KARANJA GATHECHA ..... PLAINTIFF**

**AND**

**TIRIGUALE ALASABORI ..... 1<sup>ST</sup> DEFENDANT**

**KAJIADO COUNTY SURVEYOR ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. By the Plaint dated 18<sup>th</sup> January 2022, the Plaintiff states that he is the owner of parcel of land Kajiado/Olchoro Onyore/2699 measuring approximately 0.81 hectares having purchased it from the 1<sup>st</sup> Defendant sometime in April 1989. He avers that at the time of the purchase, the boundaries were well established and beacons placed. However, sometime in the year 2017, the 1<sup>st</sup> Defendant who is the owner of the adjacent parcels; Kajiado/Olchoro Onyore/2698 and Kajiado/Olchoro Onyore/2409 encroached his land and removed the beacons. The Plaintiff reported the matter to the Chief who advised him to engage a private surveyor to visit the land and re-establish the boundaries. However, on 21<sup>st</sup> September 2018, when the Plaintiff's surveyors attempted to enter the land to undertake the survey works, the 1<sup>st</sup> Defendant threatened and denied them entry. The Plaintiff had thus approached this Court seeking, the following reliefs;
  - a. A permanent injunction be and is hereby issued to restrain the 1<sup>st</sup> Defendant from trespassing, interfering and/or encroaching on the Plaintiff's property namely Kajiado/Olchoro Onyore/2699.
  - b. The 2<sup>nd</sup> Defendant be ordered to enter the suit land and establish its boundaries and location of the beacons.
  - c. The Defendant to pay costs of the suit.



2. The Defendant who was duly served with copies of Plaintiff and summons to enter appearance neglected and/or refused to enter appearance and/or file defence.

### **Evidence of the Plaintiff**

3. PW1, James Karanja Gathecha adopted his witness statement as his evidence in chief and produced his bundle of documents which were marked as P. Exhibit 1 to 11. He stated that he purchased the suit property from the 1<sup>st</sup> Defendant in the year 1989 and was issued with a title deed after fulfilling all the obligations. He further stated that when he purchased the land, it had already been subdivided and beacons established. However, at some point the 1<sup>st</sup> Defendant denied him access to the property. He would then visit the land with the surveyor to re-establish the boundaries, in the presence of the village elders but the 1<sup>st</sup> Defendant was adamant. He then filed this suit.
4. At the close of the oral testimony the Plaintiff tendered final written submissions.

### **The Plaintiff's submissions**

5. Counsel submitted that when the Plaintiff visited his parcel of land sometime in 2017, he found that the 1<sup>st</sup> Defendant had encroached on it and removed the beacons. He reported the matter to the area Chief who advised him to engage a private surveyor to re-establish the beacons. In September 2018 the surveyors visited the land but were denied access and as such could not re-establish the boundaries. It was therefore necessary for the trespass to be stopped and with the assistance of the Officer Commanding Station Kiserian. Counsel submitted that these were orders which the Court could give citing the cases of *Tinga Kobot Kabunot vs Kipruto Mutai* [2019] eKLR and *Dickens Ogada Mitoko & 2 others vs Julius Olang Okello* [2018] eKLR.
6. Counsel also submitted that the Plaintiff was entitled to general damages for trespass of Kshs. 600,000 even without proof that he had suffered any loss or damages as was held in *Park Towers Ltd vs John Mithamo Njika & 7 others* (2014) eKLR.

### **Analysis and Determination**

7. I have considered the pleadings, the evidence on record, the written submissions and the authorities cited. The issues for determination are:
  - i. Whether the 1<sup>st</sup> Defendant should be restrained from encroaching or trespassing on property Kajiado/Olchoro Onyore/2699;
  - ii. Whether the 2<sup>nd</sup> Defendant should be ordered to enter property Kajiado/Olchoro Onyore/2699 and re-establish its beacons and boundary;
  - iii. Who should bear costs of the suit?
8. This suit emanates from a boundary dispute between the Plaintiff and the 1<sup>st</sup> Defendant. The Plaintiff claims that when he purchased the suit property from the 1<sup>st</sup> defendant, it had a clearly demarcated boundary together with established boundaries. It is the Plaintiff's case that sometime in 2017, the 1<sup>st</sup> defendant encroached on his parcel and removed the beacons. The Plaintiff made a report to the Area Chief who advised him to engage a surveyor to visit the ground and re-establish the boundaries. Unfortunately, the 1<sup>st</sup> defendant became violent, threatening and made it impossible for the surveyor to gain access to re-establish the boundaries. This was the reason for filing this suit.
9. In addressing the Plaintiff's prayer for boundary re-establishment, I am guided by the statutory framework provided under the [Land Registration Act](#). Specifically, Section 18 of the [Land Registration](#)



Act vests the authority and responsibility on the Land Registrar to determine, rectify, and re-establish land boundaries upon application by interested parties where it provides:

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.”
10. This statutory mandate empowers the Land Registrar to address and resolve boundary disputes and to ensure the accurate demarcation of land boundaries, thereby safeguarding the property rights of registered landowners. Furthermore, it provides a clear procedural limitation, stipulating that courts are precluded from entertaining disputes regarding land boundaries unless and until they have been determined by the Land Registrar in accordance with the law. This legislative provision underscores the importance of first addressing boundary disputes administratively through the Land Registrar.
11. Given this statutory framework, it is clear that the Plaintiff is within his legal rights to seek an order directing the Land Registrar to re-establish the boundaries of Kajiado/Olchoro Onyore/2699. Such an order aligns with the Plaintiff’s right to a quiet and exclusive enjoyment of his property, free from encroachment by neighbouring landowners. Thus, the Plaintiff’s request for the boundary re-established is legally justified and consistent with the provisions of the Land Registration Act.
12. Regarding the Plaintiff’s request to prohibit the 1<sup>st</sup> Defendant from encroaching upon the suit property, it follows logically that the court can only grant such an injunction if, upon re-establishment of the boundaries, it is determined that the 1st Defendant has indeed infringed upon the Plaintiff’s property. The issuance of an injunction in such circumstances would be predicated on clear evidence of encroachment, once the boundary re-establishment process has been undertaken.
13. Finally, if the hurdle to have the beacons/ boundaries re-established has been caused by the 1<sup>st</sup> Defendant’s hostility, then this court has authority to issue ancillary orders necessary to facilitate the lawful execution of its directives. In this context, the court shall direct the Officer Commanding Station, Kiserian Police Station to provide police assistance during the exercise to ensure that the process is peaceful.
14. In conclusion I find that the Plaintiff has proved his case as against the Defendant in a balance of probabilities.
15. Accordingly Judgement is entered for the Plaintiff as against the Defendants as follows;
  - i. The Land Registrar Kajiado and County Surveyor do ascertain the boundaries of the disputed parcels of land Kajiado/Olchoro Onyore/2699, Kajiado/Olchoro Onyore/2698 and Kajiado/Olchoro Onyore/2409;
  - ii. The Officer Commanding Station Kiserian Police Station is hereby ordered to assist in peaceful execution of the court order;
  - iii. That a permanent injunction is hereby issued restraining the 1st Defendant from encroaching upon or trespassing on land parcel known as Kajiado/Olchoro Onyore/2699 which shall become enforceable if the exercise in (i) above confirms that the 1st Defendant has encroached upon the Plaintiff’s property;
  - iv. The costs of the suit shall be borne by the 1st Defendant.



**DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 14<sup>TH</sup> DAY OF NOVEMBER 2024.**

**L. KOMINGOI**

**JUDGE.**

In The Presence Of:

Mr. Mugu for the Plaintiff.

N/A for the Defendants.

Mutisya – Court Assistant.

