



**Shonko v Pulei (Environment & Land Case 603 of 2017)
[2024] KEELC 7458 (KLR) (12 November 2024) (Ruling)**

Neutral citation: [2024] KEELC 7458 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 603 OF 2017
MN GICHERU, J
NOVEMBER 12, 2024**

BETWEEN

TOMOSIAY OLE SHONKO PLAINTIFF

AND

LANGESA OLE NATU PULEI DEFENDANT

RULING

1. This ruling is on the notice of motion dated 6/11/2021. The motion which is by the plaintiff is brought under Article 40 of the Constitution, Order 22 Civil Procedure Rules, Sections 1A, 1B and 38 of the Civil Procedure Act, various provisions of the Land Act, the Land Registration Act and all other enabling provisions of law.
2. The motion is based on 14 grounds and is supported by an affidavit sworn by the applicant and dated 6/11/2022. The gist of the above material is as follows. Firstly, on 18/10/2018, the court directed the plaintiff to file a surveyor's report within 60 days in respect to L.R. Kajiado/Ewaso Kedong/1362. Secondly, after a long delay, the District Surveyor filed a report on 18/12/2019. Thirdly, the report filed by the District Surveyor is extremely shallow and fails to capture the actual situation on the ground which shows massive encroachment. It is based on narrations and what was captured by the naked eye rather on science. It did not zero in on the disputed area and misses on the area and acreages. Fourthly, the applicant was aggrieved and he sought the services of a private surveyor who came up with totally different findings from what was reported by the District Land surveyor. Fifthly, the report of the private surveyor found that the positioning of the beacons was questionable and there was massive loss of acreage on the suit land. Finally, the court should adopt the report by the plaintiff's private surveyor.
3. The motion is unopposed by the respondent.
4. I have carefully considered the motion in its entirety and I find that the following issues arise.
 - i. Whether this court has jurisdiction in boundary dispute determination.



- ii. Whether this court can enter judgment in accordance with a report filed by a private surveyor.
 - iii. What is the way forward in this case.
5. On the first issue, I find that this court has no jurisdiction to entertain a dispute on boundaries of registered land. Such jurisdiction is vested exclusively in the Land Registrar of the area in which the land is situated by virtue of Section 18 (2) of the [Land Registration](#), which provides as follows.

“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...”

From the above provision of the law, it is clear that only the Land Registrar has power to determine a boundary dispute of registered land. Regulation (40) (4) of the [Land Registration \(General\) Regulation 2017](#) provides as follows.

“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”.

The only lawful guidance for the registrar is from the survey office. This finding covers the second issue as well because it is clear from Regulation 40 (4) that the report of a private surveyor has no place in official boundary determination by the District Land Registrar in execution of his mandate under Section 18 (2) of the [Land Registration Act](#).

6. On the final issue of the way forward, this suit was filed on 10/4/2008, which is more than 16 ½ years ago. I find that it is not fair or just that this case should be pending in court. Firstly, when the case was filed, the applicable law was Section 21 (4) of the [Registered Land Act](#) (cap 300) which, just like the current law provided as follows.

“No court shall entertain any action or other proceedings relating to a dispute as to boundaries of registered land unless the boundaries have been determined as provided in this section”.

Even in the year 2008, the court had no jurisdiction to entertain the suit. It is no wonder that the dispute has not been resolved. The simple reason for this inordinate delay is that it is before the wrong forum and no matter how long it takes, this court will never resolve the dispute. Secondly, under Regulation 40 (6) of the [2017 Regulations](#), it is clearly stipulated that this court has only appellate jurisdiction in boundary disputes. It provides,

“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”.

This is the first time that the law recognizes the jurisdiction of the court in a boundary dispute and such jurisdiction is not original but appellate.

7. In conclusion and because the court has no jurisdiction the only way forward is for the court to down its tools by striking out the suit with costs for want of jurisdiction. Suit struck out with costs to the defendant.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY 12TH DAY OF NOVEMBER 2024.



M.N. GICHERU
JUDGE

