



**Njurukani & another v Barasa (Miscellaneous Civil Application
E015 of 2024) [2024] KEELC 13992 (KLR) (17 December 2024) (Ruling)**

Neutral citation: [2024] KEELC 13992 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA
MISCELLANEOUS CIVIL APPLICATION E015 OF 2024
EC CHERONO, J
DECEMBER 17, 2024**

BETWEEN

JOSEPH NDAFU NJURUKANI 1ST APPLICANT

SOSPETER JUMA NDAFU 2ND APPLICANT

AND

EMILY NALIAKA BARASA RESPONDENT

RULING

1. This ruling is for determination of the application dated 14/08/2024 which seeks the following orders;
 - a. Spent
 - b. Spent
 - c. That an order is hereby issued to OCS Myanga Police Station to provide security to Bungoma Land Registrar Ministry of lands and Bungoma land surveyor Ministry of lands to complete the demarcation process in respect of land parcel no. West Bukusu/ West Siboti/ 524 and 607 pursuant to the report dated 10/06/2024.
 - d. That the Respondent, the Respondent's servants and or agents be restrained from interfering with the demarcation exercise to determine the boundaries between the aforesaid land parcels.
 - e. The OCS Mayanga Police Station be ordered to provide security during the undertaking of the exercise.
2. The application is premised on the grounds set out on the face of the application supported by the affidavit of Sospeter Juma Ndafu-2nd applicant.
3. The Applicants contend that as a result of a boundary dispute between the parties herein, they resorted to inviting the land registrar and surveyor to determine the same. The land registrar and surveyor,



amongst others, are said to have visited the site and a report prepared. However, it is said that the Respondent is not keen to have the process finalized and has resulted to using the police to threaten the Applicant with arrests. The Applicant also alleges that it is important and in the interest of justice for the demarcation process to be completed.

4. In response, the Respondent filed a replying affidavit sworn on 19/09/2024 where he deposed that this matter emanates from Bungoma ELC OS No.23 of 2016 which matter was conclusively heard and determined and he was declared as the owner of land parcel no. W.Bukusu/W.Siboti/607 measuring approximately 8.4ha. He stated that the issue was in that case was on ownership and not a boundary dispute and that the Applicant's actions are aimed at denying him occupation of the subject land which contravenes the decree issued. That the Applicant was occupying both land parcel no. W.Bukusu/W.Siboti/607 and 524 as one piece for 17 years. That upon the issuance of a decree awarding him land parcel no. W.Bukusu/W.Siboti/607, he sought the services of the county surveyor to re-establish the boundaries and a notice dated 10/11/2023 was issued to the concerned parties.
5. The surveyor is said to have visited the site on 18/11/2023, re-established the boundaries in the presence of both parties and prepared a report. He states that he thereafter got security orders and fenced off his land which was later removed by the Applicant. He stated that he was not in attendance on the dates the Applicants are alleged to have conducted a further survey. The Respondent denied appointing the firm of Paul Juma & Company Advocates who the Applicants alleged entered into a consent with. He further challenged the issuance of the orders sought stating that they were substantive in nature.
6. The Applicants filed a supplementary affidavit dated 01/10/2024 where they averred that the Respondent and her agent on 29/04/2024 demolished his house claiming that they were in her land without any court order. He claimed that the purported surveyor encroached into land parcel no W.Bukusu/W.Siboti/524. It was argued that the court is seized with jurisdiction to issue orders of security for the land Registrar to complete his/her duties.
7. Directions were taken where the parties agreed to have the application be canvassed by way of written submissions.
8. The applicants filed submissions dated 26th August, 2024 where they relied in the provisions of Section 18(2) and 19 of the Land Registration Act and the case of Willis Ocholla vs. Mary Ndege (2016) eKLR. They pointed the court to the land Registrars' recommendation for them to seek a court order for completion of the demarcation process. The Applicants further submitted that the provisions of Section 24 and 51(B) of the National Police Service Act No. 11 of 2011 outlines the function of the police to preserve peace can only be exercised, in this case upon the issuance of a court order.
9. The Respondent filed submissions dated 01/10/2024 where She submitted that the court lacks the jurisdiction to determine proceedings relating to dispute as to boundaries unless the same has been determined under Section 18(2) of the Land Registration Act. She relied in the case of Paul Muraya Kaguri vs. Simon Mbaria Muchunu (2015) eKLR and Nyori vs. Kigen & 2 Others (Environment and Land Appeal E013 of 2022) [2023] KEELC 22467 eKLR.

Legal Analysis and Determination

10. This is an application for the court to issue an order for security as the land Registrar and Surveyor Bungoma County undertake demarcation exercise in respect to land parcel no W.Bukusu/W.Siboti/524 and 607 and for orders restricting the Respondent from interfering with the demarcation process. The issue for determination is whether the court has jurisdiction to grant the orders sought and whether the Applicants have given sufficient grounds to warrant the grant of the orders.



11. Section 18 (2) and 19 of the [Land Registration Act](#) No. 3 of 2012 provides as follows

18.

- (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](#).

12. This section provides that a boundary dispute between proprietors of registered land are obliged to first seek redress from the Land Registrar before escalating it to court.

13. Section 19(2) further states as follows:

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.

14. From the record, it shows that after obtaining the decree in Bungoma ELC Case No.23 of 2016(OS), the Respondent employed the services of the county surveyor to re-establish the boundary between the two parcels of land. The Respondent presented the said surveyors report dated 08/12/2023. The Applicant on the other hand invited the land Registrar to re-establish the said boundaries and the same was done on 02/02/2024 with the concerned parties being present. The said land Registrar in his report recommended that;

“...the aggrieved party to seek for a court order to complete the demarcation process and a comprehensive report be issued on the same.”

15. First and foremost, I must note that the Respondent presenting his own independent Surveyor’s report does not constitute a boundary determination as contemplated under Section 18 and 19 of the [Land](#)



Registration Act as was held in the case of Lucy Agape Wayodi v Kenya National Highways Authority & 2 others [2019] eKLR where the learned Judge (Ombwayo J) held as follows:

“The Petitioner’s own independent survey and surveyor’s report cannot substitute the determination of the boundary by the Land Registrar as provided for in Section 18 and 19 of the Land Registration Act.”

16. Secondly, upon considering the recommendations by the land Registrar, it is not clear what court orders he required the aggrieved party to seek, given his mandate under section 18 and 19 of the Land Registration Act. The Applicant herein seems to be convinced that the land Registrar meant orders of security and thus this application. In the case of Lydia Muthoni Nabea –vs- Benson Kiriinya & 2 Others (2008) eKLR, the court held as follows;

“Courts will be reluctant to involve the Police in effecting Court Orders in purely civil proceedings. In very rare and exceptional cases will the Court direct the Police to be involved in the execution of its order issued in the exercise of its civil jurisdiction. But even then the Applicant must demonstrate that there is a real threat to peace and tranquility in which case the role of the Police will only be confined to maintenance of law and Order.”

17. The Applicants in this case have not demonstrated that the land Registrar was in any way prevented or threatened from performing their duties in placing the boundaries. There is no nexus established between the attached cash bail receipts and the exercise by the Registrar who the Respondents seem to agree is the authority in establishing and handling boundary disputes.

18. As for the restraining order, there is no substantive suit pending before this court and this court cannot therefore issue such orders.

19. Accordingly, I find no merit in the Application. The same is hereby dismissed with each party to bear their own costs.

DATED, SIGNED AND DELIVERED AT BUNGOMA THIS 17TH DAY OF DECEMBER, 2024.

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HON.E.C CHERONO

ELC JUDGE

In the presence of;

Mr. Masika H/B Mr. Wamalwa Simiyu for the Plaintiff/Applicant

M/S Adongo for the Defendant/Respondent.

Bett C/A

