



**Mbuthia & 3 others v Land Registrar Kajiado County & 3 others (Environment & Land
Petition E001 of 2023) [2024] KEELC 13640 (KLR) (5 December 2024) (Judgment)**

Neutral citation: [2024] KEELC 13640 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND PETITION E001 OF 2023
LC KOMINGOI, J
DECEMBER 5, 2024**

BETWEEN

**JOHN MWANGI MBUTHIA 1ST PETITIONER
JANE NDUTA MBUTHIA 2ND PETITIONER
GEORGE KAMAU MBUTHIA 3RD PETITIONER
MAGDALENE GATHONI MWANGI 4TH PETITIONER**

AND

**LAND REGISTRAR KAJIADO COUNTY 1ST RESPONDENT
COUNTY SURVEYOR KAJIADO COUNTY 2ND RESPONDENT
DIRECTOR SURVEYOR 3RD RESPONDENT
ATTORNEY GENERAL 4TH RESPONDENT**

JUDGMENT

1. This Petition dated 24th March 2023 brought pursuant to the Articles 2, 3, 10, 19, 20 to 24, 27, 28, 40, 47, 48, 50, 60, 61, 64, 73, 162, 232, 258 and 259 of the [Constitution](#); Section 3, 4 and 8 of the [fair Administrative Action Act](#); the [Land Registration Act](#), the [Land Act](#), and the [Survey Act](#).

The same is supported by the Affidavit of Jane Nduta Mbuthia, the 2nd Petitioner sworn on the 24th March 2023.

2. The Petitioners state that they are the Administrators of the Estate of the late Geoffrey Rotter Mbuthia who was the owner of parcels Kajiado/Kitengela/4580, Kajiado/Kitengela/4581 and Kajiado/Kitengela/17304. Following his demise, the beacons, boundaries and fences demarcating these properties and the neighbouring properties were defaced making distribution of the properties arduous.



3. The Petitioners claim that on 4th October 2017 they wrote a letter to the 1st Respondent requesting for mutation of the mother title Ololoitikoshi/Kitengela/2875 to ascertain the boundaries of these parcels. On 6th October 2017, the 1st Respondent responded and asked them to seek legal redress and obtain orders to compel them to resolve the boundary dispute. The Petitioners' advocates in another letter dated 15th October 2021 informed the 1st and 2nd Respondents that they had a legal mandate under Sections 18, 19 and 20 of the Land Registration Act to ascertain, fix and demarcate boundaries but there was no response. They claimed that the beneficiaries right to enjoyment of the suit properties as per Article 40 of the Constitution had been violated due to the boundary dispute and the 1st Respondent's lack of response was a ground for review under Section 7 (2) (j) of the Fair Administrative Action Act. They also claimed that the 1st Respondent's inaction was contrary to Section 4(3) of the Fair Administrative Action, as well as Sections 18 and 19 of the Land Registration Act.
4. They thus prayed for the following reliefs;
 - a. That the Court gives an order of Mandamus directing the 1st, 2nd and 3rd Respondents to visit LR No. Kajiado/Kitengela/4580, Kajiado/Kitengela/4581 and Kajiado/Kitengela/17304 in the presence of the Petitioners and prepare a report on the distinct demarcations and to affix the boundaries between each of the aforementioned parcels of land and the parcels of land adjoining them.
 - b. That the court gives an order of mandamus directing the 1st, 2nd and 3rd Respondents to survey the land parcels LR No. Kajiado/Kitengela/4580, Kajiado/Kitengela/4581 and Kajiado/Kitengela/17304 provide the relevant mutation forms, and to amend, rectify and update the Registry index Map (RIM) to reflect the distinct demarcations of the affixed boundaries in respect to the said land parcels.
 - c. A declaration that the actions and omissions of the 1st Respondent herein violated the Constitution of Kenya, and in particular Articles 10, 19, 20, 27, 40, 47,50, 73 and 232 of the Constitution of Kenya.
 - d. A declaration that the actions and omissions of the 1st Respondent have hampered the distribution of the suit property to the deserving beneficiaries as the boundaries are unclear.
 - e. A declaration that the unclear boundaries and defaced beacons and hedges threatens with violation the right to property of the beneficiaries of the suit property contrary to Article 40 of the Constitution of Kenya 2010.
 - f. A declaration that the 1st Respondent's actions and omissions threatens with violation the right to peaceful and quiet enjoyment of property contrary to article 40 2(b) of the Constitution of Kenya.
 - g. An order for general damages for violations of the Petitioner's fundamental rights be made.
 - h. Costs of this Petition be borne by the Respondents.
 - i. Any other relief that the Court shall deem fit and just in the circumstances.
5. The Respondents neither entered appearance nor filed responses.
6. The Petition was canvassed by way of written submissions.



The Petitioners' Submissions

7. On whether an order of mandamus should be issued against the 1st, 2nd and 3rd Respondents, counsel submitted that Sections 16, 18 and 19 of the *Land registration Act* as well as Section 21 of the Surveys Act mandates them with verifying and rectifying boundary lines making reference to Willis Ocholla vs Mary Ndege [2016] eKLR. However, despite the Petitioners severally seeking their intervention as per Regulation 40 of the General Land Regulations, they are yet to determine the boundary dispute. In effect, the beneficiaries of the late Geoffrey Rotter Mbuthia cannot undertake the succession process. The Court should thus compel them to perform their duties as was held in Kenya National Examinations Council vs Republic ex parte Geoffrey Gathenji Njoroge (1997) eKLR.
8. On whether the 1st Respondents acts had violated Articles 10, 19, 20, 27, 28, 47, 50, 73 and 232 of the *Constitution*, Counsel submitted that the Petitioners right to equality, dignity and property had been violated. It had taken the Petitioners over a decade to complete the succession proceedings due to the Respondents inaction was not only contrary to the mandate of public officers but also unconstitutional. Reference was made to the cases of JSC vs Mbalu Mutava & another [2014] eKLR and Kenya Human Rights Commission & another vs NGO Coordination Board & another [2018] eKLR.
9. As such, the Petitioners ought to be compensated for this violation through an award of general damages making reference to Edward Akong'o Oyugi and 2 others vs AG [2019] eKLR and Koigi Wamwere vs AG [2015] eKLR.

Analysis and Determination

10. I have considered the Petition, affidavit evidence, the written submissions, the authorities cited and all the materials placed before the court. I find that the issues for determination are:
 - i. Whether an order of mandamus should be issued directing the 1st, 2nd and 3rd Respondents to survey the land parcels LR No. Kajiado/Kitengela/4580, Kajiado/Kitengela/4581 and Kajiado/Kitengela/17304 provide the relevant mutation forms, amend, rectify and update the Registry index Map (RIM) to reflect the distinct demarcations of the affixed boundaries in respect to the said land parcels.
 - ii. Whether the Petitioners rights were violated and are thus entitled to an award of General damages;
 - iii. Who should bear costs of the Petition?
11. An order of mandamus is a judicial remedy used to compel a public authority or officer to perform a duty imposed upon them by law where they have failed, neglected, or refused to do so. The Petitioners have decried of the 1st, 2nd and 3rd Respondents inaction in determining boundary issues affecting their properties despite following up on the same for over seven years.
12. On matters of enforcement of Bill of Rights under Article 22 of the *Constitution*, Article 23(3)(f) gives Courts the powers to grant appropriate reliefs including Judicial review orders:
 - (3) In any proceedings brought under Article 22, a court may grant appropriate relief, including—
 - (a) a declaration of rights;
 - (b) an injunction;
 - (c) a conservatory order;



- (d) a declaration of invalidity of any law that denies, violates, infringes, or threatens a right or fundamental freedom in the Bill of Rights and is not justified under Article 24;
 - (e) an order for compensation; and
 - (f) an order of judicial review.
13. A person seeking an order for Mandamus must demonstrate that a specific public duty is imposed on the respondent by law.
 14. This Petition is in respect of a boundary determination which is a mandate of the Land Registrar through the Land Surveyor as outlined under Sections 16, 17, 18, 19 of the *Land Registration Act*. And Section 18(2) of the *Land Registration Act*, expressly bars courts from entertaining such disputes unless the boundaries have been ascertained by the Registrar:
 - (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.
 15. The second issue for determination in grant of mandamus orders is whether the Respondents failed or refused to perform the duty despite the Petitioners demand for compliance.
 16. I find that the Petition herein fails to meet the conditions set out in the case of Anarita Karimi Njeru Vs. A.G. (1979) KLR 154 as cited in the case of Mumo Matemu Vs. Trusted Society of Human Rights Alliance & Others (2012) eKLR.
 17. The Petitioners produced several correspondences showing that between 2014 and 2016, they approached the 1st Respondent to aid them in getting mutation forms for the properties Kajiado/Kitengela/4580, 4581 and 17304 so as to ascertain the beacons and ground position of the properties. The said letter reads in part: “Our problem is pinpointing the exact location of these titles on the ground despite many visits to the physical area in Oloosirkon where the previous owner and his children have made matters very difficult in identifying the beacons. The mother title for the above titles is Olootikoshi/Kitengela/2875 and this is the land whose mutation cannot be found...”
 18. A reading of this letter as well as the Petition shows that this is a boundary dispute that is, and should be determined by as outlined in the *Land Registration Act*.
 19. It is noted that on the 6th October 2017 the Principal Land Registrar in a letter addressed to the Petitioners regarding the Mutation form indicated: “... Please note that we are unable to trace the mutation for the above said land... Your issue being dispute as to the actual ground location of land parcels 4580, 4581 and 17304 and since the family members of the person who sold your father the said parcels are not ready to assist in the identification of the same, it is my advice that you consider going to Court for specific order...”
 20. From this response, it is clear that the 1st Respondent responded to the Petitioners request and gave his advice on the same. This court is therefore not convinced that the 1st respondent failed to act on their request as claimed.
 21. What is clear is that this is a boundary dispute which the Petitioners have couched as a Petition.
 22. It is clear that under Section 18(2) law is clear that this Court should not entertain a boundary dispute unless the boundary has been determined accordingly. As such, this Petition is hereby dismissed with no orders to costs.



DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 5TH DAY OF DECEMBER 2024.

L. KOMINGOI

JUDGE.

IN THE PRESENCE OF:

Mr. Kiptoo for Mr. Kiplangat for the Petitioners.

N/A for the Respondents.

Court Assistant – Mutisya.

