



**Daykio Plantations Limited v Mahugu & another (Environment & Land Case 721 of 2017) [2023] KEELC 15679 (KLR) (22 February 2023) (Judgment)**

Neutral citation: [2023] KEELC 15679 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT & LAND CASE 721 OF 2017  
MN GICHERU, J  
FEBRUARY 22, 2023**

**BETWEEN**

**DAYKIO PLANTATIONS LIMITED ..... PLAINTIFF**

**AND**

**NJUGUNA MOSES MAHUGU ..... 1<sup>ST</sup> DEFENDANT**

**LUCY NJOKI MAHUGU ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. The Plaintiff's claim against the Defendants is as follows.
  - a. A permanent injunction to restrain the Defendants from trespassing into or remaining in possession of or in any manner from interfering with the boundary of Kajiado/Kaputiei-North/14903.
  - b. An order to allow ingress of the Land Registrar and District Surveyor Kajiado to ascertain and realign the boundary of LR Kajiado/Kaputiei-North/14903 and 1465 as per the maps, mutations, registry index map and the ground.
  - c. An order directing the first and second Defendants to remove the fence.
  - d. An order for the first and second Defendants, their servants, agents and/or any other person claiming under them to be evicted from the Plaintiff's portion of land.
  - e. Mesne profits with effect from 2008.
  - f. Interest on (e), (f) and (g) above at court rates.
2. The Plaintiff's case is as follows. It is the registered proprietor of LR Kajiado/Kaputiei-North/14903 measuring 36.26 hectares. On the other hand, the Defendants are the registered owners of LR Kajiado/Kaputiei-North/1465 which measures 40.47 hectares. The two parcels share a common boundary.



3. In the year 2008, the Plaintiff surveyed its land and found it to be 30.4 hectares instead of 36.26. There was a difference of 5.9 hectares. The reason for this reduction of the Plaintiff's land in size was that the boundary between the two parcels was not properly aligned.

The Defendants had fenced a substantial portion of the Plaintiff's land as their own. They ignored the beacons on the ground when fencing as a result of which they encroached onto the Plaintiff's land.

4. In the year 2010, the Plaintiffs filed a boundary dispute at the Kajiado Land Disputes Tribunal but the tribunal did not complete its work after the law on which it was founded was repealed. When the Plaintiff reported the dispute to the Land Registrar, the defendants did not cooperate and the Land Registrar was unable to determine the dispute.

The Plaintiff has lost use of his land and it is for the above reasons that he filed the current suit.

5. The Defendants filed a written statement of defence dated March 3, 2017. In the defence, they aver that they own LR No 1465 which they took possession of in the year 1990. They fenced off the land. Nobody ever complained. The Plaintiff became registered of their land in the year 2004. The previous owner of the land now owned by the Plaintiff never complained. They add that the proper party to be sued in this case is Loishrua Ole Kuyon who sold land to the Plaintiff and who owned LR Kajiado/Kaputiei-North/498 from which the Plaintiff's land mutated.

Finally, the Defendants aver that the Plaintiff's claim is time barred by reason of Section 7 of the [Limitation of Actions Act](#) and that it is this court and not the land Registrar with jurisdiction to determine this dispute.

6. On April 11, 2018, this court ordered that the parties herein subject themselves to the Land Registrar for the determination of the boundary. The Land Registrar filed a report dated October 14, 2020. According to the report, the Plaintiff's land is actually 34.63 hectares against the 36.26 hectares registered and indicated in the title deed.

The Defendant's land was found to be 36.95 hectares against the 40.47 hectares registered and indicated in the title deed. The Registrar made the following findings.

- i. The Plaintiff has not proved encroachment by the Defendant.
  - ii. Both parties should be contented with the land they hold currently because the physical ground and the records are almost in agreement.
  - iii. The parties should submit their titles for amendment to conform with the ground measurements and registry index map and further to reflect the correct acreage each party is holding.
  - iv. Status quo to be maintained pending the outcome of the court ruling.
7. On the date scheduled for the trial, both parties decided not to call any witnesses but to rely on the report of the Land Registrar.
  8. Counsel for the parties filed written submissions on August 2, 2022 and October 3, 2022 respectively. In his submissions, the Plaintiff's counsel calls for a resurvey. On the other hand, the Defendants' counsel calls for a dismissal of the Plaintiff's case for failure to prove encroachment.
  9. I have carefully considered the evidence adduced by the Land Registrar which was produced by consent of the two parties. I have also considered the submission by learned counsel for the parties as well as the issues and the law therein.



I find that there is only one issue raised in the entire case. Whether the court should adopt the report of the Land Registrar or order a resurvey.

10. I find that the report of the Land Registrar be adopted and no resurvey should be undertaken for the following reasons.
11. Firstly, I find that contrary to the allegations that the Plaintiff's LR 14903 has a shortfall of 15 acres, the actual shortfall is only 4.026 acres. This is as per paragraph 5 and 6 of the observation and findings in the Land Registrar's Report dated October 14, 2020.

At the trial, the Plaintiff should have called evidence to show what was wrong with the Registrar's Report and the findings thereon. They chose not to do so. They cannot now be heard to say that there be a resurvey. The purpose which the said resurvey would serve has not been demonstrated.

Secondly, the same report by the Land Registrar shows that the Defendants' land has a shortfall of 8.6949 acres. This shows that the error between what is indicated in the title and what is on the ground does not just affect the Plaintiff. It also affects the Defendants in a bigger manner.

Finally, the Land Registrar is the authority on boundary determination and from the report dated October 14, 2020, there is nothing that the Registrar overlooked. The report contains everything that it should contain and it cannot be faulted in any way.

For the above stated reasons, I dismiss the Plaintiff's suit with costs to the Defendants.

It is so ordered.

**DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 22<sup>ND</sup> DAY OF FEBRUARY, 2023.**

**M.N. GICHERU**

**JUDGE**

