

RESOLVING LAND BOUNDARIES DISPUTES



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INTRODUCTION

Boundary disputes are a common phenomenon amongst property owners in Kenya. Consequently, disputes seeking delineation or alteration of land boundaries are often the subject of proceedings in Kenyan courts.

LAND REGISTRAR

Under the law, it is a mandatory requirement that any boundary dispute has to, first, be submitted for determination by the respective Land Registrar before subsequent submission to court. The Court in the case of *Mbote Gichini v Njihia Mwangi* [2018] affirmed that courts should not entertain any proceedings relating to a boundary dispute unless the issue has first been submitted to the Registrar for determination. That finding has been affirmed in other judicial precedents. In determining the boundaries, the Registrar is technically guided by the Government Surveyors.

The Registrar's report is usually regarded as conclusive by the courts, since only the Registrar is mandated to resolve boundary disputes under the law. In the case of *Sangale Ole Langas v Stephen Mishish* [2018] the Court affirmed that the Registrar's report had dealt conclusively with the boundary dispute as mandated by the law. In the case of *George Kamau Macharia v Dexka Limited* [2019] the Court noted that:

It is trite law that where the law has given a legal obligation to a department of Government, it is important for the Court to let that department proceed to meet its legal obligations. In this case the office of the Land Registrar is mandated to deal with the general boundary dispute first before the same is escalated to the Court.

Even in circumstances in which there are discrepancies between the findings of a private surveyor and those of the Registrar, the Court will uphold the Registrar's report if based on the Government Surveyors findings, as stated in the case of *Sangale Ole Langas v Stephen Mishish & Another* [2018].

DEMARCATED BOUNDARY

If the claim relates to a substantial reduction of the size of one parcel, based on the existence of a defined or established boundary but which has subsequently been disputed by one of the parties, then it is likely to be regarded as comprising a claim for land by the Registrar and the Court, rather than being a mere boundary dispute. This is particularly likely to be so if the defined boundary has elements of permanency, such as a live hedge or trees. Thus, despite allegations of previous encroachment, the existence of an established boundary may require the aggrieved proprietor to rely on other legal principles to claim back the land, if applicable, such as adverse possession.

REGISTRY MAP

Where the boundary on the ground has assumed elements of permanency, particularly due to delineation through a live fence or trees, the court may actually proceed to the extent of requiring the amendment of the Registry Index Map to reflect the situation on the ground, despite allegations of previous encroachment, as was ordered in Mbote Gichini case.

REGISTRAR'S ILLEGALITY

Despite the Registrar's report being the core determinant of boundary dispute resolution, the same can be set aside for procedural irregularly and illegality, such as failure to give notice to some of the parties during the visit to the ground for dispute resolution, or bribery.

TIME LIMITATIONS

As can be discerned from the foregoing discussion, passage of time, particularly if supplemented by the existence of a defined boundary such as a live hedge and trees, will limit

the capacity to have the boundary varied by the Registrar, or through an order of the court. Indeed, passage of time without a discernible boundary complaint significantly operates to the detriment of the subsequent claimant, and operates as estoppel, or bar, to future abrupt claims. It is noteworthy that the Limitation of Actions Act explicitly bars a claim for recovery of land after the passage of 12 years without action against the trespasser, and is the basis of adverse possession. It is, thus, practically impossible to recover land through the courts if there is no evidence that effort was made to evict or resist the adverse possessor within 12 years since the occupation or trespassing commenced.

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