

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT FORT PORTAL

MISC. APPLICATION NO. 042 OF 2023

(ARISING FROM HCT – 01 – CV – LD – CS – 027 OF 2020)

BAMANYISA MALIKO & 156 OTHERS ::::::::::::::::::::::::::: APPLICANTS

VERSUS

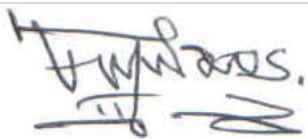
NATIONAL FORESTY AUTHORITY ::::::::::::::::::::::::::: DEFENDANT

BEFORE: HON. JUSTICE VINCENT WAGONA

RULING

The applicant bought this application under Order 52 rule 1 and 2 of the Civil Procedure Rules and section 33 of the Judicature Act and section 98 of the Civil Procedure Act for orders that:

1. An order issues directing the Commissioner of Surveys and Mapping under the Ministry of Lands, Housing and Urban Development to open the boundaries of Matiri Central Forest Reserve (MCFR) in accordance with the boundary Plan No. 1449 to determine whether the original boundaries of Matiri Central Forest Reserve are still in their original location and whether the applicants' land is within the forest reserve.
2. That an order issues that the said exercise be jointly carried out by the said Commissioner and the parties appointed private registered surveyors.
3. That the District Police Commander, Kyenjojo District be ordered to provide security for this exercise from commencement to completion.



4. That the exercise be carried out within a period of two months from determination of this application.

3 5. That the costs of the application be provided for.

The application is supported by the affidavit of Bamanyisa Maliko, the 1st applicant who averred as follows;

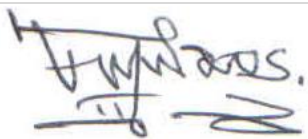
6 1. That the applicants are owners of land by first acquisition and occupation situate in Kyamunwa Village, Kyankaramata Parish, Kihura Sub County, Kyenjojo District which prior to their eviction in late November 2013 were in
9 occupation and possession thereof since 1950s.

12 2. That the applicants under their organization, Abagambakamu group in 2007 had applied for conversion of their land from customary to freehold and the said land is approximately 600 acres and in 2008 and the District Land Board of Kyenjojo approved the grant of freehold in respect of the said land.

15 3. That the Respondent who owns land adjacent crossed their boundary marks, trespassed and evicted the applicants from their lawfully owned land. That the elicited boundary shifting occurred in 2005, 2009, 2011 and 2013.

18 4. That a joint boundary opening is necessary to establish whether the boundaries of Matiri Forest Reserve are in accordance with the boundary plan no. 1440 and still in the same location. That the exercise is necessary to enable court conclusively determine the dispute between the parties in land civil suit no.
21 027 of 2020 pending before court.

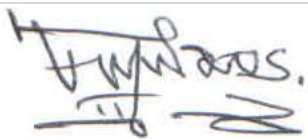
24 5. That the boundary opening is necessary to establish the alleged shifting of boundaries and as such it is fair and equitable that the application is allowed and the prayers sought granted.

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The application was opposed by the Respondent through an affidavit deposed by Namuddu Jacqueline, a legal officer who stated as follows:

- 3 1. That the main suit from where the current application arose abated under Order 11A rules 1(6) of the Civil Procedure (Amendment) Rules 2019. That accordingly the current application is rendered nugatory and an illegality.
- 6 2. That the Respondent has never evicted the applicants as falsely alleged. That the eviction of 2014 was done by court and not the Respondent.
- 9 3. That the boundaries of Matiri Central Forest Reserve were already opened under a court order dated 22nd October 2013 touching the suit land in Omuhereza Rwakaboyo versus NFA, Civil Suit No. 0016 of 2009 where court directed the Commissioner Surveys and Mapping, Ministry of Land to open
12 both external and internal boundaries of Matiri Forest Reserve.
- 15 4. That after the boundary, opening, a report was filed in court and court relied upon the same to give judgment. That the boundaries of Matiri Central Forest Reserve have since time immemorial been in the same location and do not shift therefore the orders sought in the application are baseless.
- 18 5. That the application is an abuse of court process and aimed at depleting the national funds for orders to carry out boundary opening which had been previously executed. That the boundary opening was done by the commissioner surveys and Mapping. That it is fair and just that the application
21 is dismissed since it arises from an abated suit and the boundary opening was previous done on an order of court by the same Commissioner Surveys and Mapping which the applicant again seek to re-open.

24 **Representation and hearing:**



Mr. Joseph Muhumuza Kaahwa appeared for the applicant at time of filing the application but later instructions were changed to *Mr. Richard Rwabwogo*. *Mr.*

3 *Kwesiga Joseph* appeared for the Respondent. Both counsel made written submissions which I have considered herein.

Issues:

- 6 1. Whether the suit from where the current application arises abated.
2. Whether a fresh boundary opening should be ordered to establish the extent of Matiri Central Forest Reserve.
- 9 3. Remedies available.

Consideration by Court:

1. Whether the suit from where the current application arises abated.

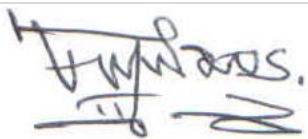
12 This issue was resolved in a point of law raised by learned counsel for the Respondent which was overruled. Therefore this issue is resolved in the negative.

2. Whether a fresh boundary opening should be ordered to establish the extent of Matiri Central Forest Reserve.

15 Boundary opening which is sometimes referred to as Boundary survey connotes a survey made to establish or to re-establish a boundary line on the ground or to obtain

18 data for preparing a map or plot showing boundary lines. It is a process of investigating, collecting and evaluating real property evidence from recorded, field, and other relevant sources, in order to formulate a professional opinion regarding

21 the location of property boundaries. (See Law Insider; Boundary Survey definitions; available on www.lawinsider.com/dictionary/boundary-survey accessed on 19th December 2023).

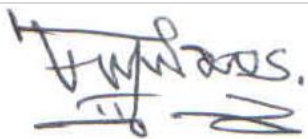


Therefore, the main import of a boundary survey or opening is to establish the extent of the land on ground as described on the title, deed print or survey map. It is intended to show the physical boundaries of the land as described on the survey map and title on ground. Boundary opening is a scientific exercises carried out by those who are qualified in the area of survey with some level of certainty as to the extent of the land as it appears on the title, deed print, cadastral sheet or survey maps.

Therefore, where land is surveyed and dispute arises as to the boundaries of the said land, I find it prudent practice that a boundary opening must be ordered by court to establish the boundary lines of such land with a view of generating data and information which can be used by court as to whether the dispute is over land within the title or outside the title. Boundary opening in such circumstances aids court in resolving the dispute premised on verifiable evidence as opposed to reliance on oral witness testimony alone which is prone to error, exaggeration or even falsehood.

In this case, the applicants contend that their land was not within Matiri Central Forest Reserve per the original cadastral map/boundary Plan No. 1449. That subsequently in 2005, 2009, and 2013, the boundaries were extended thus encroaching on their land and consequently they were evicted therefrom; that it is necessary to order a fresh boundary opening to establish whether their land falls within the forest reserve or outside per the boundary Plan No. 1449.

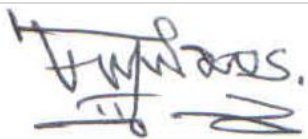
Learned counsel for the Respondent on the other hand asserted that the prayers the applicants seek are not tenable. That the exercise was previously done on the orders of court and ordering for a fresh boundary opening is a waste of court's time and public resources.

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I have considered the submissions of both counsel and the pleadings of the parties. To begin with, in the plaint filed by the applicant, they attached evidence to show that there were several engagements with the Respondent to do a joint boundary opening for Matiri Forest Reserve which was frustrated by the Respondent. In annexure A6 which is a letter by Mr. Ochieng Edward Sunday, under the Directorate of Lands, State House, he wrote to the State Minister for Environment and he stated that there were efforts by the applicants and the Respondent to have a survey and boundary opening which was frustrated by the Respondent.

Further in annexure A7 which is a letter by Dr. Sarah Nkonge Muwonge, under the same Directorate of Land matters, State House addressed to the Resident District Commissioner, Kyenjojo and the Executive Director of the Respondent, she indicated that both the parties herein were to carry out a survey and open boundaries of NFA to ensure the members of Abagambakamu (the applicants) proceed and process their documents over their land. That the parties had agreed to each appoint a surveyor to carry out the boundary opening and the exercise was to take place on 27th November 2012 starting at 10:00am but it never came to light.

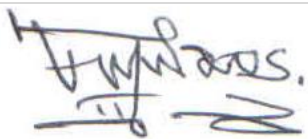
It therefore appears that the issue of boundary opening of Matiri Central Forest Reserve has been under debate between the parties for a long time. The applicants maintain that their land falls outside the original boundary marks plan boundary Plan 1449 of Matiri Central Forest Reserve while the Respondent insists that the same falls within the forest reserve. I believe to get a clear picture over the contention between the parties, a boundary opening is necessary which will inform court as to whether the suit land is within the boundary of the forest reserve or outside.

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The claim by Mr. Kwesiga that a boundary opening was previously carried out in my view is out of context. The suit from which court ordered a boundary opening is different from the one before court and the parties are different. I also believe the land in dispute is different from the one which was in dispute in Civil Suit No. 0018 of 2009. It is not in dispute that there has never been any boundary opening between the applicants and the Respondent regarding the land in dispute.

I find that this is a proper case to order a boundary opening and have a report filed in court which will assist court is determining whether the suit land falls within Matiri Central Forest Reserve under the control of the Respondent or outside. This application therefore succeeds with the following orders:

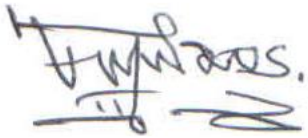
- 1. An order doth issue directing the Commissioner of Surveys and Mapping under the Ministry of Lands, Housing and Urban Development to open the boundaries of Matiri Central Forest Reserve (MCFR) in accordance with the boundary Plan No. 1449 to determine whether the original boundaries of Matiri Central Forest Reserve are still in their original location and whether the applicants' land is within the said forest reserve.**
- 2. An order doth issue directing that the said exercise shall be jointly carried out by the said Commissioner of Surveys and Mapping and the parties' appointed private registered surveyors.**
- 3. The District Police Commander, Kyenjojo District is ordered to provide security for this exercise from commencement to completion.**
- 4. The applicants or their appointed representatives and the representatives of the Respondent shall participate in the exercise.**
- 5. The applicants shall meet the expenses relating to the boundary opening exercise.**

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6. The exercise shall be carried out and a report furnished to this court by the said Commissioner of Surveys and Mapping under the Ministry of Lands, Housing and Urban Development, within a period of four months from the date of delivery of this ruling.

7. Should the applicants fail to comply with the orders herein, this application shall stand dismissed with costs to the Respondent; otherwise, the costs of the application shall be in the cause.

I so order.



Vincent Wagona

High Court Judge / Fortportal

DATE:08/04/2024

