

BOUNDARY DISPUTES CALL FOR “SIMPLE SOLUTIONS”

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Fathom your neighbor cornering you into a dispute that requires other neighbours, the area Chief, district surveyor, land registrar and independent witnesses too. Coordinating, mobilizing and listening to this big team calls for costs that could even outweigh the intended benefits. That’s why my late father kept wondering why, as a surveyor, I wasn’t using my professional expertise and network to address “what he considered a boundary problem”. I kept advising caution and care. I advised against the “big bang” approach where might and resources are employed to reign in a neighbor. Big bang solutions work against those who use them. They can compromise long term neighbourhood peace and harmony. They aggravate hate and disdain by those they are directed at. The best boundary solutions are those calmly negotiated and mutually agreed. The solutions last and promote mutual coexistence.

Most boundary disputes found in “general boundary zones”

In my routine work as a cadastral surveyor in Kenya, I have observed that most boundary disputes are recorded in zones registered under general boundaries, provided for under the Registered Land Act. Properties registered under general boundaries are to be predominantly found in trust land areas where rights to individual ownership were determined through adjudication processes before titles were issued. Many Kenyans have been brought up in such areas. Such boundaries are contrasted with precise boundaries, to be found in areas which were accurately surveyed and marked with corner beacons as the colonial settlers appropriated and registered land under the Government Lands Act or the Registration of Titles Act. Most properties in our urban centers are also under precise boundaries and, where lost or disputed, surveyors easily resolve them through accurate survey measurements. Not so general boundaries which are anchored upon good mutual maintenance of the defining physical features by property owners.

Why Nairobi-Ngong-Kiserian-Isinya-Kitengela peri-urban zone has many boundary disputes

One unfortunate thing is that one of the fastest growing peri-urban zones of Nairobi city is under general boundaries. Yet many senior and middle level public and private sector operatives are buying property there.....the Nairobi-Ngong-Kiserian-Isinya-Kitengela hub. And disputes within the hub will continue to build until the zone is accorded some special mapping attention. But whereas there is a fundamental mapping challenge here, disputes within the zone, as in most other general boundary zones in the country, are aggravated by incorrect perceptions that to resolve such disputes, one only needs to buy a map and then take measurements.

It's not that easy. Just like proper medical treatment cannot be reduced to the ability to purchase and swallow perceived curative drugs, so is the resolution of such boundary disputes. It calls for a whole legal procedure centered on the institution of the district land registrar in whose jurisdiction the property falls. The rampant practice where junior inexperienced surveyors and able landowners rush to purchase maps and scale off and use measurements there-from to resolve such disputes not only aggravates them but also contravenes the due legal procedure. Proprietors will recollect some disclaimour at the bottom of most such registry maps which reads, "*This map is not an authority on boundaries*". This disclaimour is not a mistake. Some maps were prepared in haste and could be incorrect. That's why using them exclusively to fix such boundary disputes carries no legal force.

One must formally register such disputes with the land registrar who in return puts the due legal

procedure into force. He may or may not need the evidence of a surveyor. And he may or may not call for map-based survey measurements. He is primarily guided by the prevailing physical evidence on the ground and that from credible witnesses with good historical knowledge of the disputed boundaries. Of course in zones where existing registry maps provide a good representation of the disputed boundaries, which is so for a number of Districts in Kenya, these may come in handy.

Maintain good boundaries, fences and beacons where applicable, to avoid disputes

But my experience has been that most boundary disputes recorded around the country are trivial and can be avoided. All it takes is the good mutual maintenance of property boundaries marked with durable hedges, fences or any other physical feature that can withstand the vagaries of changing weather and animals. In arid areas where vegetation or trees may not be sustainable, then lines of clear visible holes and moulds of soil can be made. Remember our fore fathers used ashes? If the land is vast, one can have a tractor mark out the boundaries by furrows.

But most parts of Kenya consist of small land parcels easy to mark out with clear physical features like natural hedges, fences or walls. But people leave them unmaintained then cry disputes when lost. Urbanized Kenyans with land in the rural areas are particularly vulnerable to disputes and must bear in mind that the panacea for this is the maintenance of clear unmistakable physical boundaries all around. And these must always be erected with the mutual agreement of the neighbours they affect.

Avoid “big bang” solutions: agree amicably with neighbours where possible

But in the event that a dispute still crops up, it is best practice to discuss the same with the affected neighbor in the presence of some respected and sincere witness. This is cheap, sustainable and promotes good neighbor relations. It's really what most of us should resort to. But ego has usually stood in the way and we seek the “big bang” solutions as if we shall live alone. That's not the way to go if one values a calm and peaceable stay with those around them.

Please note that though this article was prepared before the enactment of Kenya's new

land laws, the key principles of dispute resolution and boundary maintenance remain largely similar.

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