



**Kimani v Creek Ventures Limited; Registrar of Lands Ngong & 2 others (Interested Parties)  
(Environment & Land Case 144 of 2018) [2025] KEELC 1349 (KLR) (19 March 2025) (Judgment)**

Neutral citation: [2025] KEELC 1349 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT & LAND CASE 144 OF 2018**

**MN GICHERU, J  
MARCH 19, 2025**

**BETWEEN**

**SUSAN WANJIKU KIMANI ..... PLAINTIFF**

**AND**

**CREEK VENTURES LIMITED ..... DEFENDANT**

**AND**

**THE REGISTRAR OF LANDS NGONG ..... INTERESTED PARTY**

**THE DISTRICT SURVEYOR OF LANDS KAJIADO ..... INTERESTED PARTY**

**THE ATTORNEY GENERAL ..... INTERESTED PARTY**

**JUDGMENT**

1. The Plaintiff seeks the following reliefs against the Defendant and the 1<sup>st</sup> and 2<sup>nd</sup> interested parties.
  - a. A declaration that the Plaintiff is the lawful owner of L.R. Kajiado/Olchoro-Onyone/29494 measuring 4.61 Ha.
  - b. A declaration that the findings of the 1<sup>st</sup> interested party contained in letter Ref: CC/KAJ/VOL.II/23 as implemented by the 2<sup>nd</sup> interested party are sustained.
  - c. A permanent injunction restraining the Defendant by itself, its agents, its servants or otherwise howsoever from trespassing on the suit property.
  - d. That the title known as Kajiado/Olchoro-Onyone/22305 and subsequent subdivisions are void.
  - e. General damages for trespass.
  - f. Costs of this suit.



- g. Interest on (d) and (e) at Court rates.
- h. A declaratory order for the Plaintiff as the lawful proprietor of the suit property.
- i. Any other relief that this Court may deem fit and just to grant.

This is as per the plaint dated 20-9-2018.

2. The Plaintiff's case is as follows. She was the registered owner of L.R. No. Kajiado/Olchoro-Onyane/2182 which is now Kajiado/Olchoro Onyane/29494 measuring approximately 4.70 ha. She inherited the suit land from her husband Godfrey Kimani Kariuki (deceased) who died on 22/11/2015. The deceased had purchased the suit land from Kennedy Sokoiyon Ole Ndeka who is also deceased having died on 28/1/1993. The land measured 4.05 Ha.
3. In the year 2012, the deceased Godfrey Kimani Kariuki found out that the R.I.M (Registry Index Map) did not reflect the correct position on the ground of L.R 2182. The R.I.M did not capture the proper size and shape of the land. The deceased wrote a letter to the Director of Surveys vide a letter dated 23/3/2012. The Director of Surveys agreed with the deceased whose surveyor had prepared a report. Vide a letter dated 17-4-2012 Ref: SK/1/6/25/VOL.X/41, the Director of Surveys asked the District Surveyor Kajiado to intervene and rectify the anomaly. Owing to the illness of the registered owner who succumbed to his illness on 22/11/2015, the anomaly was not rectified until 23-5-2017 when the surveyor visited the site and compiled a report No. CC/KAJ/VOL.10/116. The report was to the effect that L.R. No.2182 be registered as L.R. No. 29494 with the correct measurement being approximately 4.61 Ha. A new mutation form and RIM were issued to match the new size and shape of L.R. No. 29494.
4. Around 14-9-2018, the Plaintiff found that a portion of L.R. No. 29494 had been fenced off by the Defendant. She made enquiries and found that the land being fenced off was Kajiado/Olchoro-Onyone/22305 which lies in the middle of L.R. No. 29494. It has also encroached on L.R. Nos.2745, 2746, 2747, 2748 and 2749. The green card for L.R No. 22305 shows that it measures 5.03 ha. and that it was transferred to the Defendant on 12/11/2014. The transferor was Kennedy Ole Ndeka who is the same person who sold the suit land to the Plaintiff's deceased husband. He could not have transferred the L.R. No. 22305 to the Defendant in 2014 because he died on 28/1/1993. Both the District Land Registrar and the District Surveyor Ngong recognize the Plaintiff as the genuine proprietor of the suit property. The Plaintiff's deceased husband purchased the suit land in 1988. The letter of 20/9/2017 by the interested party had confirmed that there was a numberless parcel on the R.I.M which formed part of L.R. No. 2182. The Defendant has fraudulently acquired the numberless portion which was found to be part of L.R. No. 2182. The numberless portion measures approximately 5.30 hectares. It is larger than L.R. No. 2182. The fraud comprises of amending the RIM through fraud and deception and the Defendant unrealistically transferring L.R. No. 22305 to himself from a person who is deceased. As for trespass, it comprises of fencing a portion of L.R. No.2182, now 29494 and then subdividing it.

The Plaintiff filed this suit to recover her fraudulently alienated land.

5. In support of her case, the Plaintiff filed the following evidence.
  - i. Copy of title for L.R. No. 2182 dated 13-5-1988.
  - ii. Copy of green card for L.R. No. 22305.
  - iii. Copy of RIM Showing L.R. No. 22305.
  - iv. Copy of certificate of death for Godfrey Kariuki Kimani.



- v. Copy of certificate of confirmation of granted dated 9-10-2017 in Nairobi Succession Cause No. 1301 of 2015.
  - vi. Copy of Gazette Notice No. 641 of 1995.
  - vii. Copies of correspondences between the Plaintiff and the Ministry of Lands dated 23-3-2012, 17-4-2012, 25-4-2017 and 20-9-2017.
  - viii. Copy of title deeds for L.R. No. 29494 dated 20-9-2017 and 12-7-2018.
  - ix. Copy of title deed for L.R. No. 2262 dated 7-9-1988.
  - x. Copy of report dated 19-5-2017.
  - xi. Copy of surveyor map showing the numberless portion.
  - xii. Copy of transfer form for L.R. No. 2182 dated 10-2-1988.
  - xiii. Google map for Olchoro-Onyone and a brief history of the land from 1987 to 2018.
  - xiv. Witness statement by the Plaintiff dated 8-4-2022.
6. The Defendant, through Counsel on record filed a written amended statement of defence and counter-claim dated 25-1-2022. In it, it pleads as follows. One, the Plaintiff's claim is generally denied in its entirety. Secondly, in the year 2014 it purchased L.R. Kajiado/Olchoro-Onyone/22305 measuring approximately 5.30 hectares from Julius Ndeka Sokoion who was the administrator of the late Kennedy Sokoion Ole Ndeka. Three, prior to purchasing this land, the Defendant conducted due diligence. It established that the land existed on the ground as well as in the register. It was also in the survey map at sheet number 148/3, 4 and 161/1 and 2. It is also in the marginal notes of the maps where it is shown as entry number 28 dated 21-8-2014. Four, the Defendant occupied the land since purchase and such occupation has not been interrupted. Five, the Defendant came to know the Plaintiff when she purported to offer for sale to third parties subdivisions of LR. No. 22305. She had purported to subdivide the land into parcels Numbers Kajiado/Olchoro-Onyone/23150-23197. Six, these so called subdivisions, were created from a purported numberless parcel in September 2017. In 2017, there was no numberless portion because the Defendant had acquired its title to L.R. No. 22305 way back in 2014. Seven, the Plaintiff is unable to explain how the land her husband bought in 1998 which it was 4.05 hectares later increased to 4.61 hectares and why the number changed from Kajiado/Olchoro-Onyone/2182 to 29494. For the above reasons, the Defendant calls for the dismissal of the Plaintiff's suit with costs.
7. In the Counterclaim dated 21-1-2022, the Defendant seeks the following reliefs against the Plaintiff.
- a. A declaration that the Defendant is the lawful owner of L.R. No. Kajiado/Olchoro-Onyone/22305.
  - b. Cancellation of the title to L.R. No. Kajiado/Olchoro-Onyone/29494.
  - c. Special damages of Kshs. 431,587,696.46.
  - d. General damages.
  - e. Costs of the suit.
  - f. Punitive damages.



- g. Order for prosecution of the Plaintiff and any other individual(s) found culpable of commissioning fraud herein.
  - h. Interest on (b), (c),(d) and ( e).
  - i. Costs of the suit.
  - j. And any other such orders or relief that this Court may deem just and fit to grant.
8. The Defendants case in the counterclaim is as follows. Firstly, the Defendant has lost a portion of its land Kajiado/Olchoro-Onyone/23150 to 23197 formerly L.R. No. 22305 through fraud and because of this it has suffered deprivation to the quiet enjoyment of its land as well as loss and damage. Secondly, the particulars of fraud include overlapping parcels numbers 23150 to 23197 (formerly L.R. No. 22305) by merging them with the Plaintiff's L.R. No. 2182 and obtaining a new title No. 29494 issued in her name. Thirdly, on 27-9-2016, the Defendant had entered into a joint venture agreement with Maramoja Commercial Agencies Limited to construct 108 villas for sale on L.R. No. 22305. Fourthly, the Defendant had secured loan facilities to subdivide and sell the suit land. However, due to interference by the Plaintiff, the Defendant was unable to develop the land as planned. The interested purchasers grew cold feet. The Defendant is now required to pay damages of Ksh. 400 Million. Fifthly, the Defendant has been defamed by the Plaintiff alleging encroachment on her land. In addition the Plaintiff accused the Defendant of defrauding potential purchasers of L.R. No. 23150-23197. In this regard the Plaintiff published the defamatory material by swearing an affidavit dated 5-9-2018 saying that the Defendant does not own L.R. Nos. 23150 to 23197. The filing of this suit was another act of publishing the defamatory material. Finally the Defendant sought the services of a licncsed surveyor who confirmed that his land exists on the ground.

For the above and other reasons, the Defendant prays for the ten(10) orders as above.

9. In support of its defence and counterclaim, the Defendant filed the following evidence.
- i. Witness Statements by Julius Ndeka Sokoion, Benson Wairagu and David Ndaba.
  - ii. Copy of Gazette Notice in Cause No. 641 of 1995.
  - iii. Copies of Grant and Certificate of confirmation of Grant in cause No. 641 of 1995 dated 31-5-1995 and 29-9-1995.
  - iv. Copies of RIM for Olchoro Onyore Group Ranch.
  - v. Copy of mutation form for L.R. No. 327 remainder. It is No. 0366460.
  - vi. Copy of certificate of official search dated 15-9-2014.
  - vii. Copy of RIM dated 21-8- 2014.
  - viii. Copy of application of consent of the land control board for the sale of the suit land.
  - ix. Copy of the register for L.R. No. 22305 dated 6-1-2016.
  - x. Copy of application for consent of the land control board for subdivision of L.R. No 22305.
  - xi. Copy of consent of the land control board to subdivide L.R. No. 22305 into 48 parcels. It is dated 11-11-2014.
  - xii. Copy of mutation dated 29-1-2015 for L.R No. 22305 subdividing it into 48 parcels.
  - xiii. Copy of valuation report dated 26-5-2015.



- xiv. Copy of joint venture agreement dated 27-9-2016.
  - xv. Copy of mutation form combining land parcels numbers 2182,2262 and 2742 to 2749.
  - xvi. Copy of letter by District Surveyor dated 11-8-2018 saying that the combination of L.R. No. 2182, 2262 and 2742-49 was improper for including a numberless parcel.
  - xvii. Copy of letter dated 25-4-2017.
  - xviii. Copy of letter dated 20-9-2017.
  - xix. Copy of mutation form for L.R. No.2182 dated 15-8-2017.
  - xx. Copy of certificate of official search for L.R. No. 29494 dated 16-8-2018.
  - xxi. Copies of correspondence between the Defendant, the Ministry of Land and Housing, Stima SACCO and Startruck Auctioneers.
  - xxii. Copy of Surveyor's report on Resurvey of L.R. Nos. 23150-23197 dated 23-3-2022.
  - xxiii. Copies of Google Earth Maps showing the overlaps between the Plaintiffs and the Defendant's land parcels.
  - xxiv. Copies of title deeds for L.R. Nos. 23197 and 23150 in the name of the Defendant and dated 29-1-2015.
10. The three (3) interested parties filed a statement of defence dated 30-10-2018 in which they aver as follows. Firstly, they deny every allegation made by the Plaintiff in the Plaint. Secondly, they state that they have no knowledge of the transactions between the parties. Thirdly, no demand or notice of intention to sue was ever served on them. Finally, they pray for the dismissal of the Plaintiff's case as against them.
11. In support of their defence, the interested parties filed the following evidence.
- i. Copies of green cards for L.R. No. Kajiado Olchoro-Onyone/327, 2182,29494 and 22305.
  - ii. Copies of title deeds for L.R. Nos. 2182 and 29494 in the name of Godfrey Kariuki Kamau.
  - iii. Copy of surveyor's report for L.R. 2182 dated 19-5-2017.
  - iv. Copy of mutation form for LR. No. 2182(resurvey) and remainder of L.R No. 327.
  - v. Copy of letter dated 20-9-2017 by officer in charge, survey office Kajiado.
12. At the trial on 26-10-22, 27-3-2023, 28/3/2023,13/12/2023, 16/9/2024, 17/9/2024,25/9/2024 and 13/11/2024 a total of nine (9) witnesses testified. They included the Plaintiff and her two witnesses Seda Nyagol and Joseph Kimani, a Director of the Defendant Benson Wairagu and his three witnesses David Ngaba, Felix Sewe and Julius Ndeka Sokoijon. On the part of the interested parties, two witnesses Rahab Njoroge and Anthony Munyasia testified. They are land registrar and government surveyor respectively. The Plaintiff and her witness merely restated her case as per the pleadings. The Defendant did the same, sticking to its script as per the pleadings. The interested parties' witnesses were no exception. They too testified as per the statement of defence dated 30/10/2018.
13. Counsel for the parties were to file and serve written submissions within set timelines. The Plaintiff's counsel was to file his by 17/2/2015. He did not comply with the set timeline and even by 11<sup>th</sup> March 2025, the Plaintiff's submissions had not been filed.



The interested parties identified the following issues for determination in the submissions dated 9/11/2025.

- i. Whether the resurvey of Kajiado/Olchoro-Onyone/2182 was procedural, regular and legal.
- ii. Whether the Defendant fraudulently acquired Kajiado/Olchoro-Onyone/22305.
- iii. Whether the Plaintiff is entitled to the prayers sought.

On the other hand, the Defendant identified the following five(5) issues for determination.

- a. What was the size of the land that the late Godfrey Kimani Kariuki purchased from the late Kennedy Sokoion Ole Ndeka who was the original owner of Kajiado Olchoro-Onyone/2182.
- b. Whether the Defendant fraudulently excised a portion of land parcel No.2182 and had it registered as parcel No. 22305.
- c. Whether L.R. No. 22305 is part of L.R. No. 2182 and whether the title to the said parcel was created procedurally.
- d. Whether the Plaintiff is entitled to the prayers sought in the plaint.
- e. Whether the Defendant is entitled to the prayers sought in its defence and counterclaim.

14. I have carefully considered all the evidence adduced in this case by all the parties. This evidence includes the witness statements, documents and the testimonies at the trial. I have also considered the written submissions by learned counsel for the parties as well as the law cited therein. I find that the issues as identified by the Attorney General and Counsel for the Defendant will determine the dispute. I make the following findings on the issues.

15. On the first issue, I find that the resurvey of L.R. No. 2182 was not procedural, regular or legal. I agree entirely with the seven reasons given by the Honourable the Attorney General in the submissions dated 9-1-2025. Firstly, there is no sale agreement between the Plaintiff's husband and the late Kennedy Sokoion to prove the size of land that he bought.

It is only if his land was less than he bought that he would be justified in complaining. The green card produced by the AG as an exhibit proves that the land was 4.05 hectares. Neither the Plaintiff nor her husband was entitled to bigger land than was actually bought. Secondly, in the year 2017 when L.R.No. 29494 was created, there was no numberless portion. The numberless portion which was the remainder of L.R. No. 327 had ceased to exist on 12-11-2014 when it was transferred to the Defendant by Julius Ndeka Sokoion who was the son of the owner. The Plaintiff having acquired the land that her husband had bought was not entitled to any other land that belonged to Kennedy Sokoion. It is the family of Kennedy that was entitled to any remainder of L.R. No. 327. The Attorney General has given many good reasons but these two will suffice.

16. On the second of the AG's issues, I find that the Defendant did not acquire L.R. No. 22305 fraudulently. Firstly, it has proved that the land existed both on the ground and in the register. Secondly, the land was numberless though it mutated from L.R. No. 327 which belonged to Kennedy Sokoion Ole Ndeka. Since L.R. No. 22305 mutated from L.R. No. 327, then only the family of Kennedy Sokoion could lawfully deal with it. The Defendant traces his title to the original owner. He traces his title to the root of the title unlike the Plaintiff. I will deal with the AG's third issue at the conclusion of this judgement.



17. Coming to the 1<sup>st</sup> of the Defendant's issues, I find that the size of the land that the Plaintiff's husband bought i.e L.R. No. 2182 is 4.05 hectares according to the green card which shows that Godfrey Kariuki Kimani was issued with a title deed for 4.05 hectares on 13/5/1988. I also find that the Plaintiff does not seem sure of the total size of the land purchased from Kennedy Sokoion. In her further list of documents filed in Court on 23-9-20121, there is the Google map for Olchoro- Onyore and a history of the property subdivision. The history reads as follows.

The first plot was purchased from Kennedy Ole Ndeka in early 1987, Kajiado/Olchoro Onyone/2056 measuring approximately 8.1 hectares(20 acres).In late 1987 this plot was subdivided in 10 plots of approximately 2 acres each with title Nos. Kajiado/Olchoro Onyone/2740-49 (under the name Godfrey Kariuki Kimani).Two of the plots title 2740 and 2741 were sold off to other parties in early 1990's.All other titles remained in the name of Godfrey Kariuki Kimani until July 2018 when they were all registered to Susan Wanjiku Kimani.”

Going by that explanation, the Plaintiff's husband bought 20 acres. He sold two parcels each of which measures 2 acres. The total sold is four acres and the balance from the 20 acres bought is 16 acres. When the Plaintiff testified on 26/10/2022, she said this at the end of her examination in chief.

“...my land was taken by the Defendants. I found them fencing. The land is 36 acres.

13 acres were taken...”

The Plaintiff's mathematics does not add up. If the husband bought 20 acres, sold 4, how is the balance 36 acres and not 16 acres. Where did the extra 20 acres come from?

In the plaint dated 20-9-2018 there is no mention of how much land was bought by the Plaintiff's husband, how much was sold to the third parties and how much remained. The same thing applies to the Plaintiff's witness statement dated 8-4-2022. The issue of how much land was bought, how much was sold and how much remained does not feature anywhere. Yet, this is the only way to prove ownership. Ownership by the Plaintiff's husband is through purchase. Yet purchase has been made very obscure in this case. No sale agreement was produced by the Plaintiff to prove exactly how much land was purchased in the first place.

18. On the second of the Defendant's issues, I find like I did in determining the interested parties' issue, that the Defendant did not act fraudulently and did not excise a portion of L.R. No. 2182. The reasoning in paragraph (16) above applies to this issue.
19. For the same reasons found in paragraph 16 above, I find that L.R. No. 22305 was lawfully created and is not part of L.R. No. 2182. If the two were to be combined, their total area would be 4.05 (2182) + 5.30 (22350) = 9.35 hectares. Yet we are told that L.R. No. 29494 is 4.61 hectares. Mathematically, this does not make sense. It is part of the Plaintiff's obscurity in her annexation of L.R. No. 22305.

Section 23 of the [Land Registration Act](#) provides as follows.

“Subject to Section 15 and authentication of the cadastral map, on the application of the proprietors of contiguous parcels who are desirous of changing the layout of their parcels, and with the consent in writing of all other persons in whose names any right or interest in the parcels is registered and any of cautioner, the Registrar may-

- a. cancel the registers relating to those parcels and prepare new registers in accordance with new edition of the cadastral map; or



- b. refuse to effect the reparation if the Registrar considers that the proposed reparation involves substantial changes of ownership, which should be effected by transfers without invoking this section, in which case, the Registrar shall direct the properties accordingly.
2. Upon reparation, the new parcels shall vest in the persons in whose names they are registered”.

In this case, I find that the Plaintiff’s annexation of L.R. No. 22305 amounted to reparation because in the end, the layout of parcel No. 2182 changed. The size also increased. The parcel number changed to L.R. No. 294294. Yet the procedure for reparation as per Section 23(1) of the Act was not complied with. Firstly, the Defendant was not desirous of changing the layout of its land No. 22305. Secondly, it did not give its consent to the reparation in writing. It was not even aware of the exercise. Finally, the land registrar ought to have advised against reparation because it resulted in substantial change in ownership which should have been effected by transfer without invoking Section 23. In short, the annexation of L.R. No. 22305 was unprocedural , irregular and illegal.

20. Coming to the issue of whether the Plaintiff is entitled to the prayers sought in the plaint, I find that she is not. The reasons are to be found in the foregoing paragraphs namely that she has no proof that she bought L.R. No. 22305 and Secondly, the procedure adopted in annexing the land was not proper.
21. As for the final issue of whether the Defendant is entitled to the prayers sought in the Counterclaim, I find that it is entitled to some of the prayers. It is entitled to prayer (a) ,(b), ( e) and (h) where applicable. I need to explain why ( c), (d), (f), (g) and (i) are not awardable.

On special damages of Kshs. 431, 587, 696.46, I find them not proved for the following reasons. Firstly, the Defendant did not prove that it had the capacity to carry out the project or the joint venture agreement. While being re-examined by Mr. Kariuki on 16/9/2024, the Defendant’s director stated as follows.

“ ...The project did not take off. This explains the absence of the BQs (Bills of Quantities)...”

My limited understanding of Projects is that the BQs are part of the initial steps in project implementation. Without BQs, one cannot get funding from the financial institutions. Secondly, the Defendant has not proved that it had the funds to undertake such a huge project involving large sums of money. No bank statements were produced to prove readiness to embark on such a mega enterprise. Finally, the Defendant has not shown a similar project it had previously undertaken successfully. The above shortcomings show that the claim for over Kshs. 430 Million is speculative.

22. There is a claim for damages for defamation. I do not find defamation proved especially because no evidence of defamation can be found in any of the 20 paragraphs of the Defendant’s directors witness statement dated 25-1-2022 or in his any of the other material that he filed in this case.
23. Even though I find that fraud may have been committed by the Plaintiff or her agents and the 1<sup>st</sup> and 2<sup>nd</sup> interested parties in the annexation of L.R. No. 22305, I will hesitate to order for the prosecution of any person because such authority is vested in the Director of Pubic Prosecutions by Article 157 of the Constitution. Again , before prosecution, investigations ought to be carried out. I do not think that any such investigations have taken place. Prayer (i) in the Counterclaim dated 25-1-2022 is a repetition of prayer (4). Having allowed prayer (4), I cannot again allow prayer (i).
24. In conclusion and for the reasons already given, I find no merit at all in the Plaintiff’s suit and I dismiss it with costs.



As for the counterclaim, I allow it in terms of prayers (a), (b), ( e) and (h) where applicable.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 19<sup>TH</sup> DAY OF MARCH, 2025.**

**M.N. GICHERU**

**JUDGE**

Delivered online in the presence of; -

Court Assistant – Mwangi Njonjo

Plaintiff's Counsel – Mr. Ngugi

Defendants' Counsel – Mr. Kariuki

1<sup>st</sup> and 2<sup>nd</sup> interested parties' counsel – Miss Njuguna

