



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT AT KAJIADO

CONSTITUTIONAL PETITION NO. E001 OF 2021

KEREMET OLE TEMPE(suing on behalf

of Loset Ole Nkores Tempei aka Loseet Tempet aka

Looset Ole Rorua (deceased).....PETITIONER

-VS-

LAND REGISTRAR KAJIADO.....1ST RESPONDENT

DISTRICT LAND SURVEYOR, KAJIADO.....2ND RESPONDENT

AND

COUNTY GOVERNMENT OF KAJIADO.....1ST INTERESTED PARTY

MUKONYO MUNKE.....2ND INTERESTED PARTY

JULIUS WALAKITI.....3RD INTERESTED PARTY

NTOYIAN WALAKITI.....4TH INTERESTED PARTY

JOSEPH MUNKE.....5TH INTERESTED PARTY

LIALO NALAKITI.....6TH INTERESTED PARTY

KEENJE TIRATEI.....7TH INTERESTED PARTY

STEPHEN NALAKITI.....8TH INTERESTED PARTY

DAN LITEL.....9TH INTERESTED PARTY

KISIPIAN KANGO.....10TH INTERESTED PARTY

JUDGMENT

Keremet Ole Koros Tempe, the Petitioner herein, filed this petition on behalf of the estate of Loset Ole Nkores Tempei AKA Loseet Tempet AKA Loseet Ole Rorua against the Land Registrar Kajiado and the District Land Surveyor Kajiado as the Respondents and the County Government of Kajiado, Mukonyo Munke, Julius Walakiti, Ntoyian Walakiti, Joseph Munke, Lialo Nalakiti, Keenje Tiratei, Stephen Nalakiti, Dan Litei and Kisipan Kango.

The Petitioner seeks the following orders;

- (a) A declaration that the Respondents have violated and/or are likely to violate the constitutional rights of the petitioner and in particular **Articles 10, 27, 47, 48, 60, 61 and 64 of the Constitution of Kenya**

(b) An order to quash the Respondents decision as contained in their report dated 14th November, 2020 titled **“In the matter of boundary dispute under Section 22 of the Land Registration Act, 2012 and in the matter of boundary dispute touching KAJIADO/PURKO/12 and 14”**

(c) An order prohibiting the Respondents or their agents or any other person acting on their instruction from interfering in whatever manner with the parcel of land known as KAJIADO/PURKO/14 or enforcing the impugned decision dated 14/12/2020.

(d) General damages for breach of the Petitioner’s constitutional rights be borne by the Respondents.

(e) Any other orders as this Court shall deem just.

The Petitioners case is as follows. In the year 1955, his father the late Loset Ole Nkores Tempei was allocated 1,500 acres of land within what to later become Purko Adjudication. The said allocation was vide minute 3/63 (Purko) 4 of the Olkejuado County Council.

On 14th May, 1979 a title deed was issued to the deceased. The said Title Deed was incomplete because the Property and Proprietorships Sections were blank. However a search carried out on 12/1/2021 indicated that the L.R. KAJIADO/PURKO/14 was approximately 400 hectares (988 acres) instead of 1, 500 acres indicated in the allotment document.

According to the Petitioner, the suit land is an individual ranch as opposed to the surrounding group ranches of Nkoile, Ildamat and Dalalekutuk. It could not therefore be alienated to any third party without the involvement of the registered proprietor.

By a decision dated 14th December, 2020, the Respondents determined a boundary dispute the suit land i.e. Kajiado/ Purko/14 and Kajiado/Purko/12 registered in the name of Munke Ole Narakiti Likatui.

The findings were as follows.

- (a) L.R. KAJIADO/PURKO/14 is more than the registered area by 25.5. hectare or 63 acres
- (b) L.R. KAJIADO/PURKO/12 is less than the registered area by 133.2 hectares or 329 acres
- (c) There is a disputed area of 88.7 hectares or 219 acres
- (d) Determination, the disputed area in (c) above to form part of L.R. KAJIADO/PURKO/12.

It is this decision that the Petition challenges.

In support of his case the Petitioner filed the following;

- (i) Supporting affidavit dated 14th January, 2021
- (ii) Limited grant of letters of Administration Ad Litem
- (iii) Copy of the proceedings and decision of the Land Registrar dated 14/12/2020
- (iv) Letter dated 15/5/1972 allocating the Petitioner late father 1, 500 acres
- (v) Copy of Land Certificate for L.R. KAJIADO/PURKO/14 dated 15/5/1979
- (vi) Certificate of Official Search dated 12th January, 2021 which shows the suit land to be 400 hectares
- (vii) Area Maps

The Petitioner urges that the Respondents should have consulted the First Interested Party before determining the boundary dispute as they are the custodians of the records. They therefore violated **Articles 10, 27, 47, 48, 60, 61 and 64** of the **Constitution of Kenya**.

The Petition is opposed by the Respondents who filed grounds of opposition dated 4/10/2021 in which it is averred that the Respondents acted within their mandate under **Sections 15 – 20** of the **Land Registration Act**.

They add that they were not under any obligation to consult the First Interested Party or any other person in executing their mandate.

In addition to the above, Paul K. Tonui the District Land Registrar Kajiado swore a replying affidavit dated 26/10/2021 in which he explains the basis for his determination namely that the suit land is larger than it should be and the adjacent parcel KAJIADO/PURKO/12 is smaller than it should be.

It is the Land Registrar’s evidence that he gave all the parties a fair hearing and they were all present during the site visit after having been

summoned.

The Interested Parties also opposed the Petition and filed a replying affidavit dated 22/2/2021 and sworn by David Litei.

In the affidavit the deponent says that all the parties were present and the dispute concerned a boundary between the two parcels and all were given a chance to state their case, that the Title Deed will not be affected and that no evidence has been tendered to prove any violation of the constitution or any other law.

The Petitioner filed written submissions dated 23rd September, 2021 while the interested parties filed theirs dated 18th October, 2021.

I have carefully considered the entire Petition including the affidavits, annexures and the submissions. I find that the following issues came up for determination;

- (1) Is the registered size of L.R. KAJIADO/PURKO/14 400 Hectares (988 acres) or 1, 500 acres?
- (2) Did the decision of the Land Registrar made on 14th November, 2020 reduce the registered size or not?
- (3) Was the boundary determination fair or did it violate any law or the constitution?

On the first issue, I find that the registered size of L.R. KAJIADO/PURKO 14 is 400 hectares or 988 acres and not 1, 500 acres.

This is proved by the Land Registrar vide paragraph 12 of the affidavit dated 26/10/2021. The Petitioner did not adduce any evidence to prove that the registered land was 1500 acres.

Anything could have happened between the year 1955 when the allocation of 1500 acres was made and the registration of the land on 15/5/1979. It was upon the Petitioner to prove the size which he failed to do.

The Land Registrar is the authority on land sizes and boundaries of all registered land. The Land Registrars evidence therefore overrides the Petitioners evidence.

Secondly, I find that the decision of the Land Registrar did not reduce the registered size of the L.R. KAJIADO/PURKO/14.

This is evident from paragraph 12 of the affidavit by the Land Registrar and also from the Report by the Registrar dated 14th December, 2020.

On the third and final issue, I find that the boundary determination was fair and did not violate any law or the Constitution and all parties were afforded a fair hearing.

The Petitioner has not proved any violation of any provision of law or the Constitution and he is the one who had the burden of proof.

For the above reasons, I find no merit in Petition dated 14th January, 2021 and I dismiss it with costs to the Respondents and Interested Parties.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 26TH DAY OF JANUARY, 2022.

M.N. GICHERU

JUDGE