



**Kimani v Sunkuyia & 5 others (Environment & Land Case 041 of 2022)  
[2022] KEELC 15604 (KLR) (19 December 2022) (Ruling)**

Neutral citation: [2022] KEELC 15604 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT & LAND CASE 041 OF 2022  
MN GICHERU, J  
DECEMBER 19, 2022**

**BETWEEN**

**GEORGE MARIMA KIMANI ..... APPLICANT**

**AND**

**GEORGE R SUNKUYIA ..... 1<sup>ST</sup> RESPONDENT**

**DEPUTY COMMISSIONER, KAJIADO WEST SUB-COUNTY .... 2<sup>ND</sup>  
RESPONDENT**

**NG-CDF KAJIADO WEST SUB-COUNTY-KISAMIS ..... 3<sup>RD</sup> RESPONDENT**

**POLICE COMMANDER, KAJIADO SUB-COUNTY ..... 4<sup>TH</sup> RESPONDENT**

**NGONG LAND REGISTRY ..... 5<sup>TH</sup> RESPONDENT**

**NARO MORU MIXED DAY SECONDARY SCHOOL ..... 6<sup>TH</sup> RESPONDENT**

**RULING**

1. This ruling is on the Notice of Motion dated May 11, 2022. It is brought under Sections 1A, 1B, 3, 3A and 63 of the *Civil Procedure Act*, cap 21, Order 40, Rule 1, Order 51, Rule 1 *Civil Procedure Rules* and all other enabling provisions of law.
2. The application is supported by an affidavit sworn by the Plaintiff/Applicant George Marima Kimani in which he deposes that he is the owner of the suit land which was Kajiado/Olchore-Onyore/8155 measuring 1.21 hectares which he bought from Margaret Wangari Lempee in the year 2008. He has always enjoyed quiet possession of the land which he subdivided into several parcels in the year 2009. In March 2022, the Plaintiff realized that there was construction going on on the suit land which he had not authorized. He immediately raised a complaint with the second Respondent the Deputy Commissioner Kajiado West Sub-County.



Following the complaint, a survey was carried out and it confirmed that the construction that was taking place was on the Plaintiff's land. It is for this reason that he filed this suit.

Annexed to the affidavit are several documents which include copies of title deeds for parcel numbers Kajiado/Olchoro-Onyore/8509, 8510, 9511, 8512, 8513, 8514, 8515, 8516, 8517, 8518, 8519, 8520, 8521, 8522, 8523, 8525, 8526, 8527, 8528 and 8529.

3. The application is opposed by the Defendants who filed four (4) grounds of opposition namely,
  - a. That it is frivolous and vexatious.
  - b. That it is an abuse of the court process,
  - c. That it cannot be granted in view of the *Government Proceedings Act*.
  - d. That it be dismissed with costs.

Additionally, Moses Kingori, the Chairman Board of Management of the sixth Defendant, has sworn a replying affidavit dated October 28, 2022 in which he deposes that the school is not built on the Plaintiff's land but on public land donated by the community.

He has not however attached any documents of title for the land on which the school is built.

4. I have carefully considered the application in its entirety including the affidavits, the grounds in support and in opposition and it is clear to me that this is either a boundary dispute or an outright invasion of private land by the sixth Defendant. If it turns out to be a boundary dispute, then only the Land Registrar, Ngong has jurisdiction to determine such dispute in view of Section 18 (2) of the *Land Registration Act*. This court would not have jurisdiction.

On the other hand, if it is an invasion of private land by the school, then the school ought to be evicted from the land.

Under Section 1A (3) of the *Civil Procedure Act*, I give the following directions which I am sure will expedite the conclusion of the suit and which is in accordance with the overriding objective of Civil Litigation in Kenya.

- i. Case referred to the District Land Registrar Ngong to determine if there is encroachment of the Plaintiff's land by the sixth Defendant.
- ii. Land Registrar to compile a report and file it in court as soon as it is ready.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 19<sup>TH</sup> DAY OF DECEMBER, 2022**

**M.N. GICHERU**

**JUDGE**

