



**Davidson v Naidoya & 4 others; Sub-County Police Commander,  
Transmara South & another (Interested Parties) (Environment & Land  
Case E025 of 2024) [2025] KEELC 542 (KLR) (10 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 542 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS  
ENVIRONMENT & LAND CASE E025 OF 2024  
EM WASHE, J  
FEBRUARY 10, 2025**

**BETWEEN**

**ROBERT WILLIAM DAVIDSON ..... APPLICANT**

**AND**

**SAMUEL PARASOILAL NAIDOYA ..... 1<sup>ST</sup> RESPONDENT**

**REGISRAR-TRANSMARA ..... 2<sup>ND</sup> RESPONDENT**

**SURVEYOR-TRANSMARA ..... 3<sup>RD</sup> RESPONDENT**

**THE HON.ATTORNEY GENERAL ..... 4<sup>TH</sup> RESPONDENT**

**ENCHIPAI MARA CAMP ..... 5<sup>TH</sup> RESPONDENT**

**AND**

**SUB-COUNTY POLICE COMMANDER, TRANSMARA SOUTH INTERESTED  
PARTY**

**CHIEF OF KIMINTET ..... INTERESTED PARTY**

**RULING**

1. The Plaintiff (hereinafter referred to as “the Applicant”) filed a Notice of Motion Application dated 16.08.2024 (hereinafter referred to as “the present application”) seeking the following orders against the 1<sup>st</sup> to 5<sup>th</sup> Defendants (hereinafter referred to as “the 1<sup>st</sup> to 5<sup>th</sup> Respondents”); -
  - a. That this Application be certified as Extremely Urgent and service be dispensed with in the first instance.



- b. That the Honourable Court issue an Order directing the 3<sup>rd</sup> Respondent/Defendant, Land Registrar Transmara West and South District, to visit the suit property, Transmara/Kimintet “D”/1528 and the neighbouring property, Transmara/Kimintet “D”/1432 & 1433 and carry out an inspection with the view of establishing the physical boundaries between the two parcels of land and ascertain the extent of encroachment on the suit property, if any, by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.
  - c. That the Honourable Court do issue an Order directing the 1<sup>st</sup> Interested Party, sub-County Police Commander for Transmara South to provide adequate security to the Land Registrar Transmara West District to enable him establish the boundary between Parcels of land Transmara/Kimintet “D”/1528 and Transmara/Kimintet “D”/1432 and 1433.
  - d. That the Honourable Court do issue an Order directing the 4<sup>th</sup> Respondent/Defendant, the District Land Surveyor Transmara, to produce the mutation Report relating to the parcels of land Transmara/Kimintet “D”/1528 and Transmara/Kimintet “D”/1432 & 1433 for purposes of conducting survey and ascertaining if there has been an encroachment by the 1<sup>st</sup> Defendant and 2<sup>nd</sup> Defendants on the Applicant’s parcel of land and produce a sketch map to illustrate any such encroachment.
  - e. That the Honourable Court do issue orders to the 3<sup>rd</sup> and 4<sup>th</sup> Respondents/Defendants to adhere to the provisions of Section 18 and 19 of the [Land Registration Act](#), 2012 in carrying out the exercise.
  - f. That upon adopting the final Report as the judgement of the Court, this Honourable Court issues orders for the demolition of the permanent buildings/fixtures on the encroached area/portion of land owned by the Applicant/Plaintiff.
  - g. That the Honourable Court do issue orders to the 2<sup>nd</sup> Interested Party, the Chief of Kimintet, to serve the relevant Court documents and summons for this matter to all Defendants/Respondents, particularly, the 2<sup>nd</sup> Defendant/Respondent, who has exhibited violence and uncooperative behaviour.
  - h. Costs of this Application do abide the cause.
  - i. Such further and/or other orders be made, as the Court may deem fit and expedient.
2. The facts and grounds in support of the above prayers are found within the body of the present Application as well as the Supporting Affidavit of the Applicant dated 16.08.2024 and are summarised as follows; -
- a. The Applicant began by pleading that he was the registered owner of the property known as LR.No. Transmara/Kimintet “D”/1528 measuring approximately 32.14 Hectares (hereinafter referred to as “the suit property”).
  - b. On the other hand, the 1<sup>st</sup> Respondent is the registered owner of the neighbouring properties known as Transmara/Kimintet “D”/1432 & 1433.
  - c. The Applicant is however aggrieved that the 5<sup>th</sup> Respondent who is in possession of the properties known as Transmara/Kimintet “D”/1432 & 1433 with the authority of the 1<sup>st</sup> Respondent has encroached into the suit property and developed permanent fixtures and/or development therein.



- d. The Applicant being aggrieved by the actions of the 1<sup>st</sup> and 5<sup>th</sup> Respondents herein reported the matter to the 2<sup>nd</sup> Respondent who summoned all the concerned parties to resolve the said dispute through a ground visit.
  - e. However, on the date of the ground visit by the 2<sup>nd</sup> Respondent, the 1<sup>st</sup> Respondent and the 5<sup>th</sup> Respondent through their agents, servants and /or representatives became hostile to the 2<sup>nd</sup> Respondent and threatened to melt violence thereby rendering the entire exercise futile.
  - f. According to the Applicant, the actions of the 1<sup>st</sup> and 5<sup>th</sup> Respondents against the 2<sup>nd</sup> Respondent were geared towards hindering the ground visit and conceal the encroachment and/or trespass perpetuated by them.
  - g. The Applicant therefore is seeking the prayers outlined in the present Application so that the 2<sup>nd</sup> Respondent is able to access the properties in dispute, re-establish the boundaries therein and thereafter make a finding on whether there is actual trespass and/or encroachment of the suit property by the 1<sup>st</sup> and 5<sup>th</sup> Respondents herein.
3. The present Application was duly served on the 1<sup>st</sup> to 5<sup>th</sup> Respondents so that they are able to respond to the same.
  4. The 1<sup>st</sup> Respondent upon service of the present Application filed a Replying Affidavit dated 17.10.2024 and opposed it on the following grounds; -
    - a. The 1<sup>st</sup> Respondent admitted that indeed he was the registered owner of the two properties known as LR.No.Transmara/Kimintet “D”/1432 & 1433 which were created from a subdivision of the property known as LR.No.Transmara/Kimintet “D”/488.
    - b. However, before the property known as LR.No.Transmara/Kimintet “D”/488 was subdivided, the 2<sup>nd</sup> Respondent in the year 2018 in the presence of all neighbours visited the ground and re-established the boundary therein before effecting the sub-division thereof.
    - c. Similarly, in the year 2022, the 2<sup>nd</sup> Respondent undertook another ground visit in the presence of the previous owner of the suit property as well as the owners of the neighbouring properties known as LR.No.Transmara/Kimintet “D”/488 and 484 wherein the boundaries to all the properties were established.
    - d. In essence, the 1<sup>st</sup> Respondent denied any encroachment on the Applicant’s suit property and stated that the boundaries between all the neighbouring parcels of land had been established.
    - e. In conclusion, the 1<sup>st</sup> Respondent sought this Court to dismiss the present Application with costs.
  5. The 5<sup>th</sup> Respondent similar filed a Replying Affidavit on the 17.12.2024 opposing the present Application on the following grounds; -
    - a. Indeed, the 5<sup>th</sup> Respondent had leased the property known as LR.No.Transmara/Kimintet “D”/1433 from the 1<sup>st</sup> Respondent herein.
    - b. The 5<sup>th</sup> Respondent stated that upon taking possession of the property known as LR.No.Transmara/Kimintet “D”/1433, it developed the property within the established boundaries and have not encroached and/or trespassed into the Applicant’s suit property.



- c. The 5<sup>th</sup> Respondent in essence denied any encroachment and/or trespass into the Applicant's suit property since the boundaries with its neighbouring properties known as LR.No.Transmara/Kimintet "D"/484 & 488 had been previously established and determined.
  - d. The 5<sup>th</sup> Respondent stated that based on the Ground Report dated 02.03.2022 by the 2<sup>nd</sup> Respondent herein, the recommendation was that the boundaries between the suit property and the properties known as LR.No.Transmara/Kimintet "D"/1432 & 1433 be maintained as appear on ground.
  - e. The 5<sup>th</sup> Respondent pleaded that the Applicant herein has never appealed against the determination of the 2<sup>nd</sup> Respondent contained in the Ground Report dated 02.03.2022 and therefore this Court has no jurisdiction to give other directions unless its exercising its appellate jurisdiction.
  - f. The 5<sup>th</sup> Respondent confirmed that there are established boundary marking delineating the Applicant's suit property and the properties known as LR.No.Transmara/Kimintet "D"/1432 & 1433 and will have no objection if the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents were to only confirm the location of the said boundary markings and not alter the same.
  - g. The 5<sup>th</sup> Respondent view was that if there are any disparities between the Mutations at the offices of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents with the ground occupation, then this Court should direct that the said Mutations be amended to reflect the actual occupation of the ground and not interfere or dispossess people of their parcels of land.
  - h. In conclusion, the 5<sup>th</sup> Respondent termed the present application unfounded, not merited and an exercise in futility.
6. The 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents elected not to participate in the present Application.
  7. The Court thereafter directed that parties to file their written submission either in support and/or opposing the present application.
  8. At the time of writing this Ruling, it is only the Applicants that had filed their submissions dated 24.12.2024.
  9. Nevertheless, the Court has perused the present Application, the Replying Affidavits by the 1<sup>st</sup> and 5<sup>th</sup> Respondents and identifies the following issues for determination; -

Issue No. 1- are there grounds upon which the court can direct the 2<sup>nd</sup> & 3<sup>rd</sup> respondents to inspect & establish the physical boundaries between the suit property and the properties known as lr.No.Transmara/Kimintet "D"/1432 & 1433 and thereafter file a ground report on the same?

Issue No. 2- Are There Grounds To Direct The 1<sup>st</sup> & 2<sup>nd</sup> Interested Parties To Provide Security To The 2<sup>nd</sup> & 3<sup>rd</sup> Respondents During The Inspection Exercise On The Suit Property And The Neighbouring Properties Known As Lr.No.Transmara/Kimintet "D"/1432 & 1433?

Issue No. 3- whether this court should order a demolition of the permanent burildings and/or fixtures found on any portion of the suit property forthwith?

Issue No. 4- whether the present application is merited & the orders therein should be granted or not?



Issue No. 5- who bears the costs of the present application?

10. The Court having duly identified the above-mentioned issues, the same will now be decided as provided below.

**Issue No. 1- Are there grounds upon which the court can direct the 2<sup>nd</sup> & 3<sup>rd</sup> respondents to inspect & establish the physical boundaries between the suit property and the properties known as LR.No.Transmara/Kimintet “D”/1432 & 1433 and thereafter file a ground report on the same?**

11. The first issue for determination is whether there are any grounds upon which this Court should direct the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents to go inspect and establish the boundaries between the suit property and the neighbouring properties known as LR.No.Transmara/Kimintet “D”/1432 & 1433.
12. According to the Applicant’s pleadings and submissions, the 1<sup>st</sup> Respondent who is the registered owner of the properties known as LR.No.Transmara/Kimintet “D”/1432 & 1433 as well as the 5<sup>th</sup> Respondent who is the entity in occupation of the property known as LR.No.Transmara/Kimintet “D”/1433 have encroached and/or trespassed into the suit property and built permanent fixtures and/or structures.
13. The Applicant is therefore seeking this Court’s orders that the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents visit the boundaries between the suit properties and the neighbouring parcels namely LR.No.Transmara/Kimintet “D”/1432 & 1433 to establish where the boundaries are located and, in the event, there is an encroachment and/or trespass onto the suit property, the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents should file a Ground Report to demonstrate the extent of such encroachment.
14. The 1<sup>st</sup> Respondent on the other hand pleaded that there is no reason why the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents should visit boundaries between the suit property and his properties known as LR.No.Transmara/Kimintet “D”/1432 & 1433.
15. The 1<sup>st</sup> Respondent informed the Court that the boundary dispute between the suit property (previously known as LR.No.Transmara/Kimintet “D”/484) and his properties known as LR.No.Transmara/Kimintet “D”/1432 & 1433 (previously known as LR.No.Transmara/Kimintet “D”/488) began way back with the previous owner of the suit property.
16. The 1<sup>st</sup> Respondent produced a Group Report from the 2<sup>nd</sup> Respondent which shows that the boundaries of the property known as LR.No.Transmara/Kimintet “D”/488 which was sub-divided into the properties known as LR.No.Transmara/Kimintet “D”/488 had been established and the necessary boundary markings placed on the ground save for one which was not placed due to time and wild animals.
17. The 1<sup>st</sup> Respondent further disclosed that again on the 14.02.2022, a boundary dispute was registered between the properties known as LR.No.Transmara/Kimintet “D”/1528 registered in the name of the Applicant, LR.No.Transmara/Kimintet “D”/1529 in the name of Parmet Ole Kiseet and LR.No.Transmara/Kimintet “D”/488 which belonged to the 1<sup>st</sup> Respondent.
18. Pursuant to the boundary dispute recorded with the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents, a Ground Report was done by the 2<sup>nd</sup> Respondent which acknowledged the existence of boundary markings around the property known as LR.No.Transmara/Kimintet “D”/488 and directed that the existing boundaries therein be maintained as they are on the ground.



19. In other words, the boundary dispute between the properties known as LR.No.Transmara/Kimintet “D”/488, 1528 & 1529 was resolved by a determination that the existing boundary markings be maintained therein.
20. The 1<sup>st</sup> Respondent stated that the Applicant has never challenged the Ground Report by the 2<sup>nd</sup> Respondent dated 02.03.2022 and therefore this Court has no jurisdiction to make any further orders regarding the boundary dispute between the Applicant’s property and the 1<sup>st</sup> and 5<sup>th</sup> Respondents unless it is exercising an appellate jurisdiction.
21. The 5<sup>th</sup> Respondent who is in occupation of the property known as LR.No.Transmara/Kimintet “D”/1433 which is a sub-division of LR.No.Transmara/Kimintet “D”/488 pleaded that they have not encroached and/or trespassed into the Applicant’s suit property as all their buildings and/or developments are within the boundaries demarcating the original property known as LR.No.Transmara/Kimintet “D”/488.
22. The 5<sup>th</sup> Respondent expressed its willingness to co-operate in the location and /or establishment of the boundary markings which had been set earlier to delineate the property known as LR.No.Transmara/Kimintet “D”/488 now sub-divided into LR.No.Transmara/Kimintet “D”/1432 & 1433 but opposed the re-establishment of the boundaries as sought in the present application.
23. To resolve this matter, the Court first wishes to look at the provisions which the Applicant has invoked in the present Application.
24. The Applicant in the present Application has invoked the provisions of Order 40 Rules 1,2,3,4 and 10 of the Civil Procedure Rules, 2010 as read with Section 3A and 63(e) of the *Civil Procedure Act*, Cap 21.
25. The provisions of Order 40 of the Civil Procedure Rules, 2010 refer to the issuance of temporary injunctions and interlocutory orders pending hearing and determinations of substantive suits and/or proceedings.
26. In the present Application, the Applicant’s prayers are neither injunctive in nature nor seeking for interlocutory orders pending the hearing and determination of the substantive suit herein.
27. The Applicant’s prayers in the present application are in fact final in nature as they seek for the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents to resolve a boundary dispute between the suit property and the neighbouring properties owned by the 1<sup>st</sup> Respondent.
28. The principles for determining applications under Order 40 of the Civil Procedure Rules, 2010 are well established and include the establishment of a prima facie case, whether the applicant will suffer irreparable injury and lastly where the balance of probability should rest.
29. Unfortunately, the Applicant in the present Application did not demonstrate and prove any of the principles required in prosecuting an Application under Order 40 of the Civil Procedure Rules, 2010.
30. In essence, the Applicant can not be granted any Orders in the present Application on the basis of Order 40 of the Civil Procedure Rules, 2010.
31. Be as it may, the Applicant in the body of the present Application has invited the Court to exercise its powers under Section 3 A and 63 ( e) of the *Civil Procedure Act*, 2010 and give life to Sections 18 & 19 of the *Land Registration Act*, No. 3 of 2012 by directing that the boundaries between the suit property and the 1<sup>st</sup> Respondents properties are established and demarcated.
32. Thereafter, the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents do prepare and file a Ground Report indicating the encroachment of the Applicant’s property by the 1<sup>st</sup> and/or 5<sup>th</sup> Respondents herein.



33. The provisions of Section 18 and 19 of the *Land Registration Act*, No. 3 of 2012 states that the 2<sup>nd</sup> Respondent is the office that is vested with the powers to indicate the approximate boundaries and situation of any parcel of land.
34. The Applicant in the grounds in support of the present Application did not disclose that in the year 2022, there was a boundary dispute which was recorded before the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents offices relating to the properties known as LR.No.Transmara/Kimintet “D”/1528 (the suit property) & 1529 with the 1<sup>st</sup> Defendant’s property known as LR.No.Transmara/Kimintet “D”/488 (now properties known as LR.No.Transmara/Kimintet “D”/1432 & 1433).
35. The 1<sup>st</sup> Respondent in his Replying Affidavit dated 17.10.2024 annexed a Ground Report dated 02.03.2022 by the 2<sup>nd</sup> Respondent resolving the said boundary dispute between the Applicant and the 1<sup>st</sup> Respondent properties as SPN 3.
36. The Court has carefully perused the Ground Report dated 02.03.2022 by the 2<sup>nd</sup> Respondent and is satisfied that indeed, there was a boundary dispute between the Applicant’s suit property against the 1<sup>st</sup> Respondent’s previous property known as LR.No.Transmara/Kimintet “D”/488 now registered as LR.No.Transmara/Kimintet “D”/1432 & 1433.
37. During the Ground Visit by the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents herein on 14.02.2024 in the presence of the Applicant as owner of the suit property, it was established that the 1<sup>st</sup> Respondent’s property known as LR.No.Transmara/Kimintet “D”/488 now LR.No.Transmara/Kimintet “D”/1432 & 1433 had been well demarcated and identifiable on the ground.
38. The conclusion by the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents was that the existing boundaries between the properties known as LR.No.Transmara/Kimintet “D”/1528 (the suit property), 1529 and 488 were to remain and be maintained as found on the ground.
39. Based on the determination of the 2<sup>nd</sup> Respondent in his Ground Report dated 02.03.2022, this Court is of the considered finding that there is no boundary dispute between the Applicant and the 1<sup>st</sup> or 5<sup>th</sup> Respondent that requires the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents to visit and/or re-establish the boundary markings delineating the suit property with those of the 1<sup>st</sup> and 5<sup>th</sup> Respondents.
40. Similarly, if indeed the 1<sup>st</sup> and/or 5<sup>th</sup> Respondent has encroached the suit property, the obligation of demonstrating this encroachment under Section 107 of the *Evidence Act*, Cap 21 is on the Applicant and this Court has no business to assist the Applicant to search for evidence by ordering the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents to file a Ground Report as to the extent and/or manner in which the 1<sup>st</sup> or 5<sup>th</sup> Respondents have encroached on the suit property.
41. In conclusion, this Court makes a finding that there are no sufficient grounds adduced by the Applicant to compel the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents to visit and establish any boundaries between the suit property and the 1<sup>st</sup> and/or the 5<sup>th</sup> Respondents as this exercise was already undertaken in the year 2022 and a Ground Report dated 02.03.2022 duly issued by the 2<sup>nd</sup> Respondent.
42. It is critical to point to the Applicant that the boundary markings placed by the 3<sup>rd</sup> Respondent delineating the property known as LR.No.Transmara/Kimintet “D”/488 now LR.No.Transmara/Kimintet “D”/1432 and 1433 should be observed unless and until lawfully altered and/or re-aligned.



**Issue No. 2- are there grounds to direct the 1<sup>st</sup> & 2<sup>nd</sup> interested parties to provide security to the 2<sup>nd</sup> & 3<sup>rd</sup> respondents during the inspection exercise on the suit property and the neighbouring properties known as LR.No.Transmara/Kimintet “D”/1432 & 1433?**

43. The second issue is whether the Court should order the 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties to provide security and peace on the ground during the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents visit to establish and identify the boundary markings between the suit property and the 1<sup>st</sup> and 5<sup>th</sup> Respondents properties.
44. The Court however having made a finding that in fact the boundary marking around the property known as LR.No.Transmara/Kimintet “D”/488 now LR.No.Transmara/Kimintet “D”/1432 & 1433 were already placed in 2018 and duly pointed out to the Applicant on the 14.02.2022 by the 2<sup>nd</sup> Respondent, there is no ground as to why the 2<sup>nd</sup> Respondent should do the same exercise again without any lawful reason.
45. As such, there is no reason as to why this Court should give orders to the 1<sup>st</sup> and 2<sup>nd</sup> Interested parties to provide security and/or ensure peace in the absence of an order for inspection and/or establishment of the boundaries.

**Issue No. 3- Whether this court should order a demolition of the permanent buildings and/or fixtures found on any portion of the suit property forthwith?**

46. On the issue of demolition of any permanent buildings and/or fixtures, the Applicant herein has not presented any documentary evidence to demonstrate the encroachment of the suit property by the 1<sup>st</sup> and/or 5<sup>th</sup> Respondents.
47. In the absence of any evidence confirming encroachment of the suit property by either the 1<sup>st</sup> or 5<sup>th</sup> Respondents, this prayer is not merited and cannot be granted.

**Issue No. 4- Whether the present application is merited & the orders therein should be granted or not?**

48. Based of the determinations in Issue No. 1,2 and 3, this Court makes a finding that the present Application is not merited and therefore fails.

**Issue No. 5- Who bears the costs of the present application?**

49. Costs follow the event and as stated hereinabove, the present Application is not merited and the Applicants is condemned to pay the costs of litigating it to the 1<sup>st</sup> and 5<sup>th</sup> Respondents.

**DATED, SIGNED & DELIVERED VIRTUALLY AT ELDORET ELC ON DAY THIS 10<sup>TH</sup> OF FEBRUARY 2025.**

**EMMANUEL.M. WASHE**

**JUDGE**

In the Presence of:

Court Assistant: Brian

Advocates for the Applicant: Mr. Ambelu for Plaintiff/ Applicant

Advocates for the Respondents: Mr. Sigoma for 1<sup>st</sup> & 5<sup>th</sup> Respondents

