



**Kantai v Director of Survey & 6 others (Environment & Land Petition E002 of 2023) [2025] KEELC 356 (KLR) (3 February 2025) (Judgment)**

Neutral citation: [2025] KEELC 356 (KLR)

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KILGORIS**

**ENVIRONMENT & LAND PETITION E002 OF 2023**

**EM WASHE, J**

**FEBRUARY 3, 2025**

**IN THE MATTER OF ARTICLES 2,3,10,19,20,21,22,23,24,27,28,40,47,48,50,60,61,64,162 & 259 OF THE CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF THE ALLEGED CONTRAVENTION OF THE RIGHTS AND FUNDAMENTAL FREEDOMS UNDER ARTICLE 40 & 47 OF THE CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF THE LAND REGISTRATION ACT, NO. 3 OF 2012**

**AND**

**IN THE MATTER OF : LAND ADJUDICATION ACT CAP 284 LAWS OF KENYA**

**AND**

**IN THE MATTER OF VIOLATIONS OF SECTION 3,4 & 8 OF THE FAIR ADMINISTRATIVE ACTION ACT, 2015**

**AND**

**IN THE MATTER OF THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS AND FUNDAMENTAL FREEDOMS) PRACTICE RULES, 2013**

**BETWEEN**

**SIOMO OLE KANTAI ..... PETITIONER**

**AND**

**THE DIRECTOR OF SURVEY ..... 1<sup>ST</sup> RESPONDENT**

**THE LAND REGISTRAR (TRANSMARA WEST SUB-COUNTY) ..... 2<sup>ND</sup> RESPONDENT**



**THE DIRECTOR OF LAND ADJUDICATION & SETTLEMENT ... 3<sup>RD</sup>  
RESPONDENT**

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

**CHARLES MBASIO KINAMPU ..... 5<sup>TH</sup> RESPONDENT**

**DANIEL OLE KINAMPU ..... 6<sup>TH</sup> RESPONDENT**

**JAMES OLE KINAMPU ..... 7<sup>TH</sup> RESPONDENT**

## **JUDGMENT**

1. The Petitioner herein filed a Constitutional Petition dated 19.07.2023 (hereinafter referred to as “the present Petition”) against the 1<sup>st</sup> to 7<sup>th</sup> Respondents seeking for the following Orders; -
  - a. A declaration be and is hereby issued that the Respondent’s alteration and manipulation of the adjudication records and cadastral maps in particular was illegal, null and void.
  - b. A declaration be and is hereby issued that the decision of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents to enlarge the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Respondent’s land being LR.NO.Transmara/Oldanyati/128 on paper was illegal and unconstitutional.
  - c. An Order be and is hereby directed that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents be directed to forthwith rectify the map and revert or restore the Petitioner’s property to its original position.
  - d. A declaration be and is hereby issued that their acts and omission, the Respondents have violated Articles 40 and 47 of *the Constitution* of Kenya, 2010.
  - e. A declaration be and is hereby issued that by their acts of omission and commission, the Respondents have violated Articles 2,3,19,40 and 47 of *the Constitution* and the provisions of Sections 3,4 and 8 of the Fair Administrative Actions Act.
  - f. A declaration be and is hereby issued compelling the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents to visit the ground of the suit property with the aim of reconciling the ground position and situation the land in question with the map.
  - g. An Order be and is hereby issued cancelling the Title Deeds issued to the Petitioner and Respondents and directing their reissuance based on the proper survey map.
  - h. Costs of the Petition be borne by the Respondents.
    - i. Any further and/or such other orders that the Honourable Court may deem fit and just to grant in the circumstances.
2. The grounds and/or facts upon which the Petitioner seeks for the above-mentioned orders can be summarised as below; -
  - a. The Petitioner herein is the beneficial and/or registered owner of the property known as LR.NO.Transmara/Oldanyati/267 (hereinafter referred to as “the suit property”).
  - b. The Petitioner acquired the suit property through an Adjudication process undertaken under the *Land Adjudication Act*, Cap 284.



- c. During the Adjudication process, the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendant did not lodge any Objection against both the Adjudication Record and/or Demarcation Map and therefore after the Objection period lapsed, the Adjudication Register relating to the suit property was deemed complete and the relevant Title Deed issued.
  - d. However, upon issuance of the individual Title Deeds, the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Respondents began interfering with the Petitioner's suit property through encroachment and even demanded that the Petitioner should vacate the suit property.
  - e. Disturbed by the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Respondent's interference and demands against the Petitioner's suit property, the Petitioner approached the Lands Departments to verify if there were any legal rights for the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Respondents actions.
  - f. The Petitioner was informed by the Lands Department at Kilgoris that there were no maps demarcating the boundaries between the suit property owned by the Petitioner and the property known as LR.NO.Transmara/Oldanyati/128 belonging to the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Respondents.
  - g. This position by the Lands Department at Kilgoris raised an alarm to the Petitioner who proceeded to the Land Survey Department in Narok and after a lengthy period obtained the Survey Index Map No. 10 and 11 which contained the positions of the suit property and the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Respondent's property known as LR.No.transmata/Oldanyati/128.
  - h. Based on the Survey Index Map No. 10 and 11, the Petitioner discovered that the demarcation boundaries of the suit property had been altered and/or interfered with by creating a larger portion of land for LR.NO.Transmara/Oldanyati/128 and thereby either denying the neighbours any land on the ground or substantively reducing the size of the neighbouring properties as discovered by the Petitioner.
  - i. Consequently, the Petitioner stated that the manipulation of the Registered Index Maps from the Original Adjudication Register which included the Demarcation Maps was illegal, an abuse of the trust and authority bestowed on the 1<sup>st</sup> to 3<sup>rd</sup> Respondents and amounted to a violation of *the Constitution* and the Fair Administration Actions Act.
3. The present Petition was duly served on the Respondents who opposed the same.
  4. The 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents in opposition of the present Petition filed a Replying Affidavit sworn on the 19.06.2024 by the 2<sup>nd</sup> Respondent and stated the following; -
    - a. The 2<sup>nd</sup> Respondent admitted that the Petitioner herein is the registered owner of the suit property while the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Respondents are the registered owners of the property known as LR.NO.Transmara/Oldanyati/128.
    - b. The 2<sup>nd</sup> Respondent stated that the Petitioner herein was allocated a portion measuring 8.50 Hectares in the Adjudication Record No. 039367 which is the same amount of land that was registered in his favour in the Title Deed issued on 07.07.2017.
    - c. In essence, the 2<sup>nd</sup> Respondent denied any fraudulent alteration of the Registered Index Maps and/or Government Records in a manner that violated the rights of the Petitioner's suit property.



- d. The 2<sup>nd</sup> Respondent's view was that the issue at hand is a boundary dispute between the suit property owned by the Petitioner and the property known as LR.NO.Trasmara/Oldanyati/128 owned by the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Respondents.
  - e. Based on this position, the 2<sup>nd</sup> Respondent indicated that the Petitioner had not exhausted the internal dispute resolution mechanisms provided under the Land Registration Act, No.3 of 2012 hence this Court should not grant any reliefs as sought by the Petitioner.
5. The 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Respondents also opposed the present Petition by filing a Replying Affidavit dated 05.03.2024 to which they stated as follows; -
- a. The 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Respondents stated that indeed the Petitioner was the registered owner of the suit property while the property known as LR.NO.Trasmara/Oldanyati/128 was registered in their names.
  - b. The 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Respondents pleaded that the acreage provided for in the Petitioner's Title Deed was similar and in line with the Adjudication Record and therefore the allegation that the maps were interfered and/or altered was misleading and not factual.
  - c. The 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Respondents further stated that the Petitioner's documents are not legible but be as it may, both the Demarcation Map produced during Adjudication and the Registered Index Maps held by the 3<sup>rd</sup> Respondent on issuance of individual titles are one and the same.
  - d. The 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Respondents disclosed that there is another pending suit known as KILGORIS SPM ELC NO.E058 OF 2021 wherein the Petitioner has been sued for trespass into the property known as LR.NO.Trasmara/Oldanyati/128 and therefore the present Petition offends the Sub-Judice Rule provided under Section 6 of the Civil Procedure Act, Cap 21.
  - e. In conclusion, the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Respondents sought for this Court to dismiss the present Petition.
6. Upon service of the two Replying Affidavits, the Court directed that the present Petition would be canvassed by way of written submissions.
7. The Petitioner duly filed his submissions dated 25.10.2024 while the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Respondents filed their submissions dated 18.10.2024.
8. The Court has duly gone through the pleadings by the parties and the submissions therein and the issues for determination are as follows; -
1. Issue no. 1- is this petition sub-judice and contravenes the provisions of section 6 of the civil procedure act, cap 21.
  2. Issue no. 2- is the dispute between the petitioner and the respondents one which relates to a boundary dispute?
  3. Issue no. 3- have the petitioner's rights as provided for under the constitution been infringed by the respondents herein either jointly or otherwise?
  4. Issue no. 4- is the petitioner entitled to the reliefs sought in the present petition?
  5. Issue no. 5- who bears the costs of the present petition?



9. The Court having duly identified the various issues pleaded by the parties herein, the same will now be discussed as provided below.

**Issue no. 1- is this petition sub-judice and contravenes the provisions of section 6 of the civil procedure act, cap 21.**

10. The first issue for determination is one that touches on the jurisdiction of the Court.

11. The 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Respondents in their Replying Affidavit stated that the present Petition offends the provisions of Section 6 of the Civil Procedure Act, Cap 21 because there is another suit pending known as Kilgoris SPM ELC NO. E058 OF 2021.

12. The 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Respondents pleaded that the said suit known as Kilgoris SPM ELC NO. E.058 OF 2021 relates to the parties in the present Petition over the same suit properties.

13. The Petitioner did not file any response to this allegation contained in the Replying Affidavit filed by the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Respondents.

14. Be as it may, this Court is required to ensure that it has proper jurisdiction to entertain and determine the present Petition because in the event there is lack of jurisdiction, then it should down its tools.

15. The provisions of Section 6 of the Civil Procedure Act, Cap 21 Laws of Kenya provide as follows; -

“No court shall proceed with the Trial of any suit or proceeding in which the matter in issue is also directly and substantively in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed.

16. For a Court to be able to evaluate whether or not a suit (or Petition) offends the provisions on Section 6 of the Civil Procedure Act, Cap 21, the party making such a claim must place the pleadings of the previous suit before the subsequent Court to enable it verify and evaluate the interlink between the previous suit and the subsequent suit.

17. It is only after the subsequent Court has verified and is convinced that indeed the previous suit has similarities with the subsequent suit, then a declaration that the subsequent suit is Sub Judice to the previous suit can be made.

18. In this Petition, the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Respondents did not provide and/or place the pleadings of the previous suit either as annexures in their Replying Affidavit or by making an application for the said file known as KILGORIS SPM ELC NO. E058 OF 2021 to be placed before this Court so that a verification of the parties and issues can be done.

19. In the absence of the pleadings relating to Kilgoris SPM ELC NO. E058 OF 2021, this Court is not familiar with the parties, facts and/or issues in the said suit and can not make a declaration that this Petition offends the provisions of Section 6 of the Civil Procedure Act, Cap 21 unless it has satisfied itself of the facts and issues in both files.

20. To this end, this Court hereby makes a finding that the present Petition does not offend the provisions of Section 6 of the Civil Procedure Act, Cap 21 in so far as the proceedings known as KILGORIS SPM ELC NO. E058 OF 2021 unless otherwise demonstrated.



**Issue no. 2- is the dispute between the petitioner and the respondents one which relates to a boundary dispute?**

21. The second issue for determination is one raised by the 1<sup>st</sup> to 4<sup>th</sup> Respondents and also deals with the issue of Jurisdiction.
22. The 1<sup>st</sup> to 4<sup>th</sup> Respondents through the Replying Affidavit sworn by the 2<sup>nd</sup> Respondents have raised an issue that the dispute between the Petitioner and the 5<sup>th</sup> to 7<sup>th</sup> Respondents is one that appertains a boundary of the suit property and LR.NO.Transmara/Oldanyati/128.
23. The 2<sup>nd</sup> Respondent in whose custody the ownership documents are bestowed has pleaded that both parties have their own separate and distinct parcels of land allocated to them through Adjudication.
24. This fact has also been repeated by the 5<sup>th</sup> to 7<sup>th</sup> Respondents in their Replying Affidavit.
25. The 2<sup>nd</sup> Respondent then produced the Adjudication Record of the suit property recorded in the name of the Petitioner which shows the portion allocated to him as 8.50 Hectares.
26. The 2<sup>nd</sup> Respondent further produced an Extract of the Green Card relating to the suit property which confirms that the suit property is approximately 8.50 Hectares.
27. On the other hand, the Adjudication Record of the 5<sup>th</sup> to 7<sup>th</sup> Defendants indicates that the portion allocated to them was 63.04 Hectares which is the same amount of land reflected in the Extract of the Green Card to the property known as LR.NO.Transmara/Oldanyati/128.
28. In essence therefore, the allegation that the Demarcation Map drawn during the Adjudication and the Registered Index Maps are incorrect, altered and/or interfered with is misleading and incorrect.
29. The 2<sup>nd</sup> Respondent's position is that the suit property and the property known as LR.NO.Transmara/Oldanyati/128 are two separate and distinct properties, the only dispute between these two properties should be where the boundaries are located.
30. The *Land Registration Act*, No. 3 of 2012 provides that such a dispute should be resolved in line with Section 18 therein.
31. To be able to resolve this issue, it is important that the Court reminds itself of the issues raised by the Petitioner in the present Petition.
32. According to the Petitioner, the acreage provided for in the Title Deed of the suit property and the property known as LR.NO.Transmara/Oldanyati/128 are not in dispute.
33. The only dispute that the Petitioner is raising is that on the ground, the property known as LR.NO.Transmara/Oldanyati/128 seems to completely and/or partially overlap on other properties including the suit property.
34. The resultant effect from the above omission or commission is that the Petitioner's actual possession of the 8.50 Hectares contained in his Title Deed is not possible and therefore any interruption of such an occupation infringes on his rights provided under *the Constitution*.
35. The Petitioner has provided a Letter received at the offices of the 2<sup>nd</sup> Respondent on the 01.09.2020 and two other Maps showing the Adjudication and/or creation of the suit property and the property known as LR.NO.Transmara/Oldanyati/128.
36. From a perusal of the letter dated 01.09.2020, the Petitioner was not one of the parties that authored this letter to the 2<sup>nd</sup> Respondent.



37. However, a portion of the Letter dated 01.09.2020 addressed to the Petitioner reads as follows; -

“Whereas the original adjudication maps agree with the boundaries on the ground, the final map purported to have been used to process and issue the titles show irregular translocation of some of the parcels concerned and reduction in size thereof to the benefit of Parcel No. 128 belonging to Charles Mbasio Ole Kinambu and his relatives. This interference contradicts the original survey and decisions made during the adjudication process. A further certified copy of a map also obtained from the survey department showing the irregularities pointed above is attached hereto.”

38. The last portion of the letter dated 01.09.2020 states as follows; -

“For your further information, the parcels in respect of which there are complaints include numbers 85,129,159,196,184,408,409,411 and 607.”

39. Based on the above letter dated 01.09.2020, it is clear that there could be boundaries issues emanating from the discrepancy between the Demarcation Map and the subsequent Registered Index Map.

40. In the Court’s view, these discrepancies usually arise especially where the sub-division of the land was under the *Land Adjudication Act*, Cap 284 due to the manner in which computation of the acreage is done at the Director of Survey through Aerial Maps and not actual measurements.

41. However, in the Petitioner’s case, the suit property was approximated to be 8.50 Hectares in the Adjudication Record and is the same portion provided in the Title Deed issued to him on 07.07.2017 as created by the Cadastral Map.

42. The 5<sup>th</sup> to 7<sup>th</sup> Respondents have also not challenged the Petitioner’s ownership of the suit property having 8.50 Hectares or its Cadastral Map.

43. The only thing remaining therefore is for the tracing of the 8.50 Hectares contained in the Petitioner’s Title Deed issued on the 07.07.20217 and the Cadastral Map on the ground and ensure that it does not overlap or is encroached by the 5<sup>th</sup> to 7<sup>th</sup> Respondents property known as LR.NO.Transmara/Oldanyati/128.

44. Before this re-establishment of the boundaries between the suit property and LR.NO.Transmara/Oldanyati/128 is done by the Land Registrar, Section 18 (2) of the *Land Registration Act*, No. 3 of 2012 prohibits this Court to entertain any legal proceedings regarding boundaries between two or more parcels of land.

45. To this effect, this Court hereby makes a finding that there exists a boundary dispute between the suit property and LR.NO.Transmara/Oldanyati/128 which the 2<sup>nd</sup> Respondent should resolve through re-establishment of the said boundary in accordance to the Cadastral Map of the Petitioner that provides for 8.50 Hectares for the suit property and the Cadastral Map of LR.NO.Transmara/Oldanyati/128 which provides for 68.04 Hectares.

46. In essence, the 2<sup>nd</sup> Respondent’s objection that the present Petition is pre-mature because the Petitioner has not exhausted the internal dispute mechanism provided under Section 18 of the *Land Registration Act*, No. 3 of 2012 is valid and therefore upheld.



**Issue no. 3- have the petitioner's rights as provided for under the constitution been infringed by the respondents herein either jointly or otherwise?**

47. The third issue is on the merit of the present Petition before the Court.
48. However, in view of the fact that the Petitioner has not exhausted the Internal Dispute Resolution mechanisms provided under Section 18 of the Land Registration Act, No. 3 of 2012, this Court does not have the jurisdiction to entertain and/or decide if the Petitioner's ownership rights were infringed until and unless the boundary dispute and/or re-establishment of the same between suit property and the property known as LR.NO.Transmara/Oldanyati/128 is concluded.

**Issue no. 4- is the petitioner entitled to the reliefs sought in the present petition?**

49. As to what reliefs can be granted to the Petitioner at this time, the Court is of the considered view that the present Petition is pre-mature and the orders sought therein can not be granted at this instance.

**Issue no. 5- who bears the costs of the present petition?**

50. As to the issue of costs, the Court is of the considered view that both parties are entitled to be shown their individual separate and distinct parcels of land in accordance to the Cadastral Maps that were issued by the 3<sup>rd</sup> Respondent and one should not be punished for ascertaining and/or ensuring that he/she enjoys the portion of land allocated in the Title Deed.
51. To this effect, each party will bear its own costs.

**Conclusion**

52. In conclusion, this Court hereby makes the following Orders appertaining the present Petition; -
- A. The 2<sup>nd</sup> respondent is hereby directed to register a boundary dispute between the petitioner's property known as lr.no.Transmara/Oldanyati/267 and the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> respondent's property known as Lr.no.Transmara/Oldanyati/128.
  - B. The 2<sup>nd</sup> respondent is further ordered to re-establish and re-mark the boundaries between the properties known as lr.no.Transmara/Oldanyati/267 and lr.no.Transmara/Oldanyati/128 within a period of 90 days from the date of this judgement.
  - C. Thereafter, the 2<sup>nd</sup> respondent shall prepare and file a ground report before this court confirming compliance of order no.1 & 2 hereinabove within 30 days from the date of the exercise of re-establishing and/or re-marking the two properties in dispute.
  - D. In the event the petitioner is aggrieved by the outcome of the said re-establishment & re-marking of boundaries, he/she shall be at liberty to seek a review of the court's judgement and seek further and appropriate orders as the case may be.
  - E. As to this petition, each party will bear its own costs.

**DATED, SIGNED & DELIVERED VIRTUALLY IN ELDORET ELC COURT ON 3<sup>RD</sup> FEBRUARY 2025.**

**EMMANUEL.M.WASHE**

**JUDGE**

In The Presence Of:



Court Assistant: Brian

Advocate For The Petitioner: No Appearance

Advocate For The Respondents: Mr. Shira For 5<sup>Th</sup>, 6<sup>Th</sup> And 7<sup>Th</sup> Respondents

