



REPUBLIC OF KENYA



**KENYA LAW**

THE NATIONAL COUNCIL FOR LAW REPORTING

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**Portland Housing Cooperative Society Limited v Moyonkoi & 10  
others; Matipei (Interested Party) (Environment & Land Miscellaneous  
Case E003 of 2023) [2025] KEELC 3695 (KLR) (5 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3695 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT & LAND MISCELLANEOUS CASE E003 OF 2023**

**LC KOMINGOI, J**

**MAY 5, 2025**

**BETWEEN**

**PORTLAND HOUSING COOPERATIVE SOCIETY LIMITED ..... PLAINTIFF**

**AND**

**MUNYETI OLE MOYONKOI ..... 1<sup>ST</sup> DEFENDANT**  
**OCHIENG MIDAMBA ..... 2<sup>ND</sup> DEFENDANT**  
**DANIEL MUSUNGU ..... 3<sup>RD</sup> DEFENDANT**  
**OCHIENG ABDALLA ..... 4<sup>TH</sup> DEFENDANT**  
**JAMES OKEYO MIDAMBA ..... 5<sup>TH</sup> DEFENDANT**  
**ESTHER NJERI NJUGUNA ..... 6<sup>TH</sup> DEFENDANT**  
**STEPHEN KUYAN KESHERE ..... 7<sup>TH</sup> DEFENDANT**  
**MAWARA HOLDING LIMITED ..... 8<sup>TH</sup> DEFENDANT**  
**GARUNKA OLE LEKEN (DECEASED) ..... 9<sup>TH</sup> DEFENDANT**  
**NICHOLAS LAPESHUR OLE MUNGAI ..... 10<sup>TH</sup> DEFENDANT**  
**LAND REGISTRAR KAJIADO ..... 11<sup>TH</sup> DEFENDANT**

**AND**

**SAUTET JEREMIAH MATIPEI ..... INTERESTED PARTY**



## RULING

1. This is the Ruling in respect of the Notice of Motion dated 30<sup>th</sup> December 2022 brought under Sections 14,18,19,86 and 101 of the [Land Registration Act](#), 2012, Sections 3 and 13 of the Environment & Land Court and Order 51 Rule 1 of the Civil Procedure Rules 2010, Section 1A, 1B, 3A and 63(e) of the [Civil Procedure Act](#) and all the enabling Provisions of the Law.
2. It seeks orders:
  - i. That the Decision of the Land Registrar Kajiado dated 19<sup>th</sup> December 2019 and delivered on the same day by P.K. Tonui (District Land Registrar) be and is hereby adopted as decision of this Honourable Court.
  - ii. That Judgement be and is hereby entered in terms of the decision of the Land Registrar Kajiado dated 19<sup>th</sup> December 2019.
  - iii. That the Parties who have encroached on Parcel No. Kajiado/Kaputiei North/27301 be ordered and directed to move out of the said parcel forthwith.
  - iv. That costs of this application be provided for.
3. The grounds are on the face of the application and are set out in paragraphs a to f. The same is supported by the Affidavit of Mark Mbogo Maina, Regina Mumu Wambua and Benedict Mutuku Nduulu, Officials of the Applicant sworn on the 30<sup>th</sup> December 2022.
4. The application is opposed. There are grounds of opposition filed by the 1<sup>st</sup> and 7<sup>th</sup> Respondents dated 28<sup>th</sup> February 2023. There is also a Replying Affidavit sworn by Sautet Jeremiah Matipei, the 1<sup>st</sup> Respondent's son, sworn on the 28<sup>th</sup> March 2023. There is also a Replying Affidavit sworn by Stephen Kuyan Keshere, the 7<sup>th</sup> Respondent on the 28<sup>th</sup> March 2023. There is a Replying Affidavit sworn by the Interested Party on the 10<sup>th</sup> December 2023.
5. On the 18<sup>th</sup> of September 2024, the Court with the consent of the parties directed the Notice of Motion be canvassed by written submissions.
6. The Plaintiff/Applicant's submission are dated 20<sup>th</sup> January 2024. Counsel submitted the parties appeared before the Land Registrar who upon hearing the parties, determined and fixed the boundaries and made a note on the Register to that effect.
7. It is their case that the 1<sup>st</sup> Respondent has been uncooperative in having the decision implemented. The decision of the Land Registrar has not been appealed against. He prays that the orders sought be granted with costs.
8. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents' and the Interested Party's submissions are dated 20<sup>th</sup> January 2025. It is submitted that the Land Registrar had a duty to give notice to the owners and occupiers of the adjacent land in question of the intention to deal with the boundary dispute, as well as accord such persons an opportunity to be heard.
9. It is further submitted that this was not done hence the land owners are likely to suffer loss if the said report is implemented. They pray that the application be found to be without merit and be dismissed.
10. I have considered the Notice of Motion, the Affidavit in support, the Responses thereto and the rival submissions. The issue for determination is whether this application is merited.



11. I have gone through the annexures to the Notice of Motion. The Notice dated 26<sup>th</sup> November 2019 was served on all the Respondents. Another Notice by the Land Registrar dated 10<sup>th</sup> December 2019 was served on the Respondents to appear on the 19<sup>th</sup> of December 2019 for the Ruling on the boundary dispute. The Ruling by the Land Registrar is dated 19<sup>th</sup> December 2019.
12. Regulation 40 (6) of the Land Registration (General) Regulations 2017 provides that; “Any party aggrieved by the decision of the Land Registrar made under paragraph 5 may within 30 days of the date of notification appeal the decision to the court.”
13. Despite having participated in the boundary dispute, and having knowledge of the decision by the Land Registrar, the Respondents chose not to appeal. Instead, they became uncooperative. Their opposition to this Notice of Motion is an afterthought. I rely on the case of Ali & 2 others VS Wang’ombe [2024] KEELC 4420 KLR in finding that the Respondents cannot challenge the decision of the Land Registrar by way of Replying Affidavit.
14. In conclusion, I find merit in this application and the same is allowed in the following terms;
  - a. That the Decision of the Land Registrar Kajiado dated 19<sup>th</sup> December 2019 and delivered on the same day by P.K. Tonui (District Land Registrar) is hereby adopted as decision of this Honourable Court.
  - b. That Judgement is hereby entered in terms of the decision of the Land Registrar Kajiado dated 19<sup>th</sup> December 2019.
  - c. That the Parties who have encroached on Parcel No. Kajiado/Kaputiei North/27301 be ordered and directed to move out of the said parcel within thirty (30) days from the date of this Ruling.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 5<sup>TH</sup> DAY OF MAY 2025.**

**L.KOMINGOI**

**JUDGE**

In The Presence Of:

For the Plaintiff/Applicant

For the 1<sup>st</sup> and 7<sup>th</sup> Defendants/Respondents

For the 2<sup>nd</sup> to 6<sup>th</sup>, 8<sup>th</sup> to 11<sup>th</sup> Defendants/Respondents

For the Interested Party

Court Assistant: Mutisya

