



**Sikoyo (Suing on Behalf of Joseph Nakodony Nkadayo) v Muimu (Environment and Land Appeal E023 of 2024) [2025] KEELC 4542 (KLR) (12 June 2025) (Judgment)**

Neutral citation: [2025] KEELC 4542 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT AND LAND APPEAL E023 OF 2024  
LC KOMINGOI, J  
JUNE 12, 2025**

**BETWEEN**

**JAMES SABAYA SIKOYO ..... APPELLANT  
SUING ON BEHALF OF JOSEPH NAKODONY NKADAYO**

**AND**

**BENSON SIYANGOT MUIMU ..... RESPONDENT**

*(Being an Appeal against the Judgement of Hon. Ntbuku J.N.  
delivered on 13th June 2023 in Loitokitok PMC ELC No. E004 of 2022)*

**JUDGMENT**

1. In her Judgement delivered on 13<sup>th</sup> June 2023 in Loitokitok PMCC No. E004 OF 2022, the learned Trial Magistrate observed thus;

“The court has not been shown any part Development Plan to prove that indeed survey was done as alleged. The court was told that beacons were planted but no beacon certificate was produced in this matter. The million dollar question I am asking at this stage is, how I know the 2 acres the ranch intended to allocate to the plaintiff herein without any number to describe the property. I am assuming there many acres of land along Email Loitokitok Road at Isineti area. Without any further description how can I declare the plaintiff the lawful owner of 2 acres at Isineti along Emali Loitokitok road?. That will be ambiquous as that does not describe any property with certainty. A party is bound by its pleadings and in the pleadings the property the plaintiff is claiming has not been describe to enable the court know with clarify which property he is claiming. The surveyors report dated 26<sup>th</sup> august 2022 does not help the plaintiff’s case at all because even with that report, this court can only rely on what is pleaded in the plaint.”



2. In the said Judgement, the learned Trial Magistrate dismissed the Lower Court's suit with costs on grounds that the suit property had not been described with certainty and there was no way of the Court knowing which Two (2) acres of land at Isinet along the Emali Loitoktok road was being claimed.
3. Aggrieved by this decision, the Appellant filed this Appeal seeking the setting aside of the said Judgement and that the reliefs sought at the Lower Court be allowed together with costs of the suit and of this Appeal. The Appellant outlined sixteen grounds of Appeal which have been compressed into the following:
  1. The trial Court erred in law and in fact by failing to appreciate the nature of proprietorship, ownership, management, use and allocation of land by Mbirikani Group Ranch.
  2. The trial Court erred in law and in fact by failing to appreciate that the Appellant had established a right/interest over the suit property for over 15 years by virtue of the letter of allotment dated 7<sup>th</sup> December 2007 from Mbirikani Group Ranch.
  3. The trial Court erred in law and in fact by failing to appreciate that the Respondent did not prove his right/interest over the suit property and ignoring evidence that the Respondent had caused malicious damage over the suit property.

#### **The Appellant's submissions**

4. Mr. Sang submitted that, the Appellant got his Letter of allotment in 2007 from Imbirikani Group Ranch as confirmed by the officials of the Group Ranch and has been in possession since then and had legal and registrable interests over it. It was also submitted that the Letter of Allotment did not bear the same conditions as those issued by the Government. He submitted that the Respondent did not produce evidence to support his claim over the suit property adding that the Surveyor's uncontroverted evidence also confirmed ownership of the suit property by the Appellant. Counsel also submitted that the Appellant was entitled to Kshs. 812,749.20 together with interest for trespass and destruction of his fence by the Respondent.

#### **The Respondent's submissions**

5. Counsel for the Respondent submitted that the Letter of Allotment issued in 2007 did not have conditions such as fees payable and did not have a description of the property. Equally, the expert testimony did not makes reference to the suit property's RIM number and the beacon certificate was non-existent. Counsel also submitted that the suit property was not fenced therefore, the claim for malicious damage was unsubstantiated. While asking for the Appeal to be dismissed, counsel pointed out that the Appellant's pleadings were ambiguous.

#### **The Appellant's additional submissions**

6. Counsel for the Appellant challenged the submissions on the *Community Land Act*, on grounds that application of this Act began in 2016 and not in 2007 when the Letter of Allotment was issued to the Appellant.

#### **Analysis and Determination**

7. I have considered the grounds of Appeal, the Record of Appeal, the written submissions, the oral highlights and the authorities cited. I find that the issues for determination is:
  - i. Whether the Learned Magistrate erred in dismissing the Appellant's suit with costs;



- ii. Whether this Appeal is merited;
  - iii. Who should bear costs of the Appeal?
8. Being a first appeal, the Court has a duty to re-evaluate the evidence and make its own findings, considering that it neither saw nor heard the witnesses. This was the Court of Appeal's holding in *Transparency International - Kenya v Omondi* (Civil Appeal 81 of 2018) [2023] KECA 174 (KLR).
- “This being a first appeal, we are required to analyze the evidence afresh and reach our own conclusions but also warning ourselves that we did not have the advantage of seeing the witnesses. It is thus the duty of the court to analyze and re-assess the evidence on record and reach our own conclusions...”
9. The Appellant herein filed a *Plaint* dated 13<sup>th</sup> July 2022 at the Magistrate's Court at Oloitokitok seeking declaratory orders that he was the lawful owner of the suit property allocated to him and that the Respondent be restrained from trespassing on it and any documents held by the Respondent be cancelled. The Appellant also sought damages and costs of the suit.
10. These reliefs were pegged on the ground that, the Appellant was the rightful owner of two (2) acres of land at Isinet area along the Emali Loitokitok road from 7<sup>th</sup> December 2007. This land was allocated to him by Imbirikani Group Ranch. He claimed that he developed the land and had been in possession until 5<sup>th</sup> July 2022 when the Respondent trespassed on it and destroyed the fence on the claim that the property was his. The Appellant's case is that he was the only proprietor and any other person claiming the land had been illegally and fraudulently registered as such.
11. To support his case, the Appellant produced an letter of allocation dated 7<sup>th</sup> December 2007 by the Chairman and Secretary of Mbirikani Group Ranch allotting him two (2) acres of land. The said letter indicates that the parcel of land was given to him as replacement of his two (2) acres which he gave to one Metui Ole Kosei to undertake irrigation. He stated that he was shown the two acres.
12. The Respondent in his statement of defence contested the allegation and sought dismissal of the suit with costs. To support his case, he produced a copy of the survey report dated 21<sup>st</sup> October 2011 for plot number 467 which production was objected to because it was a copy.
13. At the hearing, PW2, the former Imbirikani Group Ranch secretary between 2004 and 2008 testified. He confirmed that they showed Joseph Nkadayo an unsurveyed parcel of land measuring two (2) acres. There was no beacon certificate issued because the land was unsurveyed. He also stated that the Respondent was equally given two (2) acres of land but his land was different from Joseph Nkadayo's. PW3, a member of the Group Ranch also testified that he was present when Joseph Nkadayo was given the land by the chairman and treasurer. He also confirmed that the Respondent's parcel was different from Appellant's and there were other parcels in between the two parcels. PW10 the surveyor confirmed that he, together with his colleague visited the site on 12<sup>th</sup> August 2022 and confirmed that the land had a fence marked with columns and beacons although he was not aware of the surveyor who established the beacons. However, his acreage computation was that the plot was approximately 1.88acres. He stated that his survey report was on ground verification not ownership status.
14. The Respondent testified that he was allocated the land “six years ago” by the Imbirikani Group Ranch. He stated that he only had one plot while the Appellant had eight plots and the disputed parcel belonged to the Imbirikani Group Ranch.



15. In the judgement, the trial Court outlined the following issues for determination: whether the Plaintiff had proved his case to the required standards; whether malicious damage had been proved; whether special damages had been proved; who should bear costs of the suit.
16. In her decision, the learned Trial Magistrate held that a Letter of Allotment was not capable of conferring interest in land and for it to become operative, then several conditions ought to have been complied with. The Learned Trial Magistrate went on to hold that: "...in the present case, the Plaintiff did indeed file a letter dated 7/12/2007 but the same does not qualify to be regarded as an allotment letter. The same save for stating the member number of the Plaintiff and the fact that he has been allocated 2 acres of land in Isineti, it does not attempt to describe the property, give the parcel number or even give any condition to be fulfilled..."
17. I agree with the Respondent's Submissions that a party is bound by his pleadings. The letter, which is the basis of the Appellant's claim, does not describe the land that was allocated to the plaintiff by the officials of the Group Ranch.
18. I have gone through the Report by the Surveyor, and note that the same could not assist in pointing out the suit land. This was an expert who knew better than to just draw a sketch to show the location of the so called two acres of land. Did he refer to any documents and or maps? This report left the court more confused as to where the land is. They had the necessary skill to describe the land.
19. Even though the Appellant's counsel insists, the Surveyor's Report was not challenged; where is the land? It is in which map? Was it surveyed? Did it have any beacons?
20. In my view the Plaintiff approached the court casually. He is bound by his pleadings.
21. I find no reason to fault the findings of the Learned Trial Magistrate.
22. In conclusion I find no merit in this Appeal and the same is dismissed with costs to the Respondent.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 12<sup>TH</sup> JUNE 2025.**

**L.KOMINGOI**

**JUDGE.**

In the presence of:

Mr. Sang for the Appellant.

N/A for the Respondent.

Court Assistant – Mutisya.

