



REPUBLIC OF KENYA



**Tawai Limited v Eldoret Express Company Limited & 13 others (Environment and Land  
Miscellaneous Application E004 of 2025) [2025] KEELC 4462 (KLR) (11 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4462 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KITALE  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E004 OF 2025**

**CK NZILI, J  
JUNE 11, 2025**

**BETWEEN**

**TAWAI LIMITED ..... PLAINTIFF**

**AND**

**ELDOR ET EXPRESS COMPANY LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**WYCLIFFE OKUTOYI ..... 2<sup>ND</sup> RESPONDENT**

**JOSEPH MUTIMOSI ..... 3<sup>RD</sup> RESPONDENT**

**NOMI WAMAITHA MACHARIA ..... 4<sup>TH</sup> RESPONDENT**

**BENEDICT WANJALA ..... 5<sup>TH</sup> RESPONDENT**

**ELIAKIM MALACHE ..... 6<sup>TH</sup> RESPONDENT**

**DORCAS EMAIL SHIKAMI ..... 7<sup>TH</sup> RESPONDENT**

**NEREAH MURUNGA ..... 8<sup>TH</sup> RESPONDENT**

**HUMPHREY MURUNGA ..... 9<sup>TH</sup> RESPONDENT**

**FRANCIS MAKUTWA ..... 10<sup>TH</sup> RESPONDENT**

**MARTIN JUMA NAMOYO ..... 11<sup>TH</sup> RESPONDENT**

**GEOFFREY KUNGU ..... 12<sup>TH</sup> RESPONDENT**

**E DAVID SIMIYU ..... 13<sup>TH</sup> RESPONDENT**

**JOHN EGESA ..... 14<sup>TH</sup> RESPONDENT**



## RULING

1. In an application dated 10/2/2025, the applicant is seeking for orders that the County Surveyor and or the County Land Registrar Trans Nzoia County, fix and or place beacons on parcels Kiminini/ Kiminini Block 7 (formerly L.R No. 5707), L.R No. 5707/1, L.R No. 5707/2, L.R No.5707/3, L.R No. 5707/4, L.R No. 5707/5, L.R No.5707/6 and L.R No. 5707/R, (the suit parcels).
2. The application is premised on grounds on its face that the applicant is the owner of L.R Nos. 5707/1-5 and R. That following a dispute on ownership, the Court of Appeal at Eldoret found the 1<sup>st</sup> respondent as the owner of L.R No. 5707/6 (L.R 43019). The applicant avers it has complied with orders of the Court of Appeal and there is a need to place beacons on the suit parcels since the respondents has trespassed and are ploughing on the applicant's parcels.
3. Further, the applicant avers that its shareholders are prejudiced by the acts of the respondents and that justice demands grant of the orders sought. In further grounds adduced in the affidavit sworn by George Mubichakani Malanga on 10/2/2025, he avers that he is the chairman of the applicant which owns the suit parcels, whereby the Court of Appeal determined the ownership of L.R No.5707/6(L.R 43019), as per annexured copies of a title deed, judgment and eviction orders as GMM- 1(a-e), 2(a) and 3, respectively.
4. Similarly, the chairman avers that a survey was conducted and the only pending issue was fixing of beacons as seen in the letter dated 2/1/2025 and annexed as GMM-4. He further avers that the respondent, out of nowhere has started ploughing the entire suit parcels. The chairman prays for orders of status quo pending the hearing and determination of the suit and that no party stands to suffer prejudice if the orders sought are granted.
5. In a further affidavit by Mr. Malanga sworn on 21/2/2025, it is averred that the applicant has lodged AJS Tribunal Case No. 01 of 2025 at the Alternative Judicial System Tribunal Court at Kiminini. That the applicant as owner of the suit parcels instructed Ranes Enterprise Limited to place beacons on the suit parcels where the respondent was to witness the exercise but failed to. He annexed the affidavit of service and letter as CMM-1 (a-c).
6. As a result, the applicant approached the AJS to settle the matter. That despite service of hearing notices of 29/1/2025 and 4/2/2025, the respondent failed to appear before the tribunal. Copies of the affidavit of service and hearing notices are marked as annexures GMM2(a-c). The chairman further avers that, notwithstanding, the tribunal made its findings and delivered a ruling annexed as GMM-3. He thus prays that the county surveyor as well as party's independent surveyor take part in the beaconing exercise to effectively settle the matter.
7. The motion is opposed through an affidavit sworn by the 2<sup>nd</sup> respondent on behalf of the 3<sup>rd</sup> - 11<sup>th</sup> respondents. The 2<sup>nd</sup> - 11<sup>th</sup> respondents aver that they have been and continue to be in occupation and use of L.R Nos. 5707/1-5 since 1983, after they purchased the plots from the former directors of the applicant, who acknowledged receipt of the payment vide a letter dated 9/10/1986 and marked as annexure WO-1.
8. Again, the 2<sup>nd</sup> -11<sup>th</sup> respondents aver that upon the change of directors on 22/2/2005, the new directors transferred L.R. Nos. 5707/1-5 to the applicant, yet they had already sold the plots to them, leading to the filing of Kitale HCCC No.113 of 2008, where they obtained orders annexed as WO-2, restraining the applicant from entering L.R Nos. 5707/1-5 and for the preservation of the status quo.



- A copy of the amended plaint in ELC No.18 of 2023 is marked as annexure WO-3. The 2<sup>nd</sup> -11<sup>th</sup> respondents aver that the deponent of the applicant is misleading the court that there are no ownership disputes over the suit parcels, in order to steal a march and procure orders that would adversely affect them behind their backs, since they had not been joined in the application in the first instance.
9. In addition, the 2<sup>nd</sup>- 11<sup>th</sup> respondents aver that the court in a ruling dated 23/11/2023 nullified the registration of L.R Nos. 5707/1-5 and stripped the applicant and its deponent off locus standi to file this application. A copy of the ruling is marked as annexure WO-4. Further, the 2<sup>nd</sup>-11<sup>th</sup> respondents aver that the application has been filed by an advocate without a valid practicing certificate since 2024. A copy of the advocates status from the Law Society of Kenya is annexed as WO-5. They also contend that the application is an abuse of the court process and should be struck out.
  10. In written submissions dated 29/3/2025, the 2<sup>nd</sup> – 14<sup>th</sup> respondents submit that the applicant is seeking substantive orders which are not based on any judgment. They further submit that the decision by the Court of Appeal has not been availed and they ought to have filed the post-judgment application in the court that heard the dispute.
  11. The 2<sup>nd</sup> - 14<sup>th</sup> respondents submit that there is an order of status quo in ELC No.18 of 2024 and that they are in occupation of L.R Nos. 5707/1-5, having bought the same from Zacheous Chesoni and Mary Aherwa Chesoni as the then directors of the applicant.
  12. Further, the 2<sup>nd</sup> – 14<sup>th</sup> respondents submit that the court in HCCC 17 of 2018 nullified and quashed the registration of the directors of the applicant and also termed their decision as a nullity ab initio. It is their submission that LR. Nos. 5707/1-5 do not belong to the applicant, since there is a pending hearing on ownership dispute. That it would amount to a breach of the status quo if the orders sought are granted.
  13. Again the 2<sup>nd</sup> – 14<sup>th</sup> respondents submit that the deponent to the supporting affidavit was not a director of the applicant prior to 25/2/2005, and is seeking orders to perfect a nullity. They also submit that the application has been filed by an advocate without a valid practicing certificate.
  14. The role of a Land Registrar and a Land Surveyor in the ascertainment of boundaries and settlement of boundary disputes is set out under Sections 18 and 19 of the [Land Registration Act](#). The said sections provide as follows:“(1). Except where, in accordance with Section 20, it is noted in the register that the boundaries of a parcel have been fixed, the cadastral map and any filed plan shall be deemed to indicate the approximate boundaries and the approximate situation only of the parcel.(2).The court shall not entertain any action or other proceedings relating to a dispute as to the boundaries of registered land unless the boundaries have been determined in accordance with this Section.(3).Except where it is noted in the register that the boundaries of a parcel have been fixed, the Registrar may, in any proceedings concerning the parcel, receive such evidence as to its boundaries and situation as may be necessary: Provided that where all the boundaries are defined under Section 19(3), the determination of the position of any uncertain boundary shall be done as stipulated in the [Survey Act](#).
  15. Section 19 provides that:“(1).If the Registrar considers it desirable to indicate on a filed plan approved by the office or authority responsible for the survey of land, or otherwise to define in the register, the precise position of the boundaries of a parcel or any parts thereof, or if an interested person has made an application to the Registrar, the Registrar shall give notice to the owners and occupiers of the land adjoining the boundaries in question of the intention to ascertain and fix the boundaries. (2).The Registrar shall, after giving all persons appearing in the register an opportunity of being heard, cause to be defined by survey, the precise position of the boundaries in question, file a plan containing the necessary particulars and make a note in the register that the boundaries have been fixed, and the plan shall be deemed to accurately define the boundaries of the parcel.(3).Where the dimensions and



boundaries of a parcel are defined by reference to a plan verified by the office or authority responsible for the survey of land, a note shall be made in the register, and the parcel shall be deemed to have had its boundaries fixed under this Section.”

16. From the above provisions of the law, it is clear that the mandate to determine a boundary dispute is a preserve of the land registrar. The applicant has not brought the land registrar as a party or as a witness to shed more light on the issues raised and give a valid ground report on the alleged. The applicant has not made full disclosure as to the current position on the ground and other court orders that have been issued to avoid parallel orders which would be injudicious.
17. On the issue that the application is filed by an advocate without a valid practicing certificate, it is trite law that justice shall be administered without undue regard to technicalities. Section 9 of the Advocates Act requires every advocate attending and representing clients in court to hold a valid practicing certificate. The requirement to hold a valid practicing certificate extends to such person drawing or executing documents as an advocate. Without a valid practicing certificate, any document drawn or executed is invalid. Article 159 of the Constitution should not be seen as a panacea to cure all manner of indiscretions relating to procedure. See Nicholas Kiptoo Arap Korir Salat -vs- IEBC & 6 Others [2010] eKLR.
18. Even if this court were to consider the lack of a valid practicing certificate a technicality, the application would still fail since the court is being asked to act in a vacuum and grant orders that cannot issue in a miscellaneous file. For those reasons, the application is dismissed for lack of merits and incompetence.

**RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 11<sup>TH</sup> DAY OF JUNE 2025.**

In the presence of:

Court Assistant - Dennis

Mr. Kiarie for 2<sup>nd</sup> and 3<sup>rd</sup> Respondents present

Mr. Kimani for 1<sup>st</sup> Respondent present

Mukundu for Nakitare for Applicants present

**HON. C.K. NZILI**

**JUDGE, ELC KITALE.**

