



REPUBLIC OF KENYA



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Nkancha v District Land Registrar Kajiado & 10 others (Environment and Land Appeal E018 of 2023) [2025] KEELC 5222 (KLR) (10 July 2025) (Judgment)

Neutral citation: [2025] KEELC 5222 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND APPEAL E018 OF 2023
LC KOMINGOI, J
JULY 10, 2025

BETWEEN

CHARLES LOOLMEORI OLE NKANCHA APPELLANT

AND

DISTRICT LAND REGISTRAR KAJIADO 1ST RESPONDENT

KATATO ROTTEI 2ND RESPONDENT

JEREMIAH PATTA ROTTEI 3RD RESPONDENT

FAITH NAANGU TIPAPE 4TH RESPONDENT

MERCY NASIEKU LEPAPA 5TH RESPONDENT

RUTH MEMUSI LEPAPA 6TH RESPONDENT

HELLEN ONGADI INZAHULI 7TH RESPONDENT

OLE KARRAO LEIKAMBA 8TH RESPONDENT

LIKAMBA OLE KIRRO LESIRA 9TH RESPONDENT

OLE LIMPASO KANCHORI 10TH RESPONDENT

JULIUS LIMPASO KANCHORE 11TH RESPONDENT

(Being an Appeal against the decision of the Kajiado District Land Registrar T.H. Haithar delivered on the 08th day of September, 2023 in the matter of the determination of boundary lines between Kajiado/Kaputiei Central/1670 and 1330)



JUDGMENT

1. In the Ruling dated 26th July 2023 the District Land Registrar, held:

“...Therefore, parcel 1357 should be defined by boundary points B1. B2. B3x and B4x. Parcel 1670 should also be defined by boundary points B3x. 4x, 5x and B6x. Parcel 1330 to be defined by boundary points B5x, B6x, B8 and B7. Parcel 1470 and 1310 to remain intact as shown on the ground. By doing this the boundary dispute between 1357 and 1670 and 1330 will be addressed...”
2. Aggrieved by this decision, the Appellant filed this Appeal on the grounds that:
 1. The Land Registrar’s decision is biased, incomplete, unlawful and without basis in law.
 2. In reducing the acreage of parcel Kajiado/Kaputiei Central/1330 from 99.20 hectares to 88.40 hectares, the District Land Registrar and District Surveyor acted in excess of jurisdiction.
 3. The District Land Registrar erred in law and fact when he failed to carefully consider, analyse, and evaluate the Appellant’s entire body of material evidence presented before him.
 4. The District Land Registrar erred in failing to ascertain the actual acreage of each of the parcels of land as shown in the title, mutation forms and Registry Index Map (RIM) and ensure the size of the parcels on the ground is equivalent to the size of the mutation forms/title and or register.
 5. The District Land registrar failed to preside over fair and an impartial hearing thereby abandoning his statutory mandate and/or responsibility, albeit without any lawful cause and/or basis.
 6. In relying entirely on the report of the District Surveyor, the District Land Registrar exercised his discretion injudiciously and indiscreet and therefore fell in error.
3. The Appellant therefore seeks that;
 - i. The decision of the Land Registrar and all consequential orders be set aside and/or quashed and the dispute be determined de novo by a District Land Registrar other than T.H. Haithar and District Surveyor other than Mr. Stephen Mutuku.
 - ii. The District Land Registrar Kajiado Central be ordered to determine the correct boundary reflecting the correct acreage of each parcel be determined and maintained.
 - iii. The area maps which reflect the correct acreage/size of each parcel be determined and maintained and the boundary on the ground be marked to confirm with the said maps.
 - iv. The Respondents pay the cost of appeal.
 - v. Any other order that the Court deems fit and just to grant.
4. This Appeal was canvassed by way of written submissions.



Submissions of the 7th Respondent

5. Counsel for the Appellant submitted that the Appellant had also filed an appeal against the District Land Registrar's decision in ELC Appeal No. E018 of 2023 seeking orders that:
 - a. That the appeal be allowed and the decision of the District Land Registrar, Kajiado (T.H. Haithar) delivered on 8th September be reversed and/or vacated.
 - b. That in order to meet the ends of justice, if the court is satisfied that there is indeed a variance in the title versus ground areas of parcels no. Kajiado/Kaputiei Central/1357, 1670, 1330 (now subdivided into 7066, 7067, 7068 & 7069), 1470 and 1330, the 1st Respondent do a pro rata decrease of that variance from each of the parcels aforesaid and shall, in accordance to this order, proceed to cause to be defined by survey, the precise position of the boundaries in question as pro rata varied, file a plan containing the necessary particulars and make note in the various registers that the boundaries have been so fixed.
6. By consent of the parties, a site revisit was conducted on 23rd February 2024 in presence of owners of the disputed as well as adjoining parcels and each parties' private surveyors, and a survey report filed before Court by the 2nd Respondent. By consent of the parties, the recommendations of the District Surveyor in his report dated 23rd February 2024 were abandoned and vacated.
7. It was submitted that the Appellant opposed the proposals by the 1st Respondent in his appeal and sought that the boundaries as per the RIM, the satellite images and the coordinates in the Appellant's mutation form dated 12th November 2020 be maintained on grounds that: as per the Appellant's surveyors' report - Basecamp Engineering Limited- who were present during the site visit conducted on 23rd February 2024 and filed in court on 3rd June 2024, it showed that the boundaries between the Kajiado/ Kaputiei Central/1330 was defined by coordinates C and D ARC 1960 37S. C being 9759768.759, 2948003.473 and D being 9759721.91, 294415.358. These coordinates were supported by the features on the ground and on the map. And the map showed that the Appellant's parcel ends where the trajectory of Mashuuru-Isara Road changes to the east. The said road has never changed in its position. Further, the satellite images as at year 1985 and 2020 matched the position of the Appellant's land as per the RIM. The ground size of the Appellant's parcel was approximately 95.12 Ha as shown by the Appellant and supported by the Map and the satellite images.
8. Counsel also submitted that there was a discrepancy in size between land parcel Number Kajiado/ Kaputiei Central/1347 and the Appellant's in that the registered acreage of Kajiado/Kaputiei Central /1347 was 55.38Ha, the size shown by the owner was 90.68Ha and the Size as per the RIM was 65.80Ha. This demonstrated that the owner of land parcel number Kajiado/Kaputiei Central /1347 encroached on the Appellant's Parcel. The Appellant should therefore reclaim his portion from Kajiado/Kaputiei Central /1347 and not from the Appellant's parcel formerly Kajiado/Kaputiei Central /1330. Counsels also submitted that the Mutation form dated 12th November 2020 produced by the 1st Respondent in his appeal also showed the coordinates of land parcel formerly known as Kajiado/Kaputiei Central /1330 were in agreement with the ground as shown by the Appellant and the RIM. As such, this Appeal should be allowed.

Submissions of the Appellant

9. Counsel for the Appellant argued that they were strangers to the 7th Respondents private surveyor's - Basecamp Engineering Limited- report, because they had neither been served with the said report nor was it in the Appellant's Record of Appeal. As such, it lacked efficacy in the Appeal.



10. Counsel contested the 7th Respondents argument that that the RIM/cadastral map is always used to guide the production of title deeds and to determine the boundaries of the disputing parcels as opposed to the registered size, submitting that as per Section 15 of the Land Registration Act which was a replica of Section 18(1) of the Registered Land Act (repealed) provided that: (1) the office or authority responsible for the survey of land shall prepare and thereafter maintain a map or series of maps, to be known as the cadastral map, for every registration unit. And (2) the parcel boundaries on such maps shall be geo- referenced and surveyed to such standards as to ensure compatibility with other documents required ... He went on to submit that Section 18(1) of the Land Registration Act, provided that the cadastral map and any filed plan was indicative of the approximate boundaries and the approximate situation only of the parcel. Therefore, the RIM/Cadastral maps was only indicative of the boundaries of the parcels and the Survey office had a mandate under Section 15(2) of the Land Registration Act to geo reference cadastral maps to ensure compatibility with other documents required under that Act.
11. Therefore, a Land Register being a sacred document means that what is recorded therein was the valid position. According to the Green Card for parcel Kajiado/Kaputiei Central/1330 its acreage was 73.78 ha. (182 acres) while the Green Card for parcel Kajiado/Kaputiei Central/1670 indicated its acreage as 104.60 ha. (258 acres) and both parcels of land were sub-divisions of the Mashuuru - Imaroro Group Ranch. The Records of the Group Ranch also confirmed that the initial survey and allocation of the 2 parcels indicated their acreages as 73.78 ha. (182 acres) and 104.60 ha. (258 acres) respectively. This was the intention of the group ranch and the outcome of its first survey that gave rise to these parcels. However, the Land Registrar, by his impugned Ruling, was increasing the Appellant's parcel Title No. Kajiado/Kaputiei Central/1330 from 73.78 ha. (182 acres) to 88.4 ha. (218 acres) while decreasing the 1st Respondent's parcel Title No. Kajiado/Kaputiei Central/1670 from 104.6 ha. (258 acres) to 47 ha. (116 acres) which should be rejected.

Analysis and Determination

12. I have considered the grounds of Appeal, the Record of Appeal, the written submissions and the authorities cited. I find that the issues for determination are:
 - i. Whether this Appeal is merited;
 - ii. Who should bear costs of the Appeal.
13. Before Court for determination is a boundary dispute between parcels Kajiado/Kaputiei Central/1330 belonging to the Appellant and parcel Kajiado/Kaputiei Central/1670 belonging to the 1st Respondent which was determined by the Land registrar and a ruling delivered dated 22nd June 2023.
14. Aggrieved by this decision the Appellant filed an appeal seeking to quash and/or set aside the decision and sought that another boundary determination be undertaken.
15. By consent of the parties, a site visit was conducted on 23rd February 2024 in presence of the Deputy Registrar of this court; the Land Registrar; the District Land Surveyor; and independent surveyors; the Appellant as well as her advocate on record and family members; the 1st Respondent together with his advocate on record and family members; Respondents in ELC Appeal E018 of 2023 and the Chief of Mashuuru area.
16. When the matter was mentioned before the Deputy Registrar on 22nd May 2024, counsel for the 1st Respondent indicated that the date on the surveyor's report was wrong and needed to be amended. He also submitted that the reason for the site visit was to determine the acreage of the disputed parcels but instead, the surveyor made a proposal which counsel had appealed against on grounds that it should be



amended to reflect the correct position. This position was also confirmed by Counsel for the Appellant. The court ordered that the report dated 9th September 2024 by the Kajiado Survey Office be amended to reflect the correct date and acreage of suit parcels Kajiado/Kaputiei Central/1330, 1670, 1357, 1470 and 1370.

17. When the matter came up again on 10th June 2024, counsels for the Appellant and 1st Respondent indicated that they were not agreeable with the proposals by the Surveyor/Land Registrar. It is also on record that the date on the Land Registrar was not amended despite several mentions and service.
18. The Land Registrar is the office mandated to deal with boundary disputes as per Section 18 and 19 of Land Registration Act. However, it is on record that parties disputed the Land Registrar/Surveyor's proposals as per the report filed in Court.
19. The Deputy Registrar who was part of the site visit conducted on 24th February 2024 filed the Report confirms the following;
 - i. Owners of Parcels 1310 and 1370 were present during the exercise but stated that the scope of the fresh acreage ought to be carried out in the presence of other neighbours as their plots were likely to be affected.
 - ii. Ms. Hellen observed that before the District Surveyor attended the land, her parcel of land was larger and several of her trees have now been felled due to the shift in acrea by Mr Charles.
 - iii. Ms. Hellen observed that the land was sub divided 18 years ago but the dispute arose in the year 2020. She stated that the Group Ranch ought to be involved to provide the area list.
 - iv. It was noted that previous Surveyor did not take into account Parcel 1357 and hence the disparity on acreage arose. An example of the disparity is where Mr Charles claims to have 258 acres in the title deed but has 120 acres on the ground.
 - v. The parties are unaware or ignorant to the location of the beacons on their parcels of land.
 - vi. Climate change as a factor, may be considered as a factor for the shrinking land near the river but cannot be a factor to explain shifting of beacons on the area far away from the river. In addition, doubts and questions arises on the statutory distance awarded to the private owners with the river.
 - vii. Third party (surveyors) purported interference with the initial beacons is evident.
20. I find that land being an emotive issue, it would be important to have an impartial settlement.
21. I find merit in the Appeal and the same is allowed in the following terms;
 - i. That the District surveyor and the Land Registrar do carry out another boundary determination in presence of all owners of the disputed parcels, neighbours since their plots are likely to be affected as well as Group Ranch officials.
 - ii. That the boundary determination to be undertaken by a Land Registrar other than T.H. Haithar and District Surveyor Mr. Stephen Mutuku.
 - iii. That the Group Ranch officials do provide the area list for purposes of the boundary determination exercise.
 - iv. That each party shall bear own costs of the Appeal.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 10TH DAY OF JULY 2025.



L. KOMINGOI

JUDGE.

In the presence of:

Mr. Githuka for the Appellant.

Mr. Kibet Korir for the 7th Respondent.

N/A for the other Respondents.

Court Assistant – Mateli.

