



**Rombo Group Ranch & another v District Land Registrar Kajiado & 3 others (Environment and Land Appeal E027 of 2022) [2023] KEELC 21342 (KLR) (2 November 2023) (Judgment)**

Neutral citation: [2023] KEELC 21342 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT AND LAND APPEAL E027 OF 2022  
LC KOMINGOI, J  
NOVEMBER 2, 2023**

**BETWEEN**

**ROMBO GROUP RANCH ..... 1<sup>ST</sup> APPELLANT**

**JOHN SITELU NKIMPAPAI ..... 2<sup>ND</sup> APPELLANT**

**AND**

**THE DISTRICT LAND REGISTRAR KAJIADO ..... 1<sup>ST</sup> RESPONDENT**

**ISAAC SOLITEI SIKEMBEI (SUIING AS NEXT OF KIN OF JOSHUA SIKEMBEI PARTEYIE) ..... 2<sup>ND</sup> RESPONDENT**

**JOSHUA LEKUNIN OLE YIAMBATI ..... 3<sup>RD</sup> RESPONDENT**

**EMKAY ESTATE LIMITED ..... 4<sup>TH</sup> RESPONDENT**

*(Being an appeal against the decision of P.K. Tonui, the District Land Registrar Kajiado delivered on the 24th March 2022)*

**JUDGMENT**

1. The Appellants being dissatisfied with the decision of P.K. Tonui, the District Land Registrar Kajiado delivered on the 24<sup>th</sup> March 2022 filed an appeal on the grounds that:
  - i. The Land Registrar and district Surveyor erred in law and fact as the findings and observations by the District Surveyor only focused on one parcel of land known as Loitokitok/Rombo B/1 yet the boundaries in dispute relate to three parcels land (sic) as stated in the heading of the District Surveyor's report dated 9<sup>th</sup> February 2022.
  - ii. The Land Registrar erred in law and fact by making a report and determination that did not cover the full scope of the objectives of the survey as indicated in the letter by the land surveyor Mr. Andrew Machogu referenced Ref. No. Kjd/Registry BD/2022/02/B and dated



9<sup>th</sup> February 2022 on General Survey Report. The letter identified three parcels of land to be surveyed known as Loitokitok/Olkaria/103, Loitokitok/Rombo B/1 and Loitokitok/Rombo B/141 and further stated that the objective of the survey was to:

- a. Establish ground positions of the parcels of land
  - b. Compare the sizes and shapes of the said land parcels of land with the Registry Index diagram,
  - c. Compare title acreages, Registry Index Map acreages and the existing ground acreages of the said parcels of land.
- iii. The Land Registrar erred in law and fact as in the report, the District Surveyor mentioned that the area coverages for the three parcels of land known as Loitokitok/Olkaria/103, Loitokitok/Rombo B/1 and Loitokitok/Rombo B/141 yet after picking GPS coordinates covering the three parcels of land only Loitokitok/Rombo B/1 was computed and found to be 737.23 hectares.
  - iv. That the Land Registrar and the Land Surveyor erred in law and fact by failing to determine the measurements of the other two parcels of land as per the picking of corner coordinates.
  - v. The Land Registrar erred in law and fact by failing to establish whether the other two parcels of land measurements tally with what is indicated in their respective title deeds.
  - vi. That the Land Registrar and the District Surveyor, Mr. Andrew Machogu erred in law and fact by completely establishing ground position for parcel Loitokitok/Rombo B/1, partially establishing ground position of Loitokitok/Rombo B/141 and completely failing to establish ground position for Loitokitok/Olkaria/103. This is why it was difficult for the district surveyor to compute areas of the two parcels of land not mentioned in his report. Comparison of areas and shapes of the said parcels of land with the Registry Index Map (RIM) was not done since two parcels known as Loitokitok/Rombo B/141 and Loitokitok/Olkaria/103 ground positions were not established by the District Surveyor. Comparison of the acreages could not be achieved because all the tasks done by the District Surveyor were incomplete and others not done at all.
  - vii. That the decision of the Land Registrar is demonstratively biased and is incomplete, unlawful and without basis in law.
  - viii. That the Land Registrar failed to preside over a fair and impartial hearing thereby abandoning his statutory mandate and/or responsibility, albeit without any lawful cause and or basis.
2. The appellants thus prayed for setting aside of the decision and quashing any orders issued, the dispute for all the three land parcels in dispute being be Loitokitok/Olkaria/103, Loitokitok/Rombo B/1 and Loitokitok/Rombo B/141 be reviewed and determined afresh by another Land Registrar and another District surveyor other than Mr. P K Tunoi and Mr. Andrew Machogu respectively and costs of the appeal awarded to the Appellants.
  3. This Appeal was canvassed by way of written submissions.

### **The Appellants Submissions**

4. Counsel for the Appellants in their submissions dated 4<sup>th</sup> September 2023 reiterated their grounds of Appeal and prayers sought.



## The 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents' Submissions

5. In their submissions dated 5<sup>th</sup> September 2023 Counsel for the Respondents gave a history of the dispute as follows:
6. The dispute was filed at the Lands Registry in Kajiado on the 5<sup>th</sup> May 2021 on grounds that the 1<sup>st</sup> Appellant's surveyors were erecting beacons beyond its boundary lines into the Respondents' parcel numbers Loitokitok/Rombo "B" 1 and Loitokitok/Olkaria/103. Due to the inordinate delay in determining this dispute the 2<sup>nd</sup> Respondent filed ELC E077 of 2021 citing trespass by the Appellants and against the Land Registrar for failing to determine the boundary dispute. In compliance with the court orders, the Land Registrar and the parties to the dispute met at the site on 18<sup>th</sup> January 2022 and gave oral testimonies with an aim of establishing the parcels on the ground and to compare their sizes and shapes with the preliminary index diagram, Registry Index Maps and the existing ground acreages. The District Surveyor then made his findings that parcel number Loitokitok/Rombo 'B'/1 was occupying its correct position as per the Registry Index Map and that the area on the ground conformed to the area on the Registry Index Map and the area indicated on the head title. The position of number Loitokitok /Olkaria/10 was the correct position and Loitokitok /Rombo 'B'/141 position was also affirmed by picking three old corner beacons which were found to conform with the existing Registry Index Map. Therefore, it was established that the three parcels' position on the ground was correct and none of them should be altered in any way and the status quo should be maintained.
7. On the issue that the Land Registrar's decision was impartial and unbiased, Counsel while making reference to the case of *Republic & 2 Others v Principal Land Registrar - Kajiado & 3 others; Timothy Lantey & another (Interested Parties); Saidimu Ole Matayian & Another (ExParte)* [2018] eKLR submitted that this was inaccurate because all the parties were given an opportunity to be heard at the oral hearing and the Land Registrar adhered to the provisions of Sections 18, 19 and 20 of the *Land Registration Act* as well as considered documentary evidence such as Title deed and the Registry Index Map. Counsel urged the court not to consider the prayer to have another surveyor and land registrar determine the dispute because it would be a repetitive futile task which would not achieve anything. Counsel cited *Republic v Land Registrar, Maua, Sub County Surveyor & 2 others Ex parte Julius Ng'olua & another; Susan Kabuthu Muthee (sued as the legal representative of the Estate of Andriano Mbaabu M'Lithumai alias Andriano Mbaabu Koronya (Deceased) (Interested Party)* [2021] eKLR where court held

“...Government officials who have limited resources at their disposal should not be compelled to undertake repetitive tasks for frivolous reasons...”

8. In conclusion, counsel prayed that the Appeal to be dismissed with costs.

## Analysis and Determination

9. I have considered the Record of Appeal, the rival submissions and authorities cited. The issues for determination are:
  - i. Whether the Land Registrar Kajiado and the District Surveyor only considered one parcel of land in their boundary dispute determination;
  - ii. Whether the Land Registrar Kajiado and the District Surveyor decision was impartial, unfair and biased and should be quashed and orders thereof set aside;



- iii. Whether another Land Registrar and Surveyor should be ordered to review and determine the boundary dispute in relation to Loitokitok/Olkaria/103, Loitokitok/Rombo B/1 and Loitokitok/Rombo B/141.
  - iv. Who should bear costs of this appeal?
10. The Appellants have urged the Court to quash the Land Registrar's decision on the boundary dispute in relation to Loitokitok/Olkaria/103, Loitokitok/Rombo B/1 and Loitokitok/Rombo B/141 because the finding was arrived at based on the District Surveyor's report whose findings took into consideration only one parcel of land. The 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondent's contested this claim.
  11. In the Record of Appeal the Land Surveyor's findings in the report dated 9<sup>th</sup> February 2022 read:
    - "i. From the survey it was discovered that parcel Ltk/Rombo B/1 is occupying its correct position as per the Registry Index Map;
    - ii. ...
    - iii. The position of parcel Loitokitok/Olkaria/103, adjacent to the West of Loitokitok/Rombo B/1 is also correct...
    - iv. The position of Ltk/Rombo B/1414 was affirmed by picking three old corner beacons which were found to conform with the existing Registry Index Map.
    - v. The boundaries aforementioned were established in August 1971 and have never been challenged since.  
... The parcels on the ground are correct and none of them should be altered in any way."
  12. From this report, the Land Registrar recommended that the position of the three parcels on the ground was correct and none of them should be altered in any way since the boundaries are intact and undisputedly identifiable.
  13. Based on the Surveyor's report, the three contested land parcels have been unequivocally delineated, identified, and referenced. This court finds it difficult to comprehend how else the Surveyor was to focus on the parcels of land in dispute.
  14. Further in answer to the Appellants claim that the Registrar was unfair, biased and impartial in hearing the dispute; Counsel for the Respondents submitted that all the parties involved in the dispute converged at the site and each person was given an opportunity to be heard.
  15. A perusal of the Land Registrar's determination once again shows that thirteen (13) people were in attendance and among them were: 2 people from the Land Registry Kajiado, the area Chief, 2 private surveyors, the District Surveyor and 7 representatives from Rombo Group ranch and Loitokitok. Three people including the Chairman of Rombo Group Ranch gave their statements. The Chairman also urged that the original maps be used to guide the dispute resolution process, which are the documents noted to have been used by the District Surveyor in arriving at his findings.
  16. The Appellants have also asked for another review of the boundaries by other officials, a task the Respondents submitted would be futile and a waste of meagre Government's resources.
  17. It is not in dispute that the parcels on the ground are clearly marked and demarcated and those positions have never changed since 1971 as was determined. The court finds that the Appellants have not made



out a case or tabled sufficient evidence as to why and/or how the decision arrived at was erroneous to warrant the orders sought. This court finds that the Land Registrar's decision was reasonably arrived at and is fair and just. It would thus not only be unreasonable for this court to vary it, but also unfair to the parties involved, not to mention a waste of the tax payers resources that would be used undertaking an exercise in futility.

18. I find no merit in the appeal and the same is dismissed with costs to the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 2<sup>ND</sup> DAY OF NOVEMBER 2023.**

**L. KOMINGOI**

**JUDGE**

In the presence of:

Mr. Taliti for the 1<sup>st</sup> Appellant.

N/A for the 2<sup>nd</sup> Appellant.

N/A for the 1<sup>st</sup> Respondent.

Ms. Wanjiku for the 2<sup>nd</sup> – 4<sup>th</sup> Respondents.

