



Vineyard Properties Limited v Land Registrar, Kajiado & 2 others (Environment & Land Petition E06 of 2021) [2022] KEELC 3681 (KLR) (7 June 2022) (Ruling)

Neutral citation: [2022] KEELC 3681 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND PETITION E06 OF 2021
MN GICHERU, J
JUNE 7, 2022
N THE MATTER OF: ARTICLES 2, 23, 27(1) AND, 2, 50 (1), 61 (2), 162 (2)
(B), 165 (3) AND 6, 258 AND 259 OF THE
CONSTITUTION OF KENYA, 2010
AND
IN THE MATTER OF: THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS
AND FUNDAMENTAL FREEDOMS) PRACTICE AND
PROCEDURE, RULES, 2013
IN THE MATTER OF: SECTIONS 13(1) AND (2), (7) , 14 AND 19 OF
ENVIRONMENT AND LAND COURT ACT, LAND ACT, 2012
AND LAND REGISTRATION ACT, 2012
AND
IN THE MATTER OF: ALLEGED CONTRAVENTION AND OR APPREHENDED
CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS
UNDER ARTICLES 21, 40, 47(1) AND 50 (1) OF THE
CONSTITUTION OF KENYA, 2010 AND SECTIONS 20 (1) &
(3), 24, 25 (1), 26(1), 34 AND 35 (1) OF THE LAND
REGISTRATION ACT, 2012
AND
IN THE MATTER OF: ORIGINAL TITLE NO. KAJIADO/KITENGELA/29117 AND
ITS SUBSEQUENT SUBDIVISIONS (OF 110 PORTIONS) BEING
TITLE NUMBERS KAJIADO/KITENGELA/60878-74951
AND



**IN THE MATTER OF: THE UNLAWFUL
INTERFERENCE OF FIXED BOUNDARY LINES AND
ILLEGAL ENCROACHMENT OF THOSE ENTIRE (18) PORTIONS OF
LAND TITLES NUMBERS; KAJIADO/KITENGELA/60878,
60879, 60880, 60881, 60952, 60953, 74918,
74923, 74924, 74925, 74926, 74927, 74928,
74929, 74930, 74931, 74932 AND 74933 (ALL
EXCISED FROM ORIGINAL TITLE NO.
KAJIADO/KITENGELA/29117).**

HON. JUSTICE M.N. GICHERU RULING ELC PETITION NO.E06/2021 1

AND

**IN THE MATTER OF: AN IRREGULAR LAND REGISTRAR RULING ALLEGEDLY DATED
16TH OCTOBER, 2019 THAT DEPICTS AN ALLEGED ANCESTRAL
BOUNDARY FIXTURE TO CORRECT A PURPORTED INCREASED
ACREAGE EMANATING FROM UNKNOWN BOUNDARY
DISPUTE BETWEEN PARCELS NUMBERS
KAJIADO/KITENGELA/79850 AND
KAJIADO/KITENGELA/8451**

BETWEEN

BETWEEN

VINEYARD PROPERTIES LIMITED PETITIONER

AND

LAND REGISTRAR, KAJIADO 1ST RESPONDENT

COUNTY OF KAJIADO, LAND SURVEYOR 2ND RESPONDENT

BACKSON NKASIKA MUTUNKEI 3RD RESPONDENT

RULING

1. Vineyard Properties Limited (The petitioner) seeks the following reliefs against the Land Registrar (First respondent), County Land Surveyor (Second respondent) and Backson Nkasiaka Mutunkei (third respondent);
 1. A declaration that the respondents and their agents and or servants entry and interference with survey records, beacons, boundary features, mutations and or acreage of all those parcels of land known as Titles Numbers; Kajiado/Kitengela/60878, 60879, 60880, 60881, 60952, 60953,



74918, 74923, 74924, 74925, 74926, 74927, 74928, 74929, 74930, 74931, 74932 all excised from original Title No Kajiado/Kitengela/29117 is unlawful and illegal and further constitutes violation of the petitioners' right to property, security and privacy.

2. A declaration that the boundary dispute ruling dated October 16, 2019, that depicts all that land known as Kajiado/Kitengela/79850 and 8451 (known *vide* the first respondent's letter dated October 23, 2020) over the same subject parcels Kajiado/Kitengela/79850 and 8451 is irregular, a fraud, unlawful, a nullity and should not only be set aside but any subsequent implementation of the same should be stopped or cancelled forthwith, as the same is null and void.
3. A declaration that the respondents and their agents have acted irregularly or continue to act unlawfully in further allowing any person to enter into or giving authority to any person to implement and or carry out any resurvey purporting to correct an alleged increased acreage and or to carry any changes of acreage amending, altering, changing or interfering with the registration of any contemplated dealings to wit amending the current existing survey records and or boundary features emanating from an alleged boundary dispute of all the parcels of land known as Kajiado/Kitengela/79850 and 8451 and or purporting to implement an alleged boundary dispute ruling dated 16/10/2019 (known *vide* the 1st respondent letter dated October 23, 2020) over the same subject parcels Kajiado/Kitengela/79850 and 8451 to wit give effect of encroachment into all those suit portions known as Titles Numbers; Kajiado/kitengela/60878, 60879, 60880, 60881, 60952, 60953, 74918, 74923, 74924, 74925, 74926, 74927, 74928, 74929, 74930, 74931, 74932 -74933 (all excised from original Title No Kajiado/Kitengela/29117) have any amendments of the cadastral map, or registration of any mutations arising from the complained of Boundary Dispute Ruling of October 16, 2019 or subsequent entries thereof should be cancelled forthwith.
4. A mandatory injunction do issue and hereby directed to the respondents and their agents and or servants or otherwise and to restrain from interfering with the petitioners land parcels known as Kajiado/kitengela/60878, 60879, 60880, 60881, 60952, 60953, 74918, 74923, 74924, 74925, 74926, 74927, 74928, 74929, 74930, 74931, 74932 -74933 (all excised from original Title No Kajiado/Kitengela/29117) titles, boundary features, beacons and or survey records resulting from irregular Boundary Dispute Ruling dated October 16, 2019 (known *vide* the 1st Respondent letter dated October 23, 2020) and if interfered with be rectified appropriately and restored to their original position.
5. A permanent injunction order do issue restraining the respondents and their agents and or servants and or employees from trespassing, alienating, repossessing or interfering with the petitioners quiet and peaceable possession of all those suit portions known as Kajiado/kitengela/60878, 60879, 60880, 60881, 60952, 60953, 74918, 74923, 74924, 74925, 74926, 74927, 74928, 74929, 74930, 74931, 74932 -74933 (all excised from original Title No Kajiado/Kitengela/29117) boundary features, beacons and or survey records.
6. That, in the event the 3rd respondent and or any person deriving authority or title from him are in possession of land that a re-survey shows to belong to the petitioners from the dates the boundary features and or survey records were interfered with the 3rd respondent and or his agents and servants do vacate and deliver vacant possession to the petitioner forthwith from the date the boundaries features interfered are restored failing which the petitioner is entitled to an order of eviction on giving such notice.
7. General damages for trespass.



8. Special damages
9. Costs of this petition.
10. Interest on 7, 8, and 9 herein above at court rates as may be found fair and just.
11. The honourable court do make, issue and give further, and or such orders, directions, findings as it may find fair and just to grant for the purpose of restoring the dignity and integrity of the petitioner's suit parcels and their respective boundary features, survey records, register or maps as envisaged and enshrined under the mandatory provisions of the [Constitution 2010](#) and the [Land Registration Act, 2012](#).

The petition is supported by a verifying affidavit sworn by James M Munyori, a director of the petitioner company and many annexures.

2. On September 28, 2021 the second respondent filed five (5) grounds of opposition as follows;
 1. No constitutional issues are discernible in the entire petition to warrant its admission and adjudication before this court.
 2. The Petition fails to satisfy the threshold of what constitutes a constitutional petition as per the principle established in the Annarita Karimi Njeru case.
 3. The grievances raised in the petition relate to breach of statutory provisions that are capable of redress in a normal suit and not through a constitutional petition.
 4. The petition is lodged as an appeal against the ruling dated October 16, 2020, bypassing the available appeal mechanisms. On this ground above, it is defective.
 5. The application and petition are an abuse of the court process.

3. The supplementary affidavit by the petitioner's director dated February 11 refers to a replying affidavit by the third respondent dated September 28, 2021.

I have not seen that affidavit. This will not however deter me from making the ruling that I will make because there is sufficient material on record to enable me do so.

4. Counsel for the parties filed written submissions on March 8, 2022 (Third Respondent) and May 6, 2022 respectively.
5. I have carefully considered all the material on record filed by the parties herein. Most of the evidentiary material is by the petitioner.

From that material, what I understand to be the complaint is the determination by the Land Registrar. This court is being called upon to nullify everything that the Land Registrar did in the boundary determination. Yet, under Sections 14, 15, 16, 17, 18 and 19 of the [Land Registration Act](#), it is the Land Registrar who has power to determine boundary disputes, summon parties, alter boundaries among other statutory powers.

I have also considered the submissions by learned counsel for the parties and I am persuaded that this petition is not a proper method to challenge the action of the Land Registrar.

The proper procedure is through Section 86 of the [Land Registration Act](#) or through an appeal against the decision of the Land Registrar.

For the above stated reasons, I strike out the Petition with costs to the Respondents.



DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 7TH DAY OF JUNE, 2022.

M.N. GICHERU

JUDGE

