



**Kinampu & 2 others v Mukut (Environment and Land Appeal
E027 of 2024) [2025] KEELC 3892 (KLR) (15 May 2025) (Judgment)**

Neutral citation: [2025] KEELC 3892 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
ENVIRONMENT AND LAND APPEAL E027 OF 2024**

MN MWANYALE, J

MAY 15, 2025

BETWEEN

DANIEL OLE KINAMPU 1ST APPELLANT

CHARLES MPASIOOLE KINAMPU 2ND APPELLANT

JAMES SAITOTI KINAMPU 3RD APPELLANT

AND

KITE KOIYO OLE MUKUT RESPONDENT

JUDGMENT

1. Being aggrieved by the Judgment and decree of Hon. W.C Waswa SRM delivered on 29th August 2024 in Kilgoris CMEL Case No. E004/2022, the Appellants Daniel Ole Kinampu, Charles Mpasio Ole Kinampu and James Saitoti Kinampu filed the Memorandum of Appeal dated 18th September 2024, raising 5 grounds of Appeal thereof, to wit;
 - i. The Learned Trial Magistrate erred in law and in fact by failing to find that the Defendant had trespassed on the Appellant's property Transmara/Oldanyati/128.
 - ii. That the Learned Trial Magistrate erred in law and in fact by failing to consider the pleadings of parties and the testimonies of all the witnesses who testified in court which testimonies all concurred that the parties do not share a boundary as is shown in the RIM.
 - iii. That the Learned Trial Magistrate erred in law and fact by failing to order an eviction against the Respondent from the Appellants property Transmara/Oldanyati/128.
 - iv. That the Learned Trial Magistrate erred in law and in fact by ordering the Land Registrar to resolve alleged inconsistencies between the map and the ground occupation while fully determining the suit thus constructively closing out all opportunities for further litigations ensuring therefrom.



- v. The learned trial magistrate erred in law by failing to protect the sanctity of title registered in the names of the Appellants.
2. On the strength of the above grounds of Appeal, the Appellant sought for orders that; -
 - i. Their Appeal be allowed with costs.
 - ii. The Hon. Magistrates Ruling delivered on 29.08.2024 and orders issued therein be set aside with costs.
 - iii. That a judgment be entered in favour of the Appellants thus; -
 - a. Declaration that the Defendant has trespassed on the Appellants property Transmara/Oldanyati/128.
 - b. Permanent injunction restraining the Respondent from, trespassing and/or interfering with the suit land or the Plaintiff's activities over the suit land and/or expanding their occupation over Transmara/Oldanyati/128.
 - c. Eviction order evicting the Defendant, his agents and/or anybody claiming through them from the suit land.
 3. Upon admission of the Appeal, the court directed for the Appeal to be canvassed by way of written submissions, which the court summarises as herebelow; -

Appellant's Submissions

4. The Appellant has submitted on the duties of an Appellate court as held in the Court of Appeal decision in *Selle and Another versus Associated Motor Boat Co. Ltd and Others (1908) E.A 123* and further framed and submitted on 3 issues for determination as follows: -
 - a. Whether the Respondent has trespassed on the Appellant's parcel known as Transmara/Oldanyati/128?
 - b. Whether the plaintiff is deserving of the orders as prayed by the plaintiff?
 - c. Who should bear the costs of the suit?
5. On issue 1, the Appellant submits that he is the registered owner of Transmara/Oldanyati/128 and that the Respondent vacated their property and moved into the Appellants property trespassing a portion of 5.01 Ha.
6. That the properties owned by the Appellant to wit Transmara/Oldanyati/128 and the one owned by the Respondent Transmara/Oldanyati/604 do not border each other.
7. That the Appellant was an original allottee of the suit property during adjudication in 1985 while the Respondent purchased his property in 2015.
8. Placing reliance on the decision in the case of *Philip Ayaya Aluchio Vs. Crispinus Ngayo (2014) eKLR* where the court held that moving into someone's property and putting up a fence or structures is an act of trespass; and that the Land Registrar's report clearly indicates that the Respondent/Defendant is in occupation of the portion of land in dispute, hence the same constitutes trespass.
9. The Appellant further placed reliance on the decision in the case of *Alex Waigera Mwaura Vs. Chania Power Co. and Another* and Article 40 of *the Constitution* to buttress the point that the Appellant had been denied and/or deprived use of his property by the Respondent.



10. On issue No. 2, the Appellant submits that having proven trespass, the Respondent should be evicted from the suit land, and hence the orders sought in the Plaint were justified.
11. The Appellant equally sought for costs of the suit in accordance with Section 27(1) of the Civil Procedure Act.

Respondent's Submission

12. The Respondent did not frame any issues for determination but submitted generally on the grounds contained in the Memorandum of Appeal.
13. The Respondent submit that the whereas the Appellant had testified that the Respondent had trespassed on their land and he was farming having registered with Transmara Sugar Company, but could not explain how he was able to register in the land.
14. The Respondent further submits that he purchased the property from DW2 who had been allocated the said parcel in 1985.
15. Placing reliance on the report by the Land Registrar that stated that the Plaintiff was staying on his property and the ground occupation by the Defendant and others was not in tandem with the map hence they could be no trespass but an issue of adjustment of the map which issue was not in dispute.
16. On the strength of the above the Respondent prays that the appeal be dismissed.
17. From the record of Appeal and the submissions, the court notes the following undisputed issues.
 1. The Appellant is the registered owner of Transmara/Oldanyati/128.
 2. The Respondent is the registered owner of Transmara/Oldanyati/604.
 3. That both these parcels are in the area formerly comprised of Oldanyati adjudication section.
 4. That the two parcels are not neighbouring and are in fact more than two kilometres apart.
 5. From the survey report filed dated 10th July 2024 observed that people are occupying and using the lands in a manner inconsistent with the map.

Issues for Determination

18. Upon analysis of the record of Appeal the submissions and consideration of the law, the court considers the issue for determination as follow; -
 - i. Whether or not the Appeal is merited.
 - ii. Who bears the costs of the Appeal.

Analysis and Determination

19. The Appellant has reminded the court of its duty as a first appellate court as was held in *Selle and Another Vs. Associated Motor Boats and Another*, which court held as follows, "A first appellate court is mandated to re-evaluate the evidence before the trial court as well as the judgment and arrive at its own independent judgment on whether or not to allow the appeal....."
20. The non-contested facts the court has enumerated above were also the findings of the trial court.
21. The claim before the trial court was for trespass by the Defendant on Transmara/Oldanyati/128.



22. As observed herein above and held in the impugned judgment the Appellant and the Respondent are each registered as proprietor in their respective parcels.
23. Since each of the parties owned property in the adjudication area, as the court rightly found, the court ordered for the Land Registrar and Surveyor to file a ground report.
24. DW2 in his testimony indicated that he had sold to DW1 the area that DW1 was occupying which was parcel No. 604 and that there was an amendment of the RIM, which interchanged the properties.
25. PW1, DW1 and DW2 were unanimous that the parcels were not neighbouring parcels.
26. The testimony of the above witnesses lends weight to the finding in survey report, that people are occupying and using the lands in a manner inconsistent with the map. The same would lead to the conclusion that there is a disparity on the ground occupation and the map requiring the Amendment of the RIM so as to conform to the ground. This issue was however not pleaded and could not form part of issues for determination/
27. The trial court was thus right in making the findings it did on the disparity of the area map vis-avis ground occupation, and that there was no trespass.
28. I find no fault on the judgment of the learned trial magistrate so as to interfere with his decision. As a result, I find no merit in the appeal as filed.
29. The upshot is that the appeal is dismissed with no orders as to costs.

DATED AT KILGORIS THIS 15TH DAY OF MAY, 2025.

HON. M.N MWANYALE

JUDGE

In the presence of

CA – Emmanuel/Sylvia

Mr. Miruka for the Respondent

Ms. Shira for the Respondent

