



**Kimeker v Keriako (Environment and Land Appeal E007 of 2023)
[2025] KEELC 4578 (KLR) (19 June 2025) (Judgment)**

Neutral citation: [2025] KEELC 4578 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
ENVIRONMENT AND LAND APPEAL E007 OF 2023**

MN MWANYALE, J

JUNE 19, 2025

BETWEEN

NKARSIS NAISWAK KIMEKER PETITIONER

AND

PAUL KERIAKO RESPONDENT

(Appeal against the Judgment of Hon. M.I.G Moraga SPM in Kilgoris SPM No. 16 of 2020)

JUDGMENT

1. Vide the Amended Memorandum of Appeal dated 28th June 2024, the Appellant Nkarsis Naiswaki Kimeker penned down 10 grounds of Appeal against the Judgment of Hon. M.I.G Moraga SPM in Kilgoris SPM No. 16 of 2020 between Nkarsis Naiswaki Kimeker as Plaintiff and Paul Keriako as Defendant delivered on 17th November 2023.
2. The grounds of Appeal raised were
 - i. The Learned Magistrate erred in law and in fact by misconstruing the Appellants pleadings evidence and written submissions and thus arrive at the wrong decision.
 - ii. The Learned Magistrate erred in law and in fact in upholding the boundary of cypress trees fixed by the elders.
 - iii. The Learned Magistrate erred in law and in fact in putting reliance on the Registrar's report which report confirmed that the ground occupation was not in conformity with the declaration of Enaenyeny Adjudication Section as against Isampin Group Ranch.
 - iv. The Learned Magistrate erred in law and in fact in finding that although there were adjudication declaration, the cypress boundary is recognised yet the elders have no power to alter adjudication boundaries.



- v. The Learned Magistrate erred in law and in fact in failing to take into account the evidence adduced during trial and thus fell into error when she arrived at findings and conclusions unsupported by the record.
 - vi. The Learned Magistrate erred in law and in fact in failing to make a finding that the Respondent encroached on the appellant's parcel of land Transmara/Enaenyieny/5X6.
 - vii. The Learned Magistrate erred in law and in fact in holding that there was no evidence to rebut the Land Registrar's report yet there was a Report by a private Surveyor to the Contrary.
 - viii. The Learned Magistrate erred in law and in fact in failing to consider that the Respondent's parcel of land Transmara/Isampin/1X7 is a different Group Ranch and do not share a common boundary with Enaenyieny Section.
 - ix. The Learned Magistrate erred in law and in fact in failing to find that the boundaries of Isampin Registration Section and Osupukiai Group Ranch were defined by the Declaration Notices.
 - x. The Learned Magistrate erred in finding that the elders could purport to alter the boundaries as defined by the said Declarations Notices.
3. On the strength of the above grounds the Appellant prayed for: -
- i. The Appeal to be allowed.
 - ii. Judgment and decree of the Senior Principal Magistrate's Court at Kilgoris (Hon. M.I.G Moranga) delivered on 17th November 2023 be set aside.
 - iii. Cost of this Appeal be provided for.
4. Directions were issued by for the Appeal to be canvassed by way of written submissions.

Appellant's Submissions.

- 5. The Appellant has framed and submitted on five issues for determination
- 6. On issue number 1, the Appellant submits that the duty of the first Appellate court as is this one was stated in the *Selle Vs. Associated Motor Boat Company* (1968) EA 123 which held inter alia "....An Appeal to this court from a trial by the High court is by way of retrial and the principles upon which this court acts in such an appeal are well settled....Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowances in this respect...."
- 7. The Appellant thus submits that court ought to be guided by the said principles and find that the boundaries of Enaenyieny Group ranch Section and Isampin Adjudication Section were made by different declarations, and that the Respondent encroached into the Appellant's parcel; that the occupation did not conform to the Registry Index Map and the cypress trees adopted as the boundaries could not be the legally defined declaration Notices.
- 8. It is the Appellant's further submission that Section 19(1) of the Land Registrations Act prohibits alteration of a boundary in a Registry Index Map save by way of a mutation form, hence the alteration by the cypress tree boundary was illegal.
- 9. That only the Land Registrar could fix the Land Boundary dispute and the elders had no justification to modify a boundary defined in a declaration Notice.



10. The Appellant further placed reliance in decision in ELC Case No. 24/2021 between Kipaipai Ole Kantai and Leonard Terere Keriako and Paul Kamantire Keriako and 2 Others, where the court considered the boundary of the adjudication sections between Enaenyeny and Isampin.
11. On the strength of the above the Appellant submit for the Appeal to be allowed.

Respondent's Submissions.

12. The Respondent submits on only issue for determination as to whether the appeal is merited?
13. The Respondent has submitted on the court's duty as an Appellate Court and places reliance on the decision in the case of Lucas Otieno Masaye Vs. Lucia Olewe Kidi (2022) eKLR.
14. It is the Respondent's submission that the dispute herein was a boundary dispute, and that the Land Registrar fixed the boundary in accordance with Section 18 and 19 of [Land Registration Act](#).
15. The Land Registrar confirmed the boundary to have been in existence for more than 30 years and the trial court was bound by the report.
16. In support of this proposition, the Respondent placed reliance on the decision in the case Judith Achieng Omondo Vs. June Nyaingo Hossei and Another; Francis Macharia (third party), as well as the decision in Wilfred Omwansa and 5 Others Vs. Joyce Bonareri Mogaka and Another (2021) eKLR.
17. On the strength of the above the Respondent sought for the dismissal of the Appeal.
18. Before framing the issues for determination, the court notes the following undisputed facts arising in this Appeal and in the trial court;
 - i. The Plaintiff is the registered owner of Transmara/Enaenyeny/5X6 while the Defendant is the registered owner of Transmara/Isampin/1X7.
 - ii. That although the two parcels are adjoining each other one is in a Group Ranch while the other is an Adjudication Section.
 - iii. A boundary dispute was reported in the 1990's which gave rise to the civil suit and now this Appeal.
 - iv. The boundary between the Group Ranch and the Adjudication Section is a general boundary.

ISSUES FOR DETERMINATION.

19. Having analysed the Record of Appeal, the rival submissions of the parties as well as considered the law; the court frames the following as the issues for determination
 - i. What is the importance of the Judgment in ELC Case NO. 24/2021 Kipaipai Ole Kantai (suing through Julius M. Ole Nalamae Vs. Leonard Terere Keriako and 4 Others on:
 1. Enaenyeny Group ranch Section and Isampin Adjudication Section, as a whole.
 2. On this case: -
 - ii. Whether or not the appeal is merited?
 - iii. What orders ought to issue?
 - iv. Who bears the costs of the Appeal.



ANALYSIS AND DETERMINATION?

20. As observed in the forgoing paragraphs, the dispute giving rise to this appeal is a boundary dispute in a general boundary area involving parcel number Transmara/Enaenyieny/5X6 located within the Enaenyieny Group ranch Section and Transmara/Isampin/1X7, located within Isampin Adjudication Section.
21. The Appellant in his submissions cited the decision in the case of Kipaipai Ole Kantai Vs. Leonard Terere Keriako and 3 Others. I have perused the said Judgment dated 14th November 2022, as well as an Addendum to the said Judgment pronounced on 18th October 2023 by E.M. Washe J. In the said Addendum, it is clear that from paragraphs 2-6 there is an overlap between Enaenyieny Group Ranch Section and Isampin Adjudication Section, with titles in Isampin Adjudication Section overlapped onto Enaenyieny Group ranch Section.
22. What the is the import of this decision to the general area between Enaenyieny Group ranch Section and Isampin Adjudication Section.
23. The answer lies in Section 44 of the Evidence Ac which provides as follows;
 - “ 44. A final Judgment, order or decree a competent court, which confers upon or takes away from any person any legal character or which declares any person to be entitled to any such character or be entitled to any specific thing not against any specified person, but absolutely is admissible when the existence of any such legal character or title of any such person to any such thing is admissible...”
24. The Addendum to the Judgment alluded herein above settled all the issues of dispute in the Group ranch and adjudication Sections and since the disputes herein relate to the said same Sections this court is in agreement that there is an overlap between the Section and that the said Judgment applies to this appeal.
25. The impugned Judgement herein was delivered on 17.11.2023 while the addendum to the Judgment was delivered on 18.10.2023. The Addendum to the Judgment was not brought to the attention of the Hon. Chief Magistrate. Had it been brought to her attention, the outcome would have been different, noting that the Judgment settled the issues of the overlap between the two Sections and the Land Registrar’s report which the trial court based its decision on did not consider the said Judgment in so far as the boundaries by the elders were concerned which the court noted that the alterations by the elders was not gazetted and could not be enforced.
26. Whereas the Learned Magistrate was correct in adopting the Land Registrar’s report as required by law, it is the Registrar’s report that did not consider the Judgment of the court in the Kapaipai case in relation to the boundaries by the elders and the boundaries gazetted upon the declaration of the respective Group Ranch and Adjudication Section.
27. In answer to issue number 1, the court finds that the decision pronounced in the Kapaipai Ole Kantai case to be relevant to all the disputes emerging in the Enaenyieny Group ranch Section and Isampin Adjudication Section, including this appeal.
28. On issue number 2, the Appellants have demonstrated that their Appeal is merited in view of the Kipaipai Ole Kantai decision, although the court finds that the trial court did not err in adopting the Land Registrar report, but finds that the Land Registrar’s report was erroneous in view of the fact that it adjudged the boundaries based on the alteration made by the elders, which alterations were no



sanctioned by way of degazettement of the previous boundaries of the adjudication sections, which previous boundaries were adjudged in the Kaipaipai case to be valid.

29. In view of the above, the Appeal has merits.
30. On what orders ought to issue having allowed the Appeal, the suit is remitted to the trial court for the trial court to reconsider a new Registrar's report based on the gazetted boundaries between the Adjudication section and the group ranch section , and for the trial court to consider whether there is encroachment as alleged by the Appellant.
31. Costs of the Appeal to abide by the outcome of the re-trial.

DATED AT KILGORIS THIS 19TH DAY OF JUNE, 2025.

HON. M.N MWANYALE

JUDGE

In the presence of

CA – Emmanuel/Sylvia/Sandra

Mr. Ole kamwaro for the Appellant.

Mr. Tawo for the Respondent.

