



Nchebere & another v M'Ibaya & 4 others (Environment and Land Appeal E002 of 2023) [2025] KEELC 6468 (KLR) (16 September 2025) (Judgment)

Neutral citation: [2025] KEELC 6468 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND APPEAL E002 OF 2023
BM EBOSO, J
SEPTEMBER 16, 2025**

BETWEEN

**KANANGA NCHEBERE 1ST APPELLANT
PAUL KIGEA NABEA (DECEASED AND SUBSTITUTED BY KIGEA AMOS
KILEMI & PASKWALE MWITI KIGEA) 2ND APPELLANT**

AND

**FRANCIS MURUNGI M'IBAYA 1ST RESPONDENT
FRANKLINE MUGAMBI 2ND RESPONDENT
CHRISTINE MWONJARU (DECEASED AND SUBSTITUTED BY SAMUEL
MUCHENA KUBAI) 3RD RESPONDENT
GEORGE MUTUMA 4TH RESPONDENT
JOHN KARITHI M'IBAYA (LEGAL REPRESENTATIVE OF MUTHURI
KIMATHI - DECEASED) 5TH RESPONDENT**

(An Appeal from the Judgment of the Principal Magistrate Court at Tigania [Hon. P. Wechuli P M] dated 30/6/2023 rendered in Tigania E & L Court No. 55 of 2011)

JUDGMENT

Introduction

1. This judgment relates to Meru ELC Appeal No. E002 of 2023 and Meru ELC Appeal No. E004 of 2023. The two appeals were consolidated on 9/10/2023. Meru ELC Appeal No. E002 of 2023 was designated as the lead file. For ease of reference in the Judgment, the two Appeals will be referred to as "Appeal No. E002/2023" and "Appeal No. E004/2023" respectively. Secondly, parties to the two consolidated appeals will be identified by their respective first names. The properties featuring in



the two appeals will be identified by their parcel numbers without capturing their section and block numbers. Lastly, the Land Adjudication Officer will be identified simply as “the LAO”.

2. For clarity, the two appellants in Appeal No. E002/2023 are:
 - (i) Kananga Nchebere; and
 - (ii) Paul Kigea Nabea – deceased and substituted by Kigea Amos Kilemi & Paskwale Mwiti Kigea. The five respondents in Appeal No. E002/2023 are:
 - (i) Francis Murungi M’Ibaya;
 - (i) Franklin Mugambi;
 - (iii) Christina Mwonjaru – Deceased and substituted by Samuel Muchena Kubai;
 - (iv) George Mutuma; and
 - (v) John Karithi M’Ibaya – Legal representative of the late Muthuri Kimathi – Deceased.
3. The two appellants in Appeal No. E004/2023 are:
 - (i) George Mutuma; and
 - (ii) Christina Mwonjaru – Deceased and substituted by Samuel Muchena Kubai. The respondents in Appeal No. E004/2023 are
 - (i) Francis Murungi M’Ibaya
 - (ii) Paul Kigea Nabea – Deceased and substituted by Kigea Amos Kilemi and Paskwale Mwiti Kigea;
 - (iii) Franklin Mugambi
 - (iv) John Karithi M’Ibaya – Legal Representative of the late Muthuri Kimathi; and
 - (v) Kananga Nchebere. It therefore follows that there are four appellants in the two consolidated appeals, namely:
 - (i) Kananga Nchebere;
 - (ii) Paul Kigea Nabea;
 - (iii) George Mutuma; and
 - (iv) Christina Mwonjaru. Those who are respondents and are not appellants in either of the two appeals are:
 - (i) Francis Murungi M’Ibaya; and
 - (ii) John Karithi M’Ibaya [Legal representative of the late Muthuri Kimathi.
4. The two appeals challenge the Judgment of the Principal Magistrate Court at Tigania [Hon P Wachuli P.M], rendered on 30/6/2023 in Tigania PMC E & L Case No. 55 of 2011. The four issues that fell for determination in the trial court were:
 - (i) Whether Francis Murungi M’Ibaya [the 1st respondent] was entitled to the transfer of land parcel number Antuamburi/5257 into his name;



- (ii) Whether the appellants' failure to amend their defence in answer to the amended plaint rendered the 1st respondent's claim uncontested;
- (iii) What are the boundaries of land parcel number Antuamburi/5257;
- (iv) Whether parcel numbers Antuamburi/4419, 4066, 6323, 4946 and 6127 exist in the final adjudication register forwarded to the Chief Land Registrar and if so, what are their boundaries on the ground; and
- (v) Whether the respondent was entitled to the reliefs that he sought against the appellants. These are the key issues that fall for determination in this first appeal. I will outline a brief background to the appeal and summarize the parties' respective submissions before I dispose the appeal.

Background

5. Through a plaint dated 2/8/2011 and amended on 30/3/2022, Francis Murungi M'Ibaya [hereinafter referred to as "Francis"] instituted Tigania PMC E & L Case No. 55 of 2011 against: (i) Paul Kigea Nabea [now deceased and substituted by Kigea Amos Kilemi and Paskwale Mwiti Kigea] (ii) Frankline Mugambi; (iii) Christina Mwonjaru [now deceased and substituted by Samuel Muchena Kubai]; (iv) George Mutuma; (v) Kananga Nchebere ; and (vi) John Karihti M'Ibaya – Personal representative of the Late Muthuri Kimathi. Four out of the six persons who were sued as defendants in the trial court are appellants in the two consolidated appeals.
6. Francis [the 1st respondent in both appeals] sought the following reliefs in the trial court: (i) a permanent injunction restraining the defendants in the trial court against building on, cultivating, entering onto, remaining on or interfering with his peaceful possession and ownership of parcel number Antuamburi/5257; (ii) a declaration that the ground occupied by parcel number Mikinduri/4066; 6326; 4946; 6127; and part of 4419 "belongs" to the suit land, Antuamburi/5257; (iii) an order decreeing eviction of Paul, Frankline, Christina and Kananga from parcel numbers Antuamburi/5257 and cancellation of parcel numbers 4066, 6326, 4946 and 6127 and directing the OCS of Mikinduri Police Station to oversee the eviction; (iv) an order cancelling the name of Muthuri Kimathi as the registered owner of Antuamburi/5257, measuring 0.14 hectares and directing transfer of the parcel to him (Francis); and (v) an order awarding him (Francis) costs of the suit.
7. The case of Francis [the 1st respondent] was that, he was the lawful owner of parcel number Antuamburi/5257, measuring 0.14 hectares (0.36 acres) and situated within Mikinduri Township. The said land was, by mistake, registered in the name of the Late Muthuri Kimathi. He added that during land adjudication, he lodged two objections relating to the suit land. The two objections were registered as: (i) Objection No. 3895 dated 2/6/2011 against Paul Kigea Nabea; and (ii) Objection No. 3895 dated 9/6/2011 against Frankline Mugambi. Upon hearing the parties on the two objections, the Land Adjudication Officer allowed the two objections and ordered that: (i) 0.20 of an acre was to be transferred to him (to Francis) out of parcel number 4419 recorded in the name of Paul Kigea Nabea; and (ii) 0.16 of an acre was to be transferred to him (to Francis) out of parcel number 4066 recorded in the name of Frankline Mugambi. Francis contended that the acreage of the respective parcels of the duo on the ground were to be 0.23 and 0.14 acres respectively and not 0.49 and 0.30 acres respectively.
8. Francis averred that the duo had encroached on his parcel and had proceeded to erect structures on it in total disregard of the interlocutory orders issued by the trial court on 3/8/2011 and against the directive of the Ministry of Lands and Settlement. He added that the 1st to the 5th defendants in the trial court had employed fraudulent means to "engender and lay an illegal claim over parcel numbers 4419, 4066, 6323, 4946, 6127 out of the suit land". He itemized various particulars of fraud.



9. Lastly, Francis contended that he had obtained consent of the Land Adjudication Officer authorizing him to file the suit.
10. The 1st to 5th defendants in the suit filed a joint statement of defence dated 24/9/2014. They contested Francis' allegation that he was the owner of parcel number Antuamburi/5257. They further denied encroaching on the said parcel and erecting developments on it. They denied employing fraudulent means to engender and lay an illegal claim over parcel numbers 4419, 4066, 6323, 4946 and 6127 out of parcel number 5257. They also denied fraud. They averred that they were the recorded and lawful owners of land parcel numbers 4419, 4066, 6323, 4946 and 6127 respectively, adding that they had been in occupation of the said parcels and had developed their parcels extensively. They contended that Francis' suit was time-barred and that the suit had been filed in contravention of the Civil Procedure Rules.
11. The 6th defendant in the suit [John Karithi M'Ibaya – Personal Representative of the late Muthuri Kimathi] filed a statement of defence dated 31/3/2022 in which he admitted Francis' claim and averred that parcel number Antuamburi/5257, though registered in the name of the late Muthuri Kimathi, was the property of Francis and should therefore be transferred to him (to Francis).
12. Upon receiving evidence and submissions, the trial court made findings to the effect that there was common ground that the Land Adjudication Officer made binding decisions under the [Land Adjudication Act](#). The court observed that those affected by the said decisions elected not to challenge them through the redress mechanism stipulated in the [Land Adjudication Act](#). The trial court found that, in the absence of any appeal to the Minister, Francis was the rightful owner of the suit land as determined by the Adjudication Officer. On fraud, the trial court found that Francis had proved fraud. Consequently, the trial court awarded Francis the reliefs sought in the amended plaint. He also awarded him costs of the suit as against the 1st to 5th defendants in the suit.

Appeal

13. Aggrieved by the judgment and decree of the trial court, Kananga Nchebere and the estate of the late Paul Kigea Nabeba [through the Personal Representative] filed Appeal No. E002/2023 through a memorandum of appeal dated 6/6/2023. The memorandum of appeal was amended on 14/7/2023. The amended memorandum of appeal itemized 19 grounds of appeal, which I will not reproduce in this Judgment. They prayed for an order setting aside the judgment of the lower court. They also prayed for what they described as “reinstatement of the appellant's parcel no. 6123 and 4419 Antuamburi Adjudicator Section”. They prayed for costs of the appeal and costs of the suit in the lower court.
14. Similarly, aggrieved by the judgment and decree of the trial court, George Mutuma and the estate of the late Christina Mwonjaru (through her personal representative) filed Appeal No. E004/2023, advancing 13 grounds of appeal. They urged the court to set aside the judgment of the lower court and “reinstate the appellants' parcel nos 4946 and 6323 Antuamburi Adjudication Section and award them costs of the appeal and costs of the suit in the lower court.

Submissions of Appellants in Appeal NO. E002/2023

15. The two appellants in Appeal No. E002/2023 [Kananga Nchebere and the late Paul Kigea Nabeba – represented by his personal representatives] filed written submissions dated 19/12/2024 through M/s Mmboos Mutunga & Co. Advocates. Counsel submitted that in the objection proceedings relating to parcel number 4419, the Land Adjudication Officer [hereinafter referred to as “the LAO”] made a decision awarding Francis 0.20 points out of 0.43 points of the said parcel, which had been recorded in the name of Paul. Counsel added that in the objection proceedings relating to parcel number 4066,



Franklin was the respondent, adding that the LAO awarded Francis 0.16 points out of the said parcel, leaving Franklin with 0.14 points. Counsel observed that from the LAOs proceedings, Francis' land was supposed to be 0.36 points and pointed out that this is what the LAO awarded Francis in the two decisions.

16. Counsel observed that it was not disputed that Francis sought to implement the decision of the LAO which awarded him 0.20 points to be excised out of parcel number 4419 belonging to Paul and 0.16 points which was to be excised out of parcel number 4066 belonging to Franklin. Counsel added that Francis' land, parcel number 5257, currently measures 0.36 points in tandem with the two awards of the LAO, adding that Francis exhibited a title which showed his land measures 0.36 acres. Counsel emphasized that the decisions of the LAO were implemented and parties were issued with titles.
17. Counsel faulted the trial court for awarding Francis the whole of parcel number 4419 yet the LAO had awarded him only 0.20 points out of 0.43 points. Counsel submitted that Kananga's land was not a subject matter of the objection proceedings, adding that the LAO did not award Francis any portion of Kananga's land. Counsel submitted that there was no fraud committed by Kananga and the late Paul. Counsel faulted Francis for not suing the LAO, the Government Surveyor and the Land Registrar, adding that the trio were the custodians of relevant records.

Submissions of Appellants in Appeal No. E004/2023

18. The appellants in Appeal No. E004/2023 are George Mutuma and Christina Mwonjaru – now deceased and substituted by Samuel Muchena Kubai. They filed written submissions dated 26/11/2024 through M/s Maranya & Co. Advocates. Counsel identified the key issue for determination in the appeal as the question as to whether the appeal is merited and ought to be allowed.
19. Counsel submitted that the two objection proceedings in which the LAO made awards in favour of Francis did not affect parcel numbers 4946 and 6323 owned by George and the late Christina. Counsel argued that if Francis had objection in relation to the two parcels, which at all material times were recorded in the names of the two appellants, he ought to have initiated objection proceedings against them. Counsel faulted the trial court for ignoring evidence tendered by the two in form of letters from the Department of Lands confirming that their parcels existed on the ground. Counsel further faulted the trial court for awarding Francis all the parcels belonging to the two appellants yet the LAO only awarded him specific portions out of two parcels, a fact which Francis pleaded in paragraph 36 of the amended plaint.
20. Counsel added that Francis did not prove fraud to the required standard. Lastly, counsel argued that the two appellants were innocent purchasers for value who had purchased their parcels from Paul Kigea Nabea and were in occupation of their respective parcels. Counsel argued that Objection No. 3895 was filed long after they had purchased their parcels.

1st Respondent's Submissions

21. The 1st respondent in the two consolidated appeals filed written submissions dated 14/1/2025 through M/s Ndubi Ondubi & Associates. Counsel submitted that the single issue that fell for determination in the appeal was whether, in light of the evidence tendered before the trial court, the 1st respondent proved his case to the standard required against the appellants so as to justify the judgment rendered by the trial court on 30/6/2023. Counsel added that in disposing the above issue, the court was to be guided by, among other principles, the principles that parties were bound by their pleadings, and that submissions could take the place of evidence.



22. Counsel observed that the 1st appellant in Appeal No. E002 of 2023 [Kananga Nchebere] elected not to tender evidence to controvert the 1st respondent's evidence. Counsel submitted that in the absence of controverting evidence by the 1st appellant, his appeal was without merit, describing it as a fishing expedition and an afterthought. Counsel argued that the 1st appellant's submissions in the appeal could not take the place of evidence which he elected not to tender, adding that in the absence of evidence, the 1st appellant's appeal stood to fail in limine.
23. Counsel for the 1st respondent added that the two consolidated appeals stood to fail because none of the four appellants filed a defence to the amended plaint. Counsel argued that through the amended plaint, the 1st respondent sought several new reliefs, adding that only the 2nd respondent filed a defence to the amended plaint in which he admitted the 1st respondent's claim. Counsel argued that, in the absence of defences to the amended plaint, the 4 appellants had no basis for faulting the judgement of the trial court and were estopped from impugning the judgment of the trial court. Counsel argued that in the absence of an amended defence, the appellants were bound by their defence dated 19/8/2011 which did not contest prayers (i), (ii), and (iii) of the amended plaint. Counsel contended that this appeal cannot, in the absence of an amended defence, operate as the appellants' defence to the amended plaint.
24. Counsel further submitted that the estate of the late Paul Kigea Nabea, through the evidence of its administrators, admitted that the late Nabea never complied with the decisions in AR Objection No. 3895 and further confirmed that the late Nabea never bothered to lodge an appeal to the Minister. Counsel argued that, in the circumstances, the trial court could not be faulted for finding that, based on the evidence on record, the 2nd appellant failed/refused to obey the decision in AR Objection No. 3895, thereby giving rise to the 1st respondent's claim for enforcement of the AR decision before the trial court.
25. On the submissions by the appellants in Appeal No. E004 of 2023, that they were not parties to AR Objection No. 3895, counsel reiterated that the 1st appellant elected not to lead evidence. Counsel added that in their testimonies, the two appellants admitted to have bought their respective portions measuring 0.05 acres and 0.13 acres respectively from the late Paul Kigea who gave them what he had been ordered to surrender to the 1st respondent. Counsel added that the only evidence which George Mutuma tendered to support his claim of purchase was an undated letter of transfer. Counsel added that Samuel Muchena Kubai relied on a letter that bore unexplained alterations in terms of acreage. Counsel observed that it was not a coincidence that the three letters bore dates of 22/6/2011, 4/8/2022 and 26/8/2022, which were around the same time that the 1st respondent instituted the suit in the trial court. Counsel contended that the letters were manufactured to counter the 1st respondent's case.
26. Counsel argued that the 1st respondent proved fraud, pointing out, inter alia, that the confirmation letter dated 25/11/2022 was conclusive evidence that instead of the 2nd appellant complying with the decision in AR Objection No. 3895, he purported to transfer to one of the appellants the 0.2 acres that he was ordered to transfer to the 1st respondent.
27. On the appellants' argument that they were in occupation and had developed the suit land, counsel made reference to two letters from the Land Adjudication and Settlement Officer, Ministry of Lands and Settlement, dated 25/7/2011 and 15/4/2025, addressed to the appellants, restraining the appellants against undertaking any development on the land pending implementation of the decision in A/R Objection No. 3895. Counsel added that on 30/8/2011, the trial court similarly restrained the respondents against carrying on any development on the suit land. Counsel argued that by urging this court to consider the alleged developments as a basis for allowing the appeal, the appellants were



inviting the court to append a stamp of approval to their acts of disobedience of the A/R Objection decision and the interlocutory order of the trial court.

28. On some of the appellants' submissions that they were innocent purchasers for value, counsel submitted that the appellants failed to tender any evidence in form of sale agreements, adding that the 1st appellant in Appeal No. E002/2023 elected not to tender evidence. Counsel argued that the purported confirmation letters bore dates post the AR Objection decision.
29. Counsel added that the appellants had a chance to raise counterclaims but elected not to do so. Counsel added that the two consolidated appeals were inherently defective and contradictory. Counsel urged the court to reject the appeal.

Analysis and Determination

30. I have read and considered the original record of the trial court; the records filed in the two consolidated appeals; the two sets of grounds of appeal; and the parties' respective submissions in the two consolidated appeals. As pointed out in the introductory party of this judgment, the key issues which fall for termination in the two appeals are: (i) Whether Francis Murungi M'Ibaya [the 1st respondent] was entitled to the transfer of land parcel number Antuamburi/5257 into his name; (ii) Whether the appellants' failure to amend their defence in answer to the amended plaint rendered the 1st respondent's claim uncontested; (iii) What are the boundaries of land parcel number Antuamburi/5257; (iv) Whether parcel numbers Antuamburi/4419, 4066, 6323, 4946 and 6127 exist in the final adjudication register forwarded to the Chief Land Registrar and if so, what are their boundaries on the ground; and (v) Whether the respondent was entitled to the reliefs that he sought against the appellants. Before I dispose the issues, I will briefly outline the principle which guides this court when exercising jurisdiction as a first appellate court.
31. The principle was summarized by the Court of Appeal in the case of Susan Munyi v Keshar Shiani [2013] eKLR as follows:

“As a first appellate court our duty of course is to approach the whole of the evidence on record from a fresh perspective and with an open mind. We are to analyze, evaluate, assess, weigh, interrogate and scrutinize all the evidence and arrive at our own independent conclusions.”
32. The principle was similarly outlined in Abok James Odera t/a A.J Odera & Associates v John Patrick Machira t/a Machira & Co. Advocates [2013] eKLR as follows:

“This being a first appeal, we are reminded of our primary role as a first appellate court, namely, to re-evaluate, re-assess and re-analyse the extracts on the record and then determine whether the conclusions reached by the learned trial judge are to stand or not and give reasons either way.”
33. Is Francis Murungi M'Ibaya entitled to a transfer of parcel number Antuamburi/5257 from the late Muthuri Kimathi to himself? The trial court made a finding in the affirmative on this issue because the estate of the late Muthuri Kimathi filed a defence dated 31/3/2022 in which they admitted Francis' claim and averred that, although the land was registered in the name of Muthuri Kimathi, it belonged to Francis. The estate tendered evidence affirming their pleadings and urged the court to decree a transfer of the land as sought by Francis. The trial court granted the relief.



34. The appellants have not demonstrated any valid reason why this court should interfere with the finding and award of the trial court in relation to that particular relief. Consequently, the finding of this court on the first issue is in the affirmative.
35. Did the appellants' failure to amend their defence in response to the amended plaintiff render the 1st respondent's claim uncontested? The 1st respondent is of the view that his claim in relation to the new prayers was uncontested on the above account. I have looked at the original plaintiff dated 2/8/2011; the defence by Franklin Mugambi dated 19/8/2011; and the joint defence dated 24/9/2014 by Paul, Franklin, Christina, George and Kananga. It is clear from the above pleadings that the amended plaintiff did not introduce any new cause of action against the four appellants in the two consolidated appeals. It introduced Muthuri Kimathi as a 6th defendant. It also substituted two deceased defendants – Paul Kigea Nabea and Christina Mwonjaru, with their personal representatives. It further introduced a new relief against the 6th defendant – the plea for transfer of parcel number 5257 to Francis. Although it introduced two new reliefs against the appellants, no new cause of action was introduced against them. The cause of action against them remained the same.
36. The legal position of a defendant who elects not to amend his defence upon being served with an amended plaintiff is spelt out in Order 8 rule 1 (6) of the Civil Procedure Rules which provides as follows:
- “Where a party has pleaded to a pleading which is subsequently amended and served on him under subrule (1), then, if that party does not amend his pleading under the foregoing provisions of this rule, he shall be taken to rely on it in answer to the amended pleading, and Order 2 rule 12(2) shall have effect at the expiry of the period within which the pleading could have been amended.”
37. It follows from the above legal framework that, in default of an amended defence, the appellants were to be deemed to rely on their defence(s) which they had filed earlier, as their defence to the amended plaintiff. Secondly, given that the amended plaintiff did not introduce any new cause of action against the four appellants, there was no need for them to amend their defence(s). Their existing defence(s) sufficiently answered all the amended plaintiff, including the newly introduced prayers. Consequently, the finding of the court on the second issue is that the appellants' failure to amend their defence in response to the amended plaintiff did not render the 1st respondent's claim uncontested.
38. The third, fourth and fifth issues revolve around the question of boundaries of parcel numbers 5257 owned by the 1st respondent and the parcels owned by the appellants. Jurisdiction of courts in disputes relating to boundaries is governed by the statutory framework in Sections 18 and 19 of the [Land Registration Act](#). The two sections provide as follows:
- “18. Boundaries
- (1) Except where, in accordance with section 20, it is noted in the register that the boundaries of a parcel have been fixed, the cadastral map and any filed plan shall be deemed to indicate the approximate boundaries and the approximate situation only of the parcel.
- (2) The court shall not entertain any action or other proceedings relating to a dispute as to the boundaries of registered land unless the boundaries have been determined in accordance with this section.



- (3) Except where, it is noted in the register that the boundaries of a parcel have been fixed, the Registrar may, in any proceedings concerning the parcel, receive such evidence as to its boundaries and situation as may be necessary: Provided that where all the boundaries are defined under section 19 (3), the determination of the position of any uncertain boundary shall be done as stipulated in the [Survey Act](#) (Cap. 299).

19. Fixed boundaries

- (1) If the Registrar considers it desirable to indicate on a filed plan approved by the office or authority responsible for the survey of land, or otherwise to define in the register, the precise position of the boundaries of a parcel or any parts thereof, or if an interested person has made an application to the Registrar, the Registrar shall give notice to the owners and occupiers of the land adjoining the boundaries in question of the intention to ascertain and fix the boundaries.
- (2) The Registrar shall, after giving all persons appearing in the register an opportunity of being heard, cause to be defined by survey, the precise position of the boundaries in question, file a plan containing the necessary particulars and make a note in the register that the boundaries have been fixed, and the plan shall be deemed to accurately define the boundaries of the parcel.
- (3) Where the dimensions and boundaries of a parcel are defined by reference to a plan verified by the office or authority responsible for the survey of land, a note shall be made in the register, and the parcel shall be deemed to have had its boundaries fixed under this section.”

39. A reading of the pleadings presented by the 1st respondent reveals two causes of action: (i) an allegation that parcel number 5257 was erroneously registered in the name of the late Muthuri Kimathi instead of Francis M’Ibara; and an allegation that the parcels which the appellants allege to own do not exist on the ground. The trial court was properly seized of jurisdiction to hear and dispose the dispute relating to the first cause of action. It did so.
40. With regard to the second cause of action, this was in all aspects a boundary dispute calling for determination and fixing of the boundary or boundaries by the Land Registrar after hearing the affected parties, the Land Adjudication Officer, the Land Demarcation Officer and the relevant Government Surveyor involved. It is only after the Land Registrar has made a boundary determination and fixed the boundary/boundaries in tandem with the requirements of Sections 18 and 19 of the [Land Registration Act](#) that the courts would have jurisdiction to entertain the boundary claim/dispute.
41. This court recognizes that in 2011 when the case was filed, the above framework did not exist. The [Land Registration Act](#) was subsequently enacted and operationalized. The Act vested in the Land Registrar primary jurisdiction to determine and fix boundaries. The Act expressly barred courts against entertaining boundary disputes relating to boundaries that have not been fixed.



42. In this appeal, it has not been demonstrated by any of the parties to the appeal that the boundaries of the affected parcels had been determined and fixed by the Land Registrar. Clearly, the trial court failed to identify the question of boundary determination as one of the two dominant issues and proceeded to exercise jurisdiction in a dispute that fell within the exclusive mandate of the Land Registrar. To date, there is no evidence that the boundaries have been fixed.
43. For the above reasons, these appeals partially succeed to the extent that the claim relating to boundaries is struck out. The effect of this is that relief numbers (a), (ai), and (aii), are set aside. Relief numbers (aiii) which relates to cancellation of the name of Muthuri Kimathi and registration of Francis Murungi M'Ibaya as proprietor of parcel number Antuamburi/5257 is upheld.
44. What order should be made with regard to costs? At the time the case was filed in the trial court, the Land Registration Act had not been enacted. Secondly, on enactment of the statute, none of the parties pointed out to the trial court the divesture of jurisdiction. Thirdly, the omission/error relating to jurisdiction was committed by the trial court. Fourthly, it has not been demonstrated that any of the parties to the suit in the lower court was responsible for the impugned registration of the late Muthuri Kimathi as proprietor of parcel number Antuamburi/5257. Given the above circumstances, parties will bear their respective costs of this appeal and costs of the suit in the lower court.

Disposal Orders

45. In the end, the two consolidated appeals, Meru ELC Appeal No. E002 of 2023 and Meru ELC Appeal No. E004 of 2023 partially succeed and the two appeals are disposed in the following terms:
- a. Relief/Prayer number (a), (ai) and (aii) which the trial court granted in the Judgment dated 30/6/2023 in Tigania PMC E & L Case No. 55 of 2011 are set aside and are replaced with an order striking out the claim relating to the boundary or the boundaries of the parcel(s) involved in the suit.
 - b. Parties will be at liberty to approach the court in a fresh cause once there is compliance with the provisions of Sections 18 and 19 of the Land Registration Act.
 - c. Relief/Prayer (aiii) of the judgement of the trial court is upheld.
 - d. Parties to this appeal and to the suit in the lower court shall bear their respective costs of the appeal and the suit respectively.

DATED, SIGNED AND DELIVERED AT MERU THIS 16TH DAY OF SEPTEMBER, 2025

B M EBOSO [MR]

ELC JUDGE

In the presence of

Mr. Mutunga for the appellants in Appeal No. E002/2023

Mr. Kabaa for the Appellants in Appeal No. E004/2023

Respondents - Absent

Court Assistant - Tupet

