



REPUBLIC OF KENYA



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**Kiok v Ogola & 2 others (Environment and Land Appeal E031 of 2022)
[2025] KEELC 6724 (KLR) (2 October 2025) (Judgment)**

Neutral citation: [2025] KEELC 6724 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND APPEAL E031 OF 2022
LC KOMINGOI, J
OCTOBER 2, 2025**

BETWEEN

TIMOTHY KIOK APPELLANT

AND

MICHAEL OGOLA 1ST RESPONDENT

ROSEMARY OMWAMO 2ND RESPONDENT

COUNTY GOVERNMENT OF KAJIADO 3RD RESPONDENT

*(Being an Appeal from the Judgement of Hon. Kahuya I.M
delivered on 29th June 2022 in CMCC Case No. 168B of 2006)*

JUDGMENT

1. In her Judgement dated 29th June 2022, Hon. Kahuya found and held that:

“... it is apparent that plot No. A239 is bigger in size than plot No. A238 with the extension eating into plot No. A235 ... this was a clear case as shown on the surveyor’s sketch that the 1st Plaintiff being the owner of plot No. A239 had encroached into plot A235...

Thereby the Plaintiff’s case fail and the same is dismissed with no orders to costs ...”
2. Aggrieved by the said decision, the Appellant in the Memorandum of Appeal dated 21st July 2022 on the grounds that:
 1. The learned Principal Magistrate erred both in law and in facts in arriving at a determination that the Plaintiff had failed to discharge the burden of proof on balance of probabilities and proceeding to dismiss the case.



2. The learned Principal Magistrate erred both in law and fact in holding a finding that formerly Plot No 430 Bulbul Trading Centre which is now Plot A 238 merged with Plot A 239 formerly (-)(sic) was sub-divided into two (2) Plots, whereas formerly Plot No 430 Bulbul Trading Centre now Plot A 238 was merged with Plot A239 formerly (-) (sic).
 3. The learned Principal Magistrate erred in law and fact in holding that Plot A239 formerly (-) is with extension eating into Plot A235 thereby arriving at a conclusion that the Appellant being the owner of Plot A239 had encroached into the 1st Respondent's Plot No A235
 4. The learned Principal Magistrate erred both in law and fact in holding that the main issue at hand has to do with the boundary dispute whereas clearly from the pleadings the issue in dispute has to do with the ownership, boundary and trespass on formerly Plot No. 430 Bulbul Trading Centre which is now Plot A 238 merged with Plot A 239 formerly (-).
 5. The learned Principal Magistrate erred both in law and fact by failing to deduce that the disputed area on the surveyors sketch map is part of Plot No A239 formerly (-) which is part of the Appellant's Plot as all evidence presented shows that Plot A238 formerly Plot No 430 and A 239 formerly (-) were merged.
 6. The learned Principal Magistrate erred both in law and fact by failing to note that the 1st and 2nd Respondents are trespassing and essentially trying to illegally and wrongfully shift boundaries of the Plots therein from the actual Embulbul Town Physical & Land use Development Plan.
3. The Appellant urged the court to allow the Appeal with costs and the judgement be set aside and be substituted with a judgement in favour of the Appellant as per the Amended Plaint dated 26th February 2019.
 4. This Appeal was canvassed by way of written submissions.

Submissions of the Appellant

5. Counsel submitted that the Appellant is the registered owner of Plot No. 430 while the 1st and 2nd Respondents are the owners of Plot No. 425. That in 2017 a validation exercise of the Plots within Embulbul Trading Centre was carried out, the Appellant was issued with new Letters of Allotment which read Plot No. A238 and A239 while the 1st and 2nd Respondents were issued with one that read Plot No. A 235. The Appellant filed the suit in 2005, Amended on 26th February 2019, seeking that he be declared the rightful owner of Plot No. A238 & A239, the Defendants be restrained from trespassing, encroaching and evicting him from the Plots and an order of eviction against the 1st and 2nd Defendants from his plot among other reliefs.
6. Counsel submitted that the Surveyor's Report and sketch, showed that the disputed area was at the rear and/or back of the plots which is the common boundary between Plot No. A235 and Plot A239. Each of the Parties claims that the other has encroached on their Plot by some meters. Counsel further submitted that the finding that Plot No. A 239 had eaten into Plot No. A235 and that A239 appeared to be bigger than plot No. A238 was erroneous because: the 1st and 2nd Respondents did not produce a Letter of Allotment that confirmed the size of their plot; the Surveyor's Report did not indicate the actual size of each plot and neither were the measurements put on the Local Physical and Land Use Development Plan; and that the Physical Plan for Embulbul Trading Centre showed that Plot No. A 235 and A 239 were not equal in size and that plot A235 appears smaller in size. It was therefore an assumption by the Learned Trial Magistrate to conclude that since plot No. A 239 appears bigger than A 235 and there it has eaten into plot No. A235.



7. Counsel further submitted that the Surveyor's conclusion that one of the Parties has had his construction with an entrance of the building on the side which was supposed to be the back and therefore claiming the Plot which belongs to his neighbour to enable him use as the entrance was not clear as to whose construction the Surveyor was referring to. However, counsel submitted that the same could be deduced from the evidence and pleadings filed by the parties. It was the evidence of the Appellant and his witnesses that the 1st and 2nd Respondents have constructed a permanent building on part of his Plot and from the Respondents' pleadings, their construction is the one facing the back of the Appellant's plot instead of the road as it should be. Therefore respectively submit that the learned trial magistrate erred in failing to find that the 1st and 2nd Respondents' had encroached into the Appellant's Plot No. A239. It was further submitted that had the Respondents constructed their building facing the road frontage as per the Surveyor's report there would be no issues of encroachment and trespass.
8. On whether the Appellant discharged the burden of proof on a balance probabilities, counsel submitted that the Appellant had complained that the 1st and 2nd Respondents had encroached on his plot and that from the letter dated 20th September 2005 the Clerk to Council had made a decision that the Appellant be shown an alternative site next to the primary school yet as at 2001 the Appellant had already been issued with an Letter of Allotment for the plot he occupied. During the Validation exercise by the 3rd Respondent in the year 2016, the Appellant's plot was validated and Letters of Allotment were issued to him and the said plots are reflected in the Physical and Land Use Plan for Embulbul Trading Centre. Therefore, the decision in the letter dated 20th September 2005 that the Appellant be shown another alternative site was erroneous and ill-advised because the same location that the Appellant held onto is the same site that was validated and new Letters of Allotment issued eleven years later.
9. It was further submitted that, the Embulbul Town Local Physical and Land Use Development Plan showed that both plots A235 and A239 are back to back and each of them has a frontage to the road. As such, each building should face the road or exit through the road and not the back as one would be encroaching on the other plot. The Appellant had therefore discharged the burden of proof that the 1st and 2nd Respondents had encroached on his plot and the Court should set aside the decision by the Trial Magistrate and find in favour of the Appellant.

Submissions of the 1st and 2nd Respondents

10. Counsel for the Respondents submitted that the 1st and 2nd Respondents were the registered owners of property known as Plot No. 425 Bulbul Trading Centre, Kajiado County. And the Appellant was the owner of Plot No. 430, Bulbul Trading Centre, Kajiado County. However, in a letter dated 20th September 2005, the 3rd Respondent found that: the Appellant was never shown Plot No. 430 was never official shown the site claimed; Plot No. 430 never reflected in the official plan; The resultant plots were inadequate for any development as they were 6m wide; The 1st Respondent's Plot. No. 425 reflected on the official plan; and the owner of Plot 428 had encroached onto a road reserve and was required to revert to original beacons. It was decided that the Appellant be shown an alternative site next to the primary school and it is recorded that the same was shown to the parties during the site visit. Aggrieved and dissatisfied, the Appellant preferred an appeal of the said decision before the National Land Commission (NLC) as per his letter dated 1st November 2005. There was no outcome of the said Appeal before the NLC. The Appellant was indeed shown and allocated another portion in place of the alleged Plot No. 430, which portion is the subject of the proceedings herein.



11. Counsel went on to submit that in 2016, the 3rd Respondent through Notice dated 27th August 2016 notified all land owners of a validation process and warned that the said process was not open to properties that had pending land disputes and the respective land owners must be physically present during the said process. The Appellant despite having a pending Court case, fraudulently obtained the validation of the said property known as Plot No. 430 into Plot No. A238 and A239 Bulbul Trading Centre. Counsel also argued that it was unclear how one plot which in 2005 the 3rd Respondent found the plot to be too small for development was validated into two plots. It was also pointed out that Plot number A239 purportedly validated into the Appellant's name did not make reference to as formerly Plot No. 430. The alleged validation was therefore fraudulent and invalid.
12. From the foregoing, counsel submitted that the Appellant did not follow due procedure in obtaining allotment of plot No. 430 Bulbul Trading Centre and the decision dated 20th September 2005 was still valid since it had neither been appealed against or set aside.
13. On whether the 1st and 2nd Respondent trespassed onto the Appellant's Property known Plot No. 430 Bulbul Trading Centre (now Plot No. 239 and A238), it was submitted that having established that the Appellant did not have a valid title for the plot claimed, meant that the allegation of trespass could not stand.
14. On whether the Appeal was abuse of the Court process, it was submitted that once the 3rd Respondent made a determination in regard to plot No. 430 Bulbul Trading Centre, the Appellant filed an appeal before the National Land Commission (NLC). The suit herein was therefore forum shopping and was barred by the doctrine of sub judice, since the suit at the NLC was still pending.
15. As such, this appeal should be dismissed with costs to the 1st and 2nd Respondents.

Analysis and Determination

16. I have considered the grounds of Appeal, the Record of Appeal the written submissions and the authorities cited. I find that the issues for determination are:
 - i. Whether this Appeal is merited;
 - ii. Whether the Appellant is entitled to the reliefs sought;
 - iii. Who should bear costs of the Appeal.
17. This being a first Appeal, this Court sitting as an appellate court is tasked with the mandate or reviewing, reanalysing and reconsidering evidence produced at the trial court and come up with its own findings and determination. See *Musa v Musa & 6 others* [2025] KECA 1283 (KLR) which held:

“This being a first appeal, the Court’s duty is to reconsider the evidence, re-evaluate it, and draw its own conclusions in deciding whether the ruling of the trial court should be upheld or not - see *Selle vs. Associated Motor Boat Co.* [1968] EA:

But at the same time, the Court needs to exercise caution and respect the trial court’s findings on the demeanor of witnesses, especially since it had the advantage of seeing and hearing the witnesses.”
18. In the Complaint dated 7th July 2006 and Amended on 26th February 2019, the Appellant claims that he was the lawful owner of plot No. 430 which the 1st and 2nd Respondents as owners of plot No. 425 had trespassed and encroached on. The Appellant contested the 3rd Respondent’s letters dated



- 20th September 2005 and 19th October 2005 on grounds that the 3rd Respondent was illegally and unlawfully attempting to evict him from his plot which he had resided on since time immemorial.
19. In the Amended Complaint he further claimed that on 29th August 2016, the 3rd Respondent issued a validation notice for plots and between 19th September 2017 and 23rd September 2017 and a validation exercise was carried out. Upon validation, plot No. 430 was given new numbers (A238 and A239) which were merged and allotted to the Appellant. He therefore sought a declaration that he was the rightful owner of Plot No. 430 (now plot Nos. A238 and A239 Bulbul Trading centre). He sought that the Respondents be restrained from interfering with it. He also sought orders of eviction, general damages and costs of the suit.
 20. The 1st and 2nd Respondents in their statement of defence dated 27th July 2006 confirmed that they jointly owned plot No. 425 and denied encroaching on the Appellant's plot No. 430 claiming that it was non-existent and that the suit ought to be dismissed. The Respondents claimed that they purchased plot No. 425 from Deliverance Church Bulbul and the same was transferred to their names and a Letter of Allotment dated 5th August 2003 issued. He pointed out that the Letters of Allotment to the church was issued on 19th November 2000 and the one issued to the Appellant was issued in March 2001.
 21. In support of his case the Appellant produced a letter dated 11th May 2000, in which he together with four others wrote to the 3rd Respondent complaining of illegal allotment of their plots to other people. They noted that they have been residing on their plots for many years, and the allocation to other people meant the original owners would lose their plots.
 22. On 12th May 2000, the 3rd Respondent in a letter addressed to the District Officer Ngong' acknowledged the complaint made by the Kiok's family and recommended that the matter be reviewed by the committee. The 3rd respondent also pointed out that the plots were fixed and there was no room for more allocation.
 23. There is a Letter of allotment dated 1st March 2001 for plot No. 430/Residential/ Bulbul Trading Centre in the name of the Appellant.
 24. On 2nd October 2004, the Appellant wrote a letter to the 3rd Respondent re-visiting the issue raised in 2002 where people who were not initially on the ground were being allocated plots and this had pushed the Kiok family out of their plots to the road reserve.
 25. In a letter dated 30th November 2004, the 3rd Respondent asked the Appellant and the 1st Respondent to halt any construction work due to the dispute between plots Nos. 430 and 425. On 31st March 2005, the County Surveyor invited the parties in this suit as well as owners of plots No. 428 and 429 for a meeting to due to the longstanding dispute.
 26. On 4th May 2005 the 3rd Respondent, in a letter addressed to the Appellant and one James Okwara (the 2nd Plaintiff at the lower court) accusing them of not attending the site visit meetings and that it was only the 1st Respondent who had been attending all meetings. They were given a last chance to attend the final meeting set for 10th May 2005.
 27. In the letter dated 12th July 2005, addressed to the 3rd Respondent, the Acting Chief Oloolua indicated that, the Letter of Allotment dated 9th November 2000 in favour of Deliverance Church was duly allotted and signed, but the Letter of Allotment dated March 2001 by the Appellant for plot No. 430 was not signed. It also confirmed that plot 425 belonged to the 1st Respondent. He proposed that a surveyor do visit the site to identify the Appellant's plot to avoid the dispute between the Appellant and the 1st Respondent.



28. A letter dated 20th September 2005 from the 3rd Respondent to the Appellant together with the 1st and 2nd Respondents reads;

“Further to our meeting on 8th September 2005 and subsequent site visit on 9th September 2005, I established that:

- i. Mr Kiok plot No. 430 was never officially shown the site claimed.
- ii. The plot number was never reflected in the official plan.
- iii. The resultant plots was inadequate for any development as they were 6m wide.
- iv. Mr. Ogolla plot No. 425 reflected on the official plan.
- v. ...
- vi. The owner of plot No. 428 encroached onto a road reserve and was required to revert to the original beacons.

After careful consideration it has now been decided that Mr. Kiok be shown alternative site next to the primary school and plot No. 430 reflected on the official plan. It is further confirmed that the site was actually shown to the parties during the site meeting.”

29. A letter dated 19th October 2005 from the 3rd Respondent to the Appellant reads:

“Refer to my letter dated ... 20th September 2005. Please note that the decision reached is final on account that the plot was neither showed to you nor the number reflected on the site plan. You are hereby required to stop any development thereon and move to the alternative site shown... Mr Ogolla may proceed with his construction.”

30. By letters dated 21st October 2005 and 1st November 2005, the Appellant appealed to the 3rd Respondent against this decision on grounds that plot 425 was illegally positioned as it fell between plots 428 and 430 and only two plots were genuinely on the ground as per the Part Development Plan and the original plan. He also pointed out that he had been in occupation of the said plot for over sixteen (16) years and had fully developed it.

31. On the 20th May 2017, letter of allotment of plot No. A238 (formerly 430) to the Appellant as well as plot No. A239 (formerly (-)) was issued to the Appellant.

32. On the 26th September 2017, the Appellant filed a complaint to the National Land Commission complaining of the encroachment and destruction of his fence by his immediate neighbour.

33. The claim by the Respondents that at the time of the validation process, the appeal at the National Land Commission had been filed and that the claim that the validation exercise did not involve the plots in disputes is false. The Court notes that what was filed at the National Land Commission was an encroachment complaint in 2017. That the Gazette notice dated 29th August 2016 notifies plot owners of the scheduled validation exercise and asked that they carry their identification documents, previous allotment letters/certificates of lease, approved building plans as well as evidence of rent/rates payments. It also indicated that the verification exercise would not involve plot identification or plots dispute resolution. It also stated that plot owners must be present on their respective plots.

34. A report dated 17th May 2022, filed by the 3rd Respondent’s surveyor indicated that: “the owner of the plot has done his construction with an entrance of the building on the side which is supposed to be back to back and therefore claiming the plot which belongs to his neighbour’s to enable him use the



entrance... The two parties have their individual plots therefore reconstruct his construction and put their doors facing the required side...

35. It is not in contention that this dispute has been protracted spanning for over two decades. It is not in dispute that the Appellant, has plots at Bulbul trading centre as per the validation exercise carried out in 2016 and new allotment letters issued in 2017. The 1st and 2nd Respondents however did not produce their allotment letters for plot A235. That notwithstanding, this Court finds that documents produced by the Appellant were not sufficient to come with a determination on the question of encroachment and trespass.
36. This Court has perused the record of Appeal as already summarised here above. The sketch map on page 85 shows that plots A238 and A239 are on a straight line. The allotment letters dated 20th May 2017 for plots A238 and A239 also show that the two plots are equal in size, measuring 0.044478. Since they are the same size, it means that they should be same on the ground which mirrors the map on page 85. The surveyor's report and sketch dated 17th May 2022, shows that plot A239 is not on a straight line with plot A238. The sketch shows that the boundary for parcel A239 has extended into plot A235.
37. The Learned Trial Magistrate in her judgement found that the issue for determination was whether the Appellant had proved his case against the Respondents on the required threshold of balance of probabilities. She held:

“... Plot A238 borders plot A234 and there is no dispute between them. However, the present dispute is between owners of plot A239 and A235...

The 1st Plaintiff's letters of allotment indicate that the two new plots were equal in size this being 0.44478. Hence my belief that the actual plan on the ground as per the surveyor's sketch should indicate two equal plots... Going back to the subject sketch, it is apparent that plot No. A239 is bigger in size than plot No. A238 with the extension eating into plot No. A235... As it is ... this was a clear case as shown on the surveyor's sketch that the 1st Plaintiff being the owner of plot No. A239 had encroached into plot A235... Thereby the Plaintiff's case fail and the same is dismissed with no orders to costs due to the defendants' inaction that derailed the suit...

38. In conclusion, I am satisfied that the Learned Trial Magistrate considered all the evidence and applied the relevant law properly before reaching her conclusion.
39. I find no basis to interfere with the determination of the Learned Trial Magistrate.
40. Accordingly the Appeal is found to be without merit and the same is dismissed with no orders as to costs.
41. In essence the Judgement delivered on 29/6/2022 by Honourable IM. Kahuya is upheld.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 2ND DAY OF OCTOBER 2025.

L. KOMINGOI

JUDGE.

In The Presence Of:

Ms. Kirisiet for the Appellant.

Mr. Otieno for Mr. Osanjo for the Respondents.



Court Assistant – Peter.

