



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Toimasi (Deceased) v Nchiroine & 3 others (Miscellaneous Application E024 of 2025) [2025] KEELC 6932 (KLR) (9 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 6932 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KAJIADO**  
**MISCELLANEOUS APPLICATION E024 OF 2025**  
**MD MWANGI, J**  
**OCTOBER 9, 2025**

**BETWEEN**

**PAUL TINTEYO OLE TOIMASI (DECEASED) ..... APPLICANT**

**AND**

**KATEPE ENE NCHIROINE ..... 1<sup>ST</sup> RESPONDENT**

**THE DISTRICT LAND REGISTRAR, KAJIADO ..... 2<sup>ND</sup> RESPONDENT**

**THE DISTRICT SURVEYOR, KAJIADO ..... 3<sup>RD</sup> RESPONDENT**

**KAJIADO COUNTY GOVERNMENT SURVEYOR ..... 4<sup>TH</sup> RESPONDENT**

*(In respect of the Notice of Motion application dated 26th March 2025 seeking the adoption of the findings of the 2nd and 3rd Respondents)*

**RULING**

**Background**

1. This ruling is in respect of the Notice of Motion application dated 26th March 2025 brought under Articles 40, 47 and 50 of *the Constitution* of Kenya, 2010, and all enabling provisions of the law in which the Applicant seeks the following orders: -
  - a. Spent
  - b. That this Court adopts the findings of the 2nd and 3rd Respondents dated 3rd March 2025 as directed vide the Court Decree issued on 26th August 2021;
  - c. That this Court allows the 2nd, 3rd and 4th Respondents to demarcate the properties as per the District Land Surveyor's Report dated 3rd March 2025;



- d. That this Honourable Court be pleased to issue such further orders as it may deem just and expedient in the circumstances.
2. The application is supported by the affidavit of Toimasi Lepapa Adrian, a beneficiary of the estate of the late Paul Tinteyo Ole Toimasi, the Applicant herein. He avers that on 22nd June 2021, he was granted letters of administration ad litem for purposes of instituting a civil suit on behalf of the Applicant against the 1st Respondent. A copy of the said grant was annexed to his affidavit.
3. It is deposed that the dispute between the parties relates to a boundary dispute involving Land Reference Number Kajiado/Dalalekutuk/3395 and Land Reference Number Kajiado/Dalalekutuk/23, registered in the names of the Applicant and the 1st Respondent respectively. Following the institution of the suit, this Court issued a decree on 26th August 2021 restraining the 2nd and 3rd Respondents from demarcating the access road between the two parcels of land pending further directions. The decree further directed the said Respondents to ascertain the extent of the boundaries and to take measurements of the suit properties. A copy of the decree was annexed to the affidavit.
4. The deponent states that pursuant to the said decree, the District Land Surveyor and the District Land Registrar visited the site and duly carried out the exercise as directed by the court. A site visit report dated 16th March 2022 was subsequently prepared by the District Surveyor, while the District Land Registrar issued a report dated 3rd March 2025. According to the deponent, the reports comprehensively demarcated the boundaries and ascertained the extent of each parcel as ordered by the Court.
5. It is his deposition that the said reports ought to be formally adopted by this Court so as to facilitate the demarcation of the properties and the resolution of the dispute. He urges the Court to allow the reports for purposes of implementation and to grant the orders sought in the Notice of Motion, contending that it will be in the interests of justice to do so.
6. In response to the application, the 1st Respondent, Katepe Ene Nchiroine, swore a Replying Affidavit dated 26th March 2026. She avers that the application is misconceived, devoid of merit, and filed in bad faith. It is her position that the orders sought are incapable of being granted in the circumstances, and that the supporting affidavit filed by the Applicant does not contain proper annexures upon which the Court can rely on. She asserts that the documents placed before this Court are of no legal consequence, having failed to comply with the requirements of the *Oaths and Statutory Declarations Act*, Cap 15 Laws of Kenya regarding the marking and commissioning of exhibits.
7. The 1st Respondent further contends that the reports sought to be adopted by the Applicant are suspicious and misleading. She points out that during the alleged site visit, one of the persons said to have participated was Paul Tinteyo Ole Toimasi, who had passed away on 9th August 2020, long before the purported visit of 9th March 2021 and before the subsequent reports of 2022 and 2025 were prepared. According to her, this anomaly renders the documents unreliable and calls into question their authenticity.
8. It is her deposition that the District Land Registrar and the District Surveyor have never served her with any report regarding the disputed parcels and that she only became aware of the impugned report in the course of these proceedings. She maintains that the said report is a replica of an earlier report dated 16th August 2019, which had already been quashed by the decree of this Court issued on 26th August 2021 in Kajiado Miscellaneous Application No. 7 of 2020. She annexed the said 2019 report and the decree as exhibits in support of her position.



9. The 1st Respondent deposes that the decree of 26th August 2021 had expressly directed the 2nd and 3rd Respondents to conduct thorough investigations into the discrepancies in the maps relating to the parcels of land and to ascertain the true extent of their boundaries before making corrections on the registry map. She contends that the 2nd and 3rd Respondents have not complied with that directive and that the issue remains pending in Miscellaneous Application No. 7 of 2020. She states that she even filed an application on 14th June 2023 in the said proceedings to compel compliance, which application is still pending before Hon. Lady Justice L. Komingoi.
10. It is her case that the purported report of 3rd March 2025 is nothing more than a reproduction of the quashed 2019 report, and therefore incapable of adoption by this Court. She argues that entertaining the present application risks producing conflicting outcomes with the still pending proceedings in Miscellaneous Application No. 7 of 2020. She stresses that the 2nd and 3rd Respondents are yet to file a report in compliance with the decree of 26th August 2021, and that the Applicant has no legal basis or standing to seek the orders prayed for in the Motion.
11. The 1st Respondent thus prays that the application be dismissed with costs, terming it vexatious and an abuse of the process of the Court.
12. The Applicant, Toimasi Lepapa Adrian, subsequently filed a Further Affidavit sworn on 25th June 2025, in response to the 1st Respondent's Replying Affidavit. He reiterated the averments in his Supporting Affidavit but sought to clarify specific matters raised by the 1st Respondent. He deposes that the application and annexures filed are properly before this Court, compliant with the rules, and capable of dispensation on their merits.
13. The Applicant asserts that the boundary dispute originated from the 1st Respondent's claim in 2017 that the access road leading to the community waterpoint formed part of her property, Title No. Kajiado/Dalalekutuk/3395, and extended into his late father's property, Title No. Kajiado/Dalalekutuk/23. He avers that this claim was false, as the access road had long been demarcated in the 1970s by the then Kajiado County Council, and is duly marked on the local area cadastral map. He annexed a copy of the map marked "TL1".
14. He contends that numerous site visits, surveys, and reports prepared between 2017 and 2025 by the 2nd, 3rd and 4th Respondents consistently confirmed the position of the access road and beacons, and that his late father's property is separate and distinct from that of the 1st Respondent, with the access road clearly running in between. He listed several such reports, including those dated 18th August 2017, 16th August 2019, 9th February 2022, 16th March 2022, and 6th March 2025, all of which, he avers, returned similar findings. Copies of these reports were annexed and marked "TL3".
15. The Applicant further explained that the continued mention of his late father's name in the reports does not render them invalid, since the officials prepared them after his father's demise using the registered title still in his father's name. He insists that the findings remain factual and reflective of the position on the ground.
16. He accuses the 1st Respondent and her family members of frustrating the boundary demarcation process by disrupting site visits, causing violence, and resisting the placement of beacons on her own property. He annexed a charge sheet marked "TL2" relating to criminal proceedings against two of the 1st Respondent's sons in Kajiado Criminal Case No. 242 of 2020 for violence and removal of beacons. He avers that the 1st Respondent has all along been present during the surveys and cannot feign ignorance of the reports or claim non-involvement.
17. The Applicant further contends that his family was never made a party to Miscellaneous Judicial Review Application No. 7 of 2020, despite their land being implicated. He maintains that the Court



in those proceedings was misled into quashing the report of 16th August 2019, and that the quashing cannot override the consistent findings of subsequent reports confirming the position of the access road. He maintains that the 1st Respondent's claims of discrepancies in the cadastral map are fictitious, vexatious, and intended to deny the community access to a vital road and waterpoint.

18. He emphasized that the disputed access road is public in nature, created by the Government, and therefore binds all adjoining proprietors, including the 1st Respondent. In his view, the reports prepared by the statutory custodians of land records — the Land Registrar and the District Surveyor — are conclusive on the position of boundaries and the access road.
19. The Applicant further argued that the continued objection by the 1st Respondent has deprived the community of essential services and economic opportunities, including the installation of electricity by Kenya Power and Lighting Company, which has been stalled pending demarcation of the access road. He asserts that this Honourable Court ought to adopt the reports to bring the protracted dispute to rest, secure the rights of his family and the community, and allow development to proceed unhindered. He concludes that the instant application is meritorious, urgent, and deserving of this Court's favourable consideration in the interest of justice, fairness, and protection of the public's rights of way.

### **Directions**

20. The court directed that the application be canvassed by way of written submissions. I have had the opportunity to read the parties' submissions and the same have been considered in the writing of this ruling.

### **Analysis and Determination**

21. Rule 9 of the Oaths and Statutory Declarations Rules provides that:

“All exhibits to affidavits shall be securely sealed thereto under the seal of the commissioner, and shall be marked with serial letters of identification.”
22. Whereas Courts have emphasized that affidavits must substantially comply with the above requirements, they have at the same time maintained that procedural lapses should not trump substantive justice. In *Microsoft Corporation v Mitsumi Computer Garage Ltd & Another* [2001] eKLR, Ringera J (as he then was) held that:

“Rules of procedure are the handmaiden of justice. They should not be turned into instruments for defeating justice. Where it is evident that a party has attempted to comply with the rules but has fallen short due to some technicality, the court should not strike out the pleading but instead order that the party remedies the defect.”
23. Similarly, in *Kibaki v Moi & Another* (No. 3) [2000] 2 EA 115, the Court stated that:

“The overriding principle is that justice should not be sacrificed at the altar of technicalities.”
24. Applying those principles, the record shows that the Applicant annexed the District Surveyor's report dated 3<sup>rd</sup> March 2025 and the earlier reports. The 1st Respondent objects that they were not properly marked as required by Rule 9 of the Oaths and Statutory Declarations Rules. The affidavit nonetheless refers to the reports, and the copies are annexed, stamped, and accessible on the Court's electronic system. The 1st Respondent has in fact responded to their contents. In the circumstances, the defects, if any, are purely technical and have not caused any prejudice to the Respondent. Guided by Article



- 159(2)(d) of *the Constitution*, which dictates that ‘justice shall be administered without undue regard to procedural technicalities’, I am satisfied that the application is properly constituted and that the annexures may and ought to be considered in writing this ruling.
25. Section 6 of the *Civil Procedure Act*, bars a court of law from proceeding with any matter in which the question in issue is also directly and substantially in issue in a previously instituted suit. The section provides that;
- “No Court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties... where such suit or proceeding is pending in the same or any other Court having jurisdiction in Kenya to grant the relief claimed.”
26. This embodies the doctrine of lis pendens and judicial comity. In *Thiba Min Hydro Co. Ltd v Josphat Karu Ndwiga* [2015] eKLR, the Court held:
- “It is not the form in which the suit is framed that determines whether it is sub judice. Rather it is the substance of the suit.”
27. Likewise, the Court of Appeal in *Kenya Commercial Bank Ltd v Benjoh Amalgamated Ltd & Another* [2017] eKLR, warned that:
- “Parallel proceedings between the same parties and over the same subject matter should not be entertained as they may give rise to conflicting decisions by courts of concurrent jurisdiction.”
28. Here, it is common ground that the Miscellaneous Judicial Review Application No. 7 of 2020 is pending. It is in that matter that the court directed the 2nd and 3rd Respondents to investigate the cadastral maps and file reports. The present application seeks adoption of one of those reports. To do so would risk pre-empting the judicial review proceedings before a court of concurrent jurisdiction. All issues in respect to the reports or their contents must be canvassed before the court already seized of the matter.
29. Every court has the authority to implement its decrees and orders. Consequently, if any report is to be adopted, it must be adopted in and by the same court where the order originated from. It cannot be in a new matter.
30. The application by the Applicant herein is obviously mischievous calculated at outsmarting and pulling the rag under the feet of the Respondents. It amounts to an abuse of the process of court. As observed by Mativo J (as he then was) in the case of *Satya Bhama Gadhi vs DPP & 3 Others* (2018) eKLR, litigation is not a game of chess where players outsmart themselves by dexterity of purpose and traps. On the contrary, litigation is a contest by judicial process where the parties place on the table of justice their different positions clearly, plainly and without tricks.
31. The application herein must and is hereby dismissed with costs being an abuse of the process of court.

It is so ordered.

**DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 9<sup>TH</sup> DAY OF OCTOBER 2025.**

**M.D. MWANGI**

**JUDGE**



In the virtual presence of:

Ms. Lilande for the Applicant

Mr. Kangogo for the 2<sup>nd</sup> and 4<sup>th</sup> Respondents

N/A by the 1<sup>st</sup> and 3<sup>rd</sup> Respondents

Court Assistant: Mpoye

