



**Laset Limited v Koinange (Environment and Land Case
E024 of 2023) [2025] KEELC 5748 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5748 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND CASE E024 OF 2023**

**MD MWANGI, J
JULY 31, 2025**

BETWEEN

LASET LIMITED PLAINTIFF

AND

DANIEL WUANTAI KOINANGE DEFENDANT

*(In respect of the Notice of Motion application dated 2nd October 2024
by the Defendant pursuant to Order 51 of the Civil Procedure Rules)*

RULING

Background

1. By a Notice of Motion dated 2nd October 2024, the Defendant/Applicant sought the orders as outlined below:
 - a. That pending the hearing and determination of this application inter partes, all proceedings in Kajiado ELC No. E024 of 2023 be stayed;
 - b. That the County Surveyor and County Land Registrar, Kajiado, be directed to visit the disputed area and re-survey parcel Kajiado/Kitengela/92075 together with the Plaintiff's parcels Kajiado/Kitengela/27072, 27081, 27079, and 27082 to ascertain whether the Defendant's property overlaps into the Plaintiff's properties, and if so, by how many hectares;
 - c. That the parties be at liberty to have their private surveyors present during the re-survey should they so wish;
 - d. That the joint surveyors' report be filed in court and form part of the evidence in the determination of the main suit;
 - e. That the costs of the application be provided for.



2. The application is supported by the affidavit of Daniel Wuantai Koinange, who deposes that he is the registered proprietor of Kajiado/Kitengela/92075, having acquired the same from Olooitikosh Kitengela Group Ranch. The Defendant contends that the Plaintiff's claim of fraudulent acquisition and boundary encroachment is unfounded and that the re-survey will clarify the alleged overlap.
3. He further states that a previous dispute involving the same parcel, Kajiado ELC No. 632 of 2017, was dismissed with costs, thus legitimizing his title. He denies any encroachment into the Plaintiff's land and avers that some of the parcels claimed by the Plaintiff belong to third parties.
4. The Plaintiff/Respondent opposed the application through a Replying Affidavit dated 16th July 2025. The Respondent submits that the Defendant/Applicant has not filed any Statement of Defence nor entered appearance in this matter despite service, and as such, lacks clean hands and is undeserving of any equitable reliefs.
5. The Plaintiff asserts that the root of the Defendant's title, Kajiado/Kitengela/92075 is tainted with illegality and fraud, and that the overlap is a result of subdivisions arising from a fraudulent mother title. Reliance is placed on the decision of the Supreme Court in *Dina Management Limited v County Government of Mombasa & 5 others* [2023] KESC 30 (KLR), where the Court held that:

“...the ownership of land whose title was not acquired regularly is not protected under Article 40 of *the Constitution* on the protection of right to property. The Court must always go to the root of the title...”
6. The Plaintiff further submits that the re-survey exercise has already been conducted by the County Land Registrar and County Surveyor, Kajiado, who found that the Defendant's parcel does not exist on the ground or in the official records. A report from the Directorate of Criminal Investigations corroborates these findings.
7. The Plaintiff invokes the equitable maxim that “he who comes to equity must come with clean hands”, and argues that any resurvey at this stage would amount to sanitizing fraud and prejudice the proceedings. Citing *Lazarus Estates Ltd v Beasley* [1956] 1 All ER 341, the Respondent stresses that:

“No court in this land will allow a person to keep an advantage which he has obtained by fraud... Fraud unravels everything.”
8. It is further submitted that permitting the orders sought would amount to determining the dispute at an interlocutory stage and cause undue prejudice to third-party interests.

Issues for Determination

9. Having carefully considered the application, the response thereto, the parties' submissions, and the applicable law, the Court identifies the following issues for determination:
 - I. Whether the Defendant/Applicant is entitled to the orders sought;
 - II. Whether the application is meritorious; and
 - III. What orders, if any, ought to be granted.



10. On the issue of boundary determination, Section 18(2) of the [Land Registration Act](#) is instructive. It states:

“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.”

11. However, the Plaintiff has adduced evidence, including the reports of the County Land Registrar and Surveyor, which suggest that the Defendant’s parcel is non-existent both in the records and on the ground. This raises fundamental questions about the legitimacy of the Applicant’s title, thereby transcending a mere boundary dispute. The Court in *Muthui v Kimiti & 2 Others* [2017] eKLR, rightly held:

“A dispute as to whether one parcel of land encroaches upon another is best resolved by an official survey...”

However, that presupposes that the title in question is valid, a presumption now heavily challenged.

12. The applicant seeks to activate the equitable jurisdiction of the Court by inviting it to conduct an evidentiary or factual enquiry on his behalf. This proposition is not only procedurally untenable but also inconsistent with established jurisprudence on parties’ responsibility in civil litigation. To this effect, the Supreme Court of Kenya in *Trusted Society of Human Rights Alliance v Mumo Matemo & 5 others* [2014] eKLR, pronounced itself in clear and binding terms that a suit in Court is a ‘solemn’ process, ‘owned’ solely by the parties. It is not part of the duty of the court in an adversarial system, to enter upon an inquiry into the case before it. It is the responsibility of the parties to present their cases before the court.

13. It is not lost upon this Court that the re-survey sought by the Defendant has already been undertaken. These findings are further corroborated by the DCI. The application by the Defendant seems to be an appeal against the findings which he is unhappy with. The law is clear on how an appeal against the decision of the land registrar may be mounted. In light of this factual matrix, the orders sought by the Applicant are not only overtaken by events, but also misplaced.

14. The purpose of a re-survey under Section 18(2) of the [Land Registration Act](#) is not to cure defective or fraudulent titles, but rather to ascertain physical boundaries between existing, validly registered parcels. A re-survey at this stage would amount to circumventing the adjudication of the Plaintiff’s core claim; that the Defendant’s title is a nullity.

15. Additionally, the Defendant’s failure to enter appearance or file a defence severely undermines the bona fides of his application and supports the inference of abuse of process. He who comes to equity must come with clean hands and equity will only aid the vigilant, not one who sleeps on his rights.

16. In view of the above considerations, and guided by both statutory and equitable principles, the Court finds no merit in the application dated 2nd October 2024.

17. Accordingly, the Notice of Motion dated 2nd October 2024 is dismissed in its entirety. The stay of proceedings sought therein is denied, and the court orders that this matter shall proceed to full hearing on the merits of the Plaintiff’s claim. The re-survey sought is declined, the same having already been conducted, and findings thereon already submitted by the competent statutory authorities. The costs of this application shall be borne by the Defendant/Applicant.

It is so ordered.



DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 31ST DAY OF JULY 2025.

M.D. MWANGI

JUDGE

In the virtual presence of:

Mr. Obadiah for the Defendant/Applicant

Mr. Nairi for the Plaintiff/Respondent

Court Assistant: Edwin

