



REPUBLIC OF KENYA



KENYA LAW
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**Longurokol v Lokudo (Environment and Land Case 118 of 2017)
[2025] KEELC 7171 (KLR) (15 October 2025) (Judgment)**

Neutral citation: [2025] KEELC 7171 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT AND LAND CASE 118 OF 2017**

CK NZILI, J

OCTOBER 15, 2025

BETWEEN

JOHN TUKEI LONGUROKOL PLAINTIFF

AND

GEOFFREY MOBRO LOKUDO DEFENDANT

JUDGMENT

1. The plaintiff approached this court through an amended plaint dated 18/6/2018. He seeks:
 - a. Declaration that the defendant has no proprietary interest in West Pokot/Kishaunet/695 and should vacate and or forcefully be evicted.
 - b. Permanent injunction restraining the defendant, his agents, servants, or employees, or anyone claiming through him, from cultivating, cutting trees, erecting, constructing, or putting up buildings or structures, or improving them, damaging or committing acts of waste, or in any way interfering with parcel No. West Pokot/Kishaunet/695.
2. The plaintiff contends that he is the registered owner of the whole of the suit land measuring approximately 4.30 Ha, previously owned by his mother, Cheplege Ariangonyang, before it was transferred to him as a beneficiary and the only surviving child, following a will made in 1992, before she passed on.
3. The plaintiff avers that the land was initially part of West Pokot/Kishaunet/268, before it was subdivided to the deceased's estate beneficiaries. Further, the plaintiff avers that the land had a dispute which was resolved by the Land Adjudication & Settlement Office Board, in favour of his late mother.
4. The plaintiff therefore avers that the defendant has no right or live or stay and or develop the suit land, otherwise his actions were an infringement on or violation of his rights of ownership. As a result of the



- trespass, the plaintiff avers that the defendant has misused, wasted, damaged, destroyed, or degraded the land.
5. The defendant opposed the suit through a statement of defence dated 26/4/2018. The defendant averred that he lives, stays, and has developed their family land, and hence disputes the alleged occupation, misuse, wastage, damage, destruction, or degradation of any suit land belonging to the plaintiff.
 6. The defendant averred that their family land is plot No. West Pokot/Kishaunet/277, measuring 24.9 Ha, while the plaintiff plot is No. West Pokot/Kishaunet/268, measuring 9.0 Ha, the same is intact; otherwise, the plaintiff has concealed material facts from the court by bringing a misplaced, far-fetched, and baseless claim, which discloses no cause of action.
 7. The defendant averred that the plaintiff misdirected and misguided the surveyors, if at all, to create two parcels of land out of plot No. West Pokot/Kishaunet/268, in their offices and not on the ground.
 8. By a reply to defence dated 8/7/2019, the plaintiff reiterated the contents of the amended plaint, insisting that he was the registered owner of parcel No. West Pokot/Kishaunet/295, measuring approximately 4.30 Ha, which was previously under his mother's ownership before the transfer, initially also included parcel West Pokot/Kishaunet/268, which was later subdivided among the deceased beneficiaries. He termed the defence as mere denial, a sham, and a calculated move to defeat or obstruct justice.
 9. At the trial, John Tukei Longurokol testified as PW1. He relied on a witness statement dated 5/7/2017 as his evidence-in-chief. PW1 told the court that he was the only surviving child in the family of the late Cheplege Ariangunyang Longurokol, since all his brothers are deceased, hence he is the sole heir of his parents' estate.
 10. PW1 told the court that in 1992, his late mother informed him that she had given the area chief, Mr. Joseph Ngoro Komoi, her wishes about the estate, whose outcome was that he inherited the entire parcel No. West Pokot/Kishaunet/295, measuring 4.30 Ha. He said that the family had a long-standing land dispute that was resolved by the Land Adjudication Board in 1977.
 11. PW1 said that the land is situated in the Kishaunet area. Upon the demise of his mother, PW1 said that he filed succession proceedings in court and obtained a title deed of the land. PW1 said that, unfortunately, the defendant encroached onto his land with effect from 2013 and erected a house therein by force. Despite efforts to urge him to vacate, PW1 said that the defendant has become adamant, hence the demand letter before filing the suit, since he has denied him the right to peaceful occupation and enjoyment of the land.
 12. PW1 relied on a copy of a title deed, will dated 19/12/1992, transfer form, and area list as P. Exhibits. No. 1 - 4. PW1 said that the land initially recorded as parcel No. 268 Kishaunet Adjudication Section was 13.4 Ha, before it was subdivided into other portions for him to retain Parcel No. 695. He produced a copy of the original title deed for 268 and a copy of a receipt dated 5/7/1993, as P. Exhibit. Nos. 5 and 6.
 13. PW1 said that his late mother used to have a case with Mr. Tiamale before the adjudication office, which was decided in her favour on 2/2/1977, following which the land was subdivided into parcels No. 268 and 277 among them. PW1 said that the defendant was given 60 days to appeal against the decision, which he did not file. He produced the ruling and the area map as P. Exhibit. No. 7 and PMFI-8.
 14. As to the letter listed in the defendant's case dated 28/7/1986 marked DMFI-(2), PW1 said that though it referred to appeal No. 242 of 1980, his late mother was never invited for the hearing of the appeal, or



- served with such a letter, or the outcome showing that the boundary of the two parcels of land would be the river.
15. PW1 said that it was the defendant occupying the land. Again, PW1 said that DMFI No. (3) shows that the appeal was lodged in 1978, yet the board ruling was in 1975, while the Land Adjudication Officer's decision was made on 2/2/1977, when the 60 days for appeal began to run.
 16. PW1 said that he was old enough in 1977 to know whether or not the appeal had been preferred. PW1 said that her late mother obtained a title deed for the land in 1979, which is also when Mr. Tiamale obtained his; otherwise, there was no objection as to the acreages indicated in the title deed.
 17. PW1 said that the title deeds couldn't be issued if there was a pending appeal against the parcels. PW1 said that Tiamale has never challenged the title held by his late mother and himself as belonging to him. PW1 disputed the authenticity of the defendant's list of documents; otherwise, entry into the land occurred in 2015, yet he has a neighbouring parcel of land, No. 277.
 18. In cross-examination, PW1 said that even though DMFI-1 indicated that his late mother attended the minister's appeal hearing at the DC's office, his mother passed on in 1994. He said that after her mother gave him the land, he called the Land Adjudication Officer to subdivide the land, which was done to create parcels No. 695 and 694.
 19. PW1 said that the defendant is a grandson of Chebet Tiamale, who had a dispute with his late mother over the land. PW1 insisted that the boundary of the land is the river at Kishaunet. PW1 said that no one objected to his application for letters of administration in respect to his late mother's estate and, in particular, over parcel No. 268.
 20. Answering a question from the court, PW1 said that he used the river to demarcate parcels No. 694 and 695. He said that his late mother was occupying the land across the river, while he was on the other side.
 21. Andrew Loreyo Wiso testified as PW2. As a former assistant chief at Siyoi Sub-location until 2006, PW2 told the court that, relying on a witness statement filed 5/7/2017, the plaintiff was born in the Kishaunet area. Parcel No. 695 initially No. 268, belonging to his late mother, with which she had a dispute with the defendant's grandfather, but was ruled in her favour in 1977.
 22. PW2 said that he moved from the Kishaunet area to Sigoi in 1976. PW2 said that the boundary between parcels No. 267 and 268 was a river. PW2 could not tell how the dispute began and ended.
 23. Geoffrey Mepro Lokudo testified as DW1. He relied on a witness statement dated 30/4/2018 as his evidence-in-chief. DW1 denied the alleged trespass to the plaintiff's parcel of land. DW1 contended that he inherited parcel No. West Pokot/Kishaunet/277 measuring 24.9 Ha, from his late grandfather, where he resides with his children, parents, and uncles.
 24. DW1 said that there used to be a land dispute between the family of his late grandfather and the late plaintiff's mother of the plaintiff over the boundary between parcels No. 277 and 268, which was heard all the way to Minister Appeal No. 28 of 1980.
 25. DW1 said that the minister's decision made on 18/10/1985 was that the river is the boundary. DW1 produced a certified copy of the order dated 18/10/1985, letter dated 28/7/1986, minister's appeal decision dated 2/2/1980, letter dated 22/4/1996 to the Director of Land Adjudication and Settlement, letter by the District Land Adjudication to the District Surveyor dated 28/7/1986, letter dated 31/5/1986, Director's letter dated 20/6/1986, letter dated 5/8/1986, District Surveyor's letter dated 5/9/1996 to the Director, letter to the Land Registrar dated 13/12/1996, Adjudication records, letter dated 30/3/2017, and County Surveyor's letter to Land Registrar dated 4/8/2017, all produced as D. Exhibit. No. 2-13, official searches for parcels No. 268 or 277 as D. Exhibit. No. 14 and 15, copy



- of title for parcel No. 277 D. Exhibit. No. 16, death certificate for Tiamale D. Exhibit. No. 17, copy of map as D. Exhibit. No. 18.
26. DW1 said that his late grandfather's land is 24.9 Ha, while that of the late mother of the plaintiff is 9.0 Ha. DW1 said that after the minister's decision, he was occupying his land as divided by the river. DW1 said that his land is in Chemomoi Sub-location, while that of the plaintiff is in Kishaunet Sub-location.
 27. DW1 admitted that parcels No. 694 and 695 originally belonged to parcel No. 268, which the plaintiff have sold and were remaining with 0.5 acres now occupied by the plaintiff's nephew. DW1 said that he does not own the land under his occupation, nor has he trespassed into the plaintiff's land as alleged.
 28. According to DW1, his late grandfather, Chebet Tiamale, is the one who filed the Minister's appeal on 22/7/1980 against the late Cheplege over P. Exhibit. No. 2 made on 6/5/1975. He admitted that the appeal was lodged after 5 years instead of the 60 days. DW1 said that he had nothing to show that the appellant was his grandmother. DW1 said that D. Exhibit. No. 6, the title deed was in the name of his uncle Dickson Yoywar Tiamale (deceased), who passed on 21/1/2009 as per the certificate of death.
 29. DW1 admitted that he has been on the land since 2014, after his late father permitted him to occupy the same (Abraham Tiamale). DW1 admitted that since his late father had no title to the land, he could not have permitted him to enter the land in 2014. DW1 denied that he was in occupation of parcel No. 695, owned by the plaintiff.
 30. According to him, the registered owner of parcel No. 277, now deceased, obtained title from the late Chebet Tiamale, who passed on in 1986. If then the title was issued to the late Dickson Tiamale on 12/11/1999, DW1 admitted that it was 13 years after his grandmother passed on. DW1 said that he had no confirmation of the grant regarding the estate.
 31. At that juncture, the trial court stood down the witness to enable the County Surveyor, West Pokot, to fresh survey the land. The record shows that on 17/2/2025, directions were taken that the matter proceed from where it had stopped with the previous court.
 32. Raymond Rutto testified as DW2. He told the court that, following the orders of the court in December 2024, he visited parcel Nos. 268 and 277, in the presence of the parties, and prepared a report dated 16/12/2024, which he produced as D. Exhibit, No. (18), which unfortunately was done without knowledge of the minister's appeal or decision, and the correspondence thereto.
 33. Due to the foregoing admission by DW2 by an order dated 17/2/2025, the County Surveyor was directed to revisit the locus in quo, effect the amended RIM on the ground and prepare a conclusive report for the court with parties at liberty to avail to him all the requisite documents in their possession, to effect his mandate in line with Sections 14-19 of the *Land Act*.
 34. DW2, upon recall, his testimony told the court that he revisited the locus in quo and prepared a fresh report dated 26/2/2025, which he produced as D. Exhibit No. 20. He told the court that from the findings, the defendant was utilizing parcel No. 277, while the plaintiff utilizes parcel No. 268.
 35. DW2 said that he came across a mutation form dated 23/1/2017 showing a new parcel of Nos. 694 and 694, which were subdivided from parcel No. 268, totaling 9.0 Ha. Further, DW2 said a mutation form dated 20/7/2016 was made after the minister's decision, showing parcel No. 277 and 268 as 24.90 Ha and 9.0 Ha, respectively.
 36. Further, DW2 said that he concluded that the current RIM is not reflective of the minister's decision and requires re-amended to reflect the results of Land Case No. 242 of 1980. DW2 said that he relied on the adjudication record, the minister's appeal case proceedings, and compared them with the current situation on the ground, especially the features that are shown on its RIM. DW2 said that from his



findings, there should be a correct boundary, so that the acreages of the two parcels Nos. 277 and 268 and their two subdivisions can tally.

37. In further cross-examination, DW2 regards his earlier report dated 26/12/2024, said that the current report dated 26/2/2025, is more comprehensive and updated, and is clear that there is need to rectify the RIM to reflect the outcome of the Minister's decision, otherwise, there appears it have been a reversal of the minister's decision leading to the cancellation of mutation form No. 22 of 1992, which reversal affected the parcel No. 277 and 268 through mutation No. 22/1191/7/16.
38. According to DW2, the minister's decision was made on 19/7/2018, and there are correspondences to that effect on the need to implement it, especially the letter dated 4/5/2017 and 2/7/2018. DW2 said that the implementation was being made after 35 years.
39. DW2 said that he did not get any other decision overruling the minister's decision confirming the acreages for the two parcels of land. DW2 said that he fixed the boundaries as per the minister's decision.
40. The plaintiff relies on written submissions dated 25/8/2025. It is submitted that as the owner of parcel No. West Pokot/Kishaunet/695, he is entitled to exclusive possession, yet the defendant has trespassed thereon without justification, claiming that the land belongs to his late uncle, Dickson Yoywar Tiamale.
41. Further, the plaintiff submits that the justification collapses since the defendant has no locus standi to represent the estate of his late uncle. Secondly, the title, adjudication record, RIM, and the survey evidence all show that the boundary of the initial two parcels of land is the river.
42. Reliance is placed on Rajesh Pranjivan Chudasama -vs- Sailesh Pranjivan Chudasama [2014]. Section 24(a) and 25(1) of the Land Registration Act and Elijah Makori Nyangwara -vs- Stephen Mungai Njuguna & Another [2013] eKLR.
43. The plaintiff submits that the two survey reports dated 16/12/2024 and 26/2/2025 are contradictory in nature. The plaintiff submits that DW2 conceded that a minister's decision, though initially he had said it was implemented, could be implemented even after 35 years.
44. In essence, therefore, the plaintiff submitted that the report is a departure from the official area list, and reinforces the plaintiff's case that the defendant is on parcel No. West Pokot/Kishaunet/695, which entry amounts to trespass as held in Dae -vs- Mude (Environment and Land Appeal E001 of 2024) [2025] KEELC 4163 (KLR) (19 May 2025) (Judgment).
45. The plaintiff submits that the defendant's reliance on ancestral land parcel No. West Pokot/Kishaunet/277, cannot enlarge into his parcel of land, more so when the adjudication process resolved the boundary dispute decades ago via a ruling dated 2/2/1977, which was not appealed against within 60 days.
46. The plaintiff submits that exhibits on records included the District Commissioner's order dated 11/10/1985, correspondences thereto, showing that the appeal was filed on 22/7/1980, which was approximately 3 years after the adjudication ruling, which was out of time, with no explanation for the delay.
47. Further, the plaintiff submits that the decision earlier made cannot be reopened through a surveyor's contradictory field notes. The plaintiff submits that the suggestion that he sold or relocated from the plot is legally irrelevant, and there were no registered transfers produced.
48. The plaintiff urges the court to find that he has discharged the burden of proof under Sections 107-109 of the Evidence Act, to be entitled to the reliefs sought.



49. The issues calling for my determination are:
- (1) If the plaintiff has established trespass to Title No. West Pokot/Kishaunet/695 by the defendant
 - (2) Whether boundaries to parcels No. West Pokot/Kishaunet/277 measuring 24.9 Ha, and the plaintiff parcel No. 268 and its resultant subdivisions No. 695 and 694 have been determined.
 - (3) If the plaintiff is entitled to the reliefs sought.
 - (4) What is the order as to costs?
50. Trespass as defined in Kenya Power. Kenya Power & Lighting Company -vs- Ringera & Others [2022] KECA 104 [KLR] (4th February 2022) (Judgment), is governed by Section 3(1) of the *Trespass Act*. In M'Rikanya -vs- M'Mbijiwe [1984] eKLR, it is defined as a violation of the right to possession. A plaintiff must prove that he has proved that he has the right to immediate and exclusive possession.
51. In Margaret Iminza Luyayi -vs- Moses Opudo Mudaka [2014] eKLR, the court observed that there was no wrongful entry or violation of the plaintiff's right to possession since it was the plaintiff who had invited the defendant as a man-friend to the land.
52. In Ochako Obinchi -vs- Zachary Oyoti Nyamongo [2018] eKLR, the court cited Clerk and Lindsell on Torts 18th Edition page 923, that the onus was on the plaintiff to prove that he was the owner of the suit property, and the elements of invasion or occupation by the defendant without a justifiable cause.
53. Trespass, therefore, involves interference with possession of private land without justification or consent of the registered owner. It could also be a continuing tort. See Muthiora -vs- Marion Muthama Kiara (deceased) 2022 KECA 28 [KLR] (4th February 2022) (Judgment).
54. In Faraj Maharus -vs- J.B. Martin Glass Industries & 3 others [2005] eKLR, the court said that trespass consists of serious acts done on consecutive days that are exact and may be continuous. Further, the court held that unauthorized entry, whether present or continuing, amounts to trespass.
55. In Bandi -vs- Dzomo & Others Civil Appeal 16 of 2020 [2020] KECA 584 [KLR] (24th June 2022) (Judgment), the court emphasized that the appellant had the evidential burden to show that he acquired title to the suit land in a regular, law-compliant fashion and not in an opaque manner.
56. In Elijah Mukeri Nyangwara -vs- Stephen Mungai Njuguna (supra), the court observed that the law is protective of a title and that the burden was on the defendant to prove that the title to the land was obtained illegally, unprocedurally, and or through a corrupt scheme.
57. Applying the foregoing case law to the instant case, the onus was on the plaintiff to prove ownership of the suit land, demonstrate when the alleged trespass or encroachment to his land occurred, and prove the acts of trespass which he attributes to the defendant.
58. The plaintiff relied on a title to West Pokot/Kishaunet/695 issued on 15/3/2017 for an area measuring 4.30 Ha in Registry Map Sheet No. 20/25, adjudication proceedings in case No. 9/74-75 over parcel No. 277 determined on 2/2/1977, adopting record, undated and unregistered transfer from between Chepleke Longurokol and the plaintiff and a will dated 19/12/1992, area list, title deed for No. West Pokot/Kishaunet/268, letter issued on 14/8/1980, a demand letter and an area map as P. Exhibits. No. 1, 2, 3, 4, 5, 6, 7, and PFMI-8.
59. On the other hand, the defendant denied the alleged encroachment. He insisted that he lives on their family land. West Pokot/Kishaunet/277 measuring 24.9 Ha, while the plaintiff's land is West Pokot/



- Kishaunet/268 measuring 9.0 Ha. The defendant told the court that they had lived peacefully until the plaintiff's late mother filed a complaint that her land crossed over the river to the opposite side, which went up to the minister, who allowed the same, and the map was rectified.
60. The defendant relies on the District Commissioner's order dated 11/10/1985, letter from the Director of Land Adjudication dated 28/7/1986, DC's ruling in case No. 242 of 1980, letters dated 28/7/1986, 22/4/1996, 31/5/1996, 20/6/1996, 5/8/1996, 5/9/1995, 13/12/1999, copy of adjudication record, letters dated 30/3/2017 and 4/5/2017, copy of official search for parcel No. 268, 277, copy of titles for parcel No. 277, death certificate of the owner, and copy of the map.
 61. Following a conflicting version of events, the court, on its own motion, directed that the County Land Surveyor, West Pokot, visit the locus in quo and provide a report. The said reports were produced by DW2 as D. Exhibit. Nos. 18 and 19 dated 16/12/2024 and 26/2/2026.
 62. The finding of the County Surveyor is that the fixed boundary between parcels No. 268 and 277 is the river. The defendant utilizes parcel No. 277 measuring 23.62 Ha. The RIM dated 19/7/2018 was amended as per the minister's decision No. 242 of 1980; new numbers have been created out of parcel No. 268, being parcel No. 694 and 695, measuring 4.5 Ha and 4.30 Ha each.
 63. The recommendation is that the current RIM needs to be amended to reflect the minister's decision. DW2 told the court that he determined and fixed the boundary as per the minister's appeal. DW2 told the court that in coming up with his 2nd report, he relied on historical documents right from the adjudication rough book, adjudication records, current and previous RIMS, mutation form dated 23/1/2017, 20/7/2018, official search certificates, minister's decision, and the surveyor's letter dated 2/7/2018.
 64. The plaintiff in written submissions dated 25/8/2025 terms the County Surveyor's two reports as contradictory and as based on documents that refer to an unimplemented minister's decision, at variance with the official area list. The plaintiff insists that the defendant has trespassed on his land.
 65. In *Doshi -vs- Chemutut & 7 others* (Civil Appeal E020 of 2023) [2025] KECA 776 (KLR) (9 May 2025) (Judgment, the court cited *Charles Ogejo Ochieng -vs- Geoffrey Okumu* [1995] KECA 169 [KLR], that trespass is an injury to a possessory right, and that the proper plaintiff in an action of trespass to land is the person who has title to it, or a person who is deemed to have been in possession at the time of the alleged trespass.
 66. As for the ingredients of trespass, the court cited *William Kamunge Gakui -vs- Eustace Gitonga Gakui* Civil Appeal 16 of 2023 [2014] KECA 39 9KLR], that as a violation of the right to possession, a plaintiff must prove that he has the right to immediate and exclusive possession of the land.
 67. In *Barmasai -vs- Rono & Others* Civil Appeal E068 of 2023 [2025] KECA 1489 [KLR] (19th September 2025) (Judgment), the court observed that a registry index map is a crucial cadastral document used in the land registration system to represent the location and boundaries of land parcels and serves as the official record maintained by the Survey of Kenya, and is integral to the land registration and ownership system under the *Land Registration Act*.
 68. The court held that, unlike a title deed, which confers ownership, a registry index map provides the geographical context, mapping out the physical existence and the precise location of a property relative to its surroundings.
 69. The court held that a registry index map is a comprehensive tool that complements other ownership documents like title deeds and green cards, offering a detailed layout of the land parcel, its shapes, and its boundaries. The court held that Kenya's legal framework allows for the amendment of the registry



index map under specific circumstances, such as in boundary disputes, government initiatives, and in the correction of errors, so as to protect landowners' rights.

70. The court said that where there is disagreement between landowners regarding boundaries of the properties, a court or a land tribunal may order a survey to resolve the dispute, and if the survey results in a change to the original boundary, the registry index map will be updated to reflect the new boundary. The court said that pleadings must be lucid and logical, and courts only pronounce judgment on issues arising from the pleadings.
71. In this suit, the plaintiff has denied knowledge of the minister's appeal and the involvement in the same or awareness of its outcome. The plaintiff submits that a minister's decision was not implemented on time and should not be used by DW2 to overturn the area list and other documents that were used during the land adjudication process.
72. Parties are bound by their pleadings. The title deed that was issued to the plaintiff for title Nos. West Pokot/Kishaunet/694 and 695 had restrictions showing that there was a pending minister's appeal. A letter to that effect was also written, dated 30/3/2017, to M/s Katina & Co. Advocates. The same appears in the title deed issued for Title No. West Pokot/Kisaunet/277. The official search certificates before the court also show those entries.
73. The minister's appeal shows that the late Cheplege Arianganyang participated in the minister's appeal. A sketch map was also drawn by the Minister. Correspondences produced by the defendant show that the Minister's appeal outcome was communicated to relevant government agencies for implementation. The adjudication record was updated after the Minister's decision to reflect the changes on 3/1/1997.
74. Letters dated 4/5/2017 confirmed the implementation that parcel No. 268 measures 9.0 Ha, while No. 277 measures 24.9 Ha. There is no evidence that the late Cheplege Arianganyang moved to the High Court to have the minister's decision quashed under Section 29 of the *Land Adjudication Act*, Cap 284. See Martha Kigen -vs- Johana Tibino [2014] eKLR.
75. The minister's decision is final under Section 29 of the Act. Section 29(3) of the Act says that after the minister's decision in the appeal, the adjudication register will become final in all respects. This means that one cannot reopen the adjudication process that has been completed, as the plaintiff wants the court to rule and ignore the minister's decision and its implementation.
76. There is no evidence that the plaintiff filed judicial review proceedings to quash the minister's decision and its implementation. There were no particulars pleaded on the basis that the appeal was filed out of time and its implementation was unreasonably delayed in the reply to defence. Once the adjudication process was completed, this court has no jurisdiction to reopen the adjudication register or process in the name of declaratory relief sought by the plaintiff that there is trespass or encroachment.
77. The basis of the plaintiff's claim appears to be on a mistaken belief that there was no Minister's appeal decision. In Euton Njuki Makungo -vs- Republic & 2 others [2014] eKLR, the court held that a person who has knowledge of a pending appeal cannot come to court and submit that, because there was no restriction, he could deal with the land as he pleased. The plaintiff is seeking equitable remedies. He who comes to equity must do equity and come with clean hands. Full disclosure was not made on all material facts, including the pendency of the appeal when the plaintiff acquired the title.
78. In Johana Buti -vs- Walter Omariba & Others [2011] eKLR, the court said that the mere fact that an appeal took 19 years to be heard and concluded did not take away the minister's powers. In this suit, the plaintiff has not substantiated ownership and trespass to parcel No. 695. The extent, particulars,



details, and parameters of encroachment by way of valuation report, Land Registrar, or surveyor's report have not been availed.

79. The plaintiff is challenging an expert report without a rival report. See Stephen Kinini Wangondu -vs- The Ark Ltd, Nyeri High Court Civil Appeal No. 2 of 2014. Without a supporting report to substantiate the plaintiff's claim, the court is left with no option but to find the suit unproven under Sections 107-109 of the *Evidence Act*. The suit is dismissed with costs.

80. Orders accordingly.

**JUDGMENT DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT
AT KITALE ON THIS 15TH DAY OF OCTOBER 2025.**

In the presence of:

Court Assistant - Dennis

Chebii for Defendants present

Ndinyor for the plaintiff present

HON. C.K. NZILI

JUDGE, ELC KITALE.

