



**Oloisa v Konchellah & 2 others (Environment and Land Miscellaneous Case E012 of 2025) [2025] KEELC 7604 (KLR) (6 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 7604 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS  
ENVIRONMENT AND LAND MISCELLANEOUS CASE E012 OF 2025  
MN MWANYALE, J  
NOVEMBER 6, 2025**

**BETWEEN**

**JOSEPH SAILENYI AMES LESIMO OLOISA ..... APPLICANT**

**AND**

**FRANCIS SAMERI KONCHELLAH ..... 1<sup>ST</sup> RESPONDENT**

**TOMITO OLE KONCHELLAH ..... 2<sup>ND</sup> RESPONDENT**

**JAMES KAPOLONTO KONCHELLAH ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. The Notice of Motion application dated 28<sup>th</sup> July 2025 subject of this Ruling, seeks the following reliefs:
  - i. Spent.
  - ii. Honourable court be pleased to issue a conservatory order restraining the Respondents herein either by themselves their agents, servants, employees and/or any other person acting at their behest from blocking, obstructing and/or in any way interfering with the determination of the boundary to all those parcels of land known as Transmara/Ololchani/10, 321 and 11 during the implementation of the orders from the Appeal to the Minister by the District Land Registrar, Transmara and the County Surveyor as and when they visit the place of dispute to undertake the exercise.
  - iii. That this Honourable court be pleased to issue an order that the officer commanding police station (OCS) Kilgoris police station provides security during the determination and/or fixing of the boundary to all parcels of land known as Transmara/Ololchani/10, 321 and 11 in compliance with the orders of the Appeal to the Minister by the District Land Registrar, Transmara and the County Surveyor.



- iv. That the parties herein be at liberty to engage the services of private surveyors of their own choice to accompany the District Land Registrar and the County Surveyor during the determination and/or fixing of the boundaries of the subject parcels of land in implementation of the orders from the Minister's Appeal.
  - v. That the parties herein share equally the District Registrars and the County Surveyor's facilitation charges and/or costs attendant to the visiting the place of dispute.
  - vi. Costs of the application be provided for.
2. The application is expressed to be premised on sections 1A, 1B, 3A and 63(e) of the Civil Procedure Act, sections 13 and 18 of the Environment and Land Court Act as well as order 40 Rules 1, 2 and 4 of the Civil Procedure Rules.
  3. The grounds in support of this application are interalia that:
    - i. The Applicant is registered owner of Transmara/Ololchani/321 and Administrator of the Estate of Late Lemiso Ole Sosian registered owner of Transmara/Ololchani/10 while Respondents are registered owners of Transmara/Ololchani/11.
    - ii. Pursuant to a boundary dispute involving the 3 parcels of land, a claim in the nature of a boundary dispute was lodged by the Applicant before the Arbitration Board of Transmara Sub-District wherein a finding was made awarding the Applicant 15 yards and there was an order directing the boundary to be fixed by the Demarcation officer and the survey department.
  4. The Arbitration board's decision was upheld by the adjudication committee pursuant to objection No. 29/88 filed.
  5. The Arbitration Board's said decision was again upheld by the Minister's Appeal award delivered on 15<sup>th</sup> March 2004 which further ordered that parcel No. 321 be deleted.
  6. An attempt to implement the decision vide letters dated 13<sup>th</sup> May 2013 and 29<sup>th</sup> of August 2013 was blocked by the Respondents who indicated that they had filed another Appeal despite the position in law that the Minister's Appeal is final.
  7. Another attempt to implement the decision on 6<sup>th</sup> October 2015 was resisted when Respondents became violent.
  8. The Respondents once again on 14<sup>th</sup> of July 2025 blocked the exercise with threats of violence on the Land Registrar and District Surveyor.
  9. That there being no pending challenge to the decision of the Minister's Appeal the same remains binding and ought to be implemented.
  10. That there is a big chance of the Estate suffering injustice if the decision is not implemented hence the interests of justice, equity and constitutional governance dictates that the prayers be granted.
  11. The application is supported by the affidavit of Joseph Sailenyi who reiterates the grounds in support of the application in his depositions and has annexed copies of searches for Transmara/Ololchani/10, Transmara/Ololchani/321, as well as Transmara/Ololchani/11, proceedings and ruling on the objection, proceedings and ruling of the Minister's Appeal, copies of letters dated 24.07.2007, June 2024, 3<sup>rd</sup> July 2025 as well as summons.
  12. The Application is strenuously opposed by the Replying affidavit of Francis Samen Koncellah deponed with the authority of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents, and depones interalia



- i. That the Applicant filed a chamber summons application seeking orders of Mandamus to compel the Respondents to determine and fix the boundary between the parcel Transmara/Ololchani 10, 321 and 11, which application was opposed by the Respondents but the court allowed the same granting the leave application on 7<sup>th</sup> March 2017.
- ii. That a substantial application was filed pursuant to the leave granted and vided a Ruling delivered on 03.10.2019, vide the Application was dismissed in its entirety.
- iii. That the Transmara/Ololchani/321 no longer as the Minister's decision in an Appeal 126/2001 expressly ordered the deletion of parcel 321 in the adjudication register.
- iv. That the Respondents did not obstruct the county land surveyor and land registrar Kilgoris on 14<sup>th</sup> July, 2025, and had no intention of encroaching or erecting any structures on the 15 yards that were awarded.
- v. That the present application is barred by doctrine of Resjudicata as the issues raised herein were directly and substantially in issue between the same parties in Narok ELC JR No. 4/2017 (formerly Kisii ELC JR No. 6/2017; which decision is held the Minister's decision was final and binding and the court lacked jurisdiction to re-open the matter.
- vi. That hence the application ought to be dismissed as it is opening litigation, that had previously been considered; and determined.

#### **Issues for determination**

13. Having considered the application, the rival affidavits as well as submissions and the law, the court frames the following issues for the determination.
14. The first issue is jurisdictional issue, the Respondent having submitted on the application being Resjudicata.
15. It follows that the first issue that the court shall determine is the issue of
  - i. Whether or not the application is Resjudicata.
  - ii. Whether or not, the application is merited?
  - iii. What orders ought to issue?
  - iv. Who bears the costs of the application?

#### **Analysis and Determination**

16. The application herein essentially seeks the implementation of the orders from the Appeal to the Minister by the District Land Registrar.
17. The Respondent submits that the application is Resjudicata in view of a previous judicial Review application which sought orders for Mandamus to compel the Land Registrar to fix the boundaries of Transmara/Ololchani/10, 321 and 11.



18. The doctrine of Resjudicata is provided under section 7 of the *Civil Procedure Act* and for it to apply, the Supreme court decision in the case of John Maritime Florence Vs. Cabinet Secretary for the Transport and Infrastructure 2021 KESC 39 set out the following as the elements to be proved.
- “59. For the doctrine to apply to be invoked in a civil matter the following must be demonstrated
- a. There is a former judgment or order which is final,
  - b. The judgment or order was on merit,
  - c. The judgment or order was rendered by a court having jurisdiction over the subject matter and the parties, and
  - d. There must be between the first and second suits, identical parties, subject matter and cause of action...”
19. The court shall now examine whether the elements of Resjudicata as summarized in the John Maritime Florence decision apply herein.
20. On identical parties, and subject matter, the Applicant in the judicial Review application No. 6/2016 was Joseph Katim Sailenyi who is the applicant herein, the subject matter relates to fixing of the boundary Transmara/Ololchani/11/321 and 10.
21. Thus, the parties and subject matter are the same.
22. On competent court and final orders, the orders in the JR application were final orders issued by the ELC court which is a court which is a court of competent jurisdiction.
23. Thus, there is similarities in parties, subject matter, as well as final order issued by a court of competent jurisdiction, the court has now to determine whether the issues in the JR application are similar to the issues herein.
24. A copy of the JR application was exhibited as annexure fk1. On the nature of Relief sought the same was stated to be “An order of Mandamus, compelling the Respondents to determine and fix the boundary between land parcels Nos. Transmara/Ololchani/10, 321 and land parcel No. Transmara/Ololchani/11 as per the provisions of section 19 of the Land Registrations Act”.
25. The basis for the instant application is to implement the Ruling of Minister’s Appeal No. 126/2001.
26. Thus, whereas in the J.R application the Applicant sought to fix the boundaries under section 19 of the *Land Registration Act*, in this instant application, the fixing of the boundaries is sought pursuant to the Ruling Minister’s Appeal.
27. This application is therefore an execution and/or implementation application of the Minister’s Appeal whereas the J.R application sought to compel the Land Registrar to perform his duties under section 19 of the *Land Registration Act*.
28. Though the two would have an end effect of fixing the boundaries, the issue herein is materially different from the issue in the J.R application.
29. Indeed, Kullow J. in his Ruling in respect of the J.R application observed interalia that “section 29 of the *Land Adjudication Act* provides that where an appeal has been made to the Minister, the same shall be final. Am persuaded that the matter has been heard and determined by the Minister in pursuance of the provisions of section 29 of the Lands Adjudication Act and therefore the same does not fall within



- the pervert of those instances where this court can exercise its powers to grant the prerogative order of Mandamus and thus I find that the application therefore before is incompetent and further that the Applicant is guilty of non-disclosure of material fact about the existence of the Ministerial decision.”
30. It follows that the Minister’s decision was not an issue in the JR application, as it is herein, hence this element of the Resjudicata has not been proven and the court finds on a balance of probabilities that the J.R application having not dealt with the Ministerial decision, renders this application which is based on the implementation of the said Ministerial decision not to be Resjudicata.
  31. Accordingly issue number 1 is answered in the negative that the application is not Resjudicata.
  32. The court shall now determine whether the Application is merited.
  33. The Respondents deponed that they have not obstructed the Land Registrar from implementing the decision, they conceded that in fact the Ministerial decision is final and binding at paragraph 14 of the Replying affidavit, they contest however that the said Ministerial decision ordered the deletion of Transmara/Ololchani/321 from the adjudication register.
  34. The Respondents equally deny erecting any unauthorized structures on the 15 yard allegedly awarded to the Applicant.
  35. There is therefore merit for the implementation of the Minister’s decision which both parties agree that it is final and binding, so that each party knows the extent of their boundaries and to bring finality to this issue. I find there is therefore merit in implementation of the Minister’s Appeal as per the Ruling dated 11.03.2004 under the hands of J.M Mathenge District Commissioner Transmara, including deletion of parcel number 321, and the adherence to the 15 yards/steps
  36. The court thus answers issue number 2 in the affirmative.
  37. On what orders ought to issue; the application is allowed in terms that
    - i. The District Land Registrar, Transmara and County Surveyor to visit Transmara/Ololchani/10 and Transmara/Ololchani/11 and fix the said boundaries in terms of the Minister’s decision dated 11<sup>th</sup> March 2004 and as directed vide the letter dated 24.07.2007 from the Director of Land Adjudication and Settlement.
    - ii. The O.C.S Kilgoris police station to provide security during the implementation of the Minister’s decision by the County Surveyor and the District Land Registrar, Kilgoris.
    - iii. The attendant costs of the implementation of the Minister’s decision shall be shared by the parties.
    - iv. Costs of the application are awarded to the Applicant.

**DATED AT KILGORIS THIS 6<sup>TH</sup> DAY OF NOVEMBER, 2025.**

**HON. M.N MWANYALE**

**JUDGE**

In the presence of

CA – Emmanuel/Sylvia/Sandra

Mr. Nanda for the Applicant

Mr. Otieno for the Respondent

