



**Basi v Land Registrar Transmara West, East and South & another;  
Yasi & 3 others (Interested Parties) (Environment and Land Petition  
E007 of 2024) [2025] KEELC 5627 (KLR) (30 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5627 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS  
ENVIRONMENT AND LAND PETITION E007 OF 2024  
MN MWANYALE, J  
JULY 30, 2025**

**BETWEEN**

**JOSEPH LETEIPA OLE BASI ..... PETITIONER**

**AND**

**LAND REGISTRAR TRANSMARA WEST, EAST AND  
SOUTH ..... 1<sup>ST</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**KOSIKA MOROMBI OLE YASI ..... INTERESTED PARTY**

**KIPIMO OLE YASI ..... INTERESTED PARTY**

**MOLA OLE YASI ..... INTERESTED PARTY**

**OLE KETONO OLE YASI ..... INTERESTED PARTY**

**JUDGMENT**

1. Vide the petition dated 19<sup>th</sup> July 2024, the petitioner Joseph Leteipa Ole Basi sought for the following reliefs
  - a. A declaration that the process leading boundary identification report held on 12<sup>th</sup> May 2021 as was conducted by the 1<sup>st</sup> Respondent was unlawful and therefore null and void for all intents and purpose.
  - b. An order of mandamus compelling the 1<sup>st</sup> Respondent to conduct a fresh boundary identification in accordance with the law.



- c. Costs of the suit.
  - d. Any other consequential relief and orders.
2. The petition was premised on the following provisions of the Constitution. Articles 2(1), 3(1), 10, 19, 20, 22, 23, 27, 28, 40(3)(b)(i), 47, 48, 258, as well as Sections 18 and 19, 86 and 87 of Land Registration Act.
  3. The facts leading to the filing of the petition being interalia that
    - i. The Petitioner being the registered owner of land parcel number Transmara/Ololchani/124 measuring about 61.42 Hectares which property shares a common boundary with the interested parties parcel number Transmara/Ololchani/96 which measures approximately 42.47 Ha.
    - ii. Vide a Complaint dated 18<sup>th</sup> November 2020 the Petitioner filed a civil suit of trespass against the interested parties at the ELC Kilgoris and upon hearing the suit, the court directed the 1<sup>st</sup> Respondent to register and resolve the boundary dispute between the properties known as L.R No. Transmara/Ololchani/124 and Transmara/Ololchani/96 within 90 days from the pronouncement of the judgment.
    - iii. That in line with the above mentioned directions the 1<sup>st</sup> Respondent via a letter dated 17<sup>th</sup> April, 2022 summoned the Petitioner to avail himself on 26<sup>th</sup> April 2022 at the place of dispute for purposes resolving the dispute however on the appointed date was and (sic) well and as such requested for another date.
    - iv. The 1<sup>st</sup> Respondent however proceeded to prepare a report dated 6<sup>th</sup> June 2022 and presented the same to the trial court purporting to have visited the site and resolved the dispute, which report was maned with several misrepresentations, errors and omissions.
    - v. The Petitioner being dissatisfied with how the 1<sup>st</sup> Respondent carried out the boundary dispute filed an application dated 18.07.2023 before the trial court challenging the said report; whereat the trial court advised that disagreements thereof should be handled through the provisions in the Land Registration Act and/or other proceedings that will deal with the correctness of the Land Registrar's actions and consequently the application was withdrawn.
    - vi. That vide a letter dated 4<sup>th</sup> October 2024, the Petitioner challenged the report on grounds that there was lack of fair hearing, misrepresentation, reliance on a previous unknown report, general assumptions, errors and omissions, which made the interested party acquire approximately 30.03 Hectares of the Petitioner's land.
  4. The Petitioner further pleads that his right to own property guaranteed under Article 40 of the Constitution was infringed by the 1<sup>st</sup> Respondent who did not visit the suit property but made a boundary identification report nonetheless.
  5. That the actions by the 1<sup>st</sup> Respondent equally infringe his rights to fair administrative Actions.
  6. That the 1<sup>st</sup> Respondent's actions equally infringe the Petitioner's right to legitimate expectation as well as Right to life, human dignity economic and social dignity.
  7. The Petitioner on the strength of the above facts and violations of fundamental human rights sought for prayers as set out at paragraph 1 of this judgment and further framed 3 issues for determination to wit;



- a. Whether the 1<sup>st</sup> Respondent carried out boundary identification in accordance with the law?
- b. Whether there exist any legal justification restraining the 1<sup>st</sup> Respondent from visiting the disputed area and carrying out fresh boundary dispute in accordance with the law?
- c. Whether there is any consequential order or relief that this Honourable court should grant.
- d. The Petition was further supported by the affidavit of the Petitioner who reiterated the grounds in support of the petition annexing thereto, copy of the adjudication records, copy of title, certificate of official search and green card in respect of Transmara/Ololchani/124, copy of certificate of official search and green card in respect of Transmara/Ololchani/96, copy of the judgment in Kilgoris ELC Case No. 36/2021, copy of summons dated 17.04.2023, copy of letter dated 24.04.2023, copies of letter dated 03.05.2023, and 08.5.2023, copy of the boundary report dated 12.05.2023, true copy of court order , copy if the summons, and copy of a letter dated 24.04.2024.

### **1<sup>st</sup> Respondent's Case**

8. The 1<sup>st</sup> Respondent filed a Replying affidavit deponed by Mr. Tom Chepkwasi, the District Land Registrar Transmara West, East and South who deponed interalia, that;
  - i. A team from his offices led by the Deputy Registrar had visited the disputed parcels on 10<sup>th</sup> and 16<sup>th</sup> May 2022 and established a boundary between Transmara/Ololchani/124 and Transmara/Ololchani/96 and a report dated 6<sup>th</sup> June 2022 was prepared; which visits were pursuant to court orders.
  - ii. That the team again visited the disputed parcels on 26<sup>th</sup> April 2022 pursuant to the judgment and decree of the court and filed a report.
  - iii. That he had received a request for a review of the boundary report and whereas he has noted grounds for review of the report dated 6<sup>th</sup> June 2022, he was barred by the trial court from visiting the suit property with a view of reviewing the boundaries; of Transmara/Ololchani/124 and Transmara/Ololchani/96.
  - iv. That he was ready and willing to abide by directions of the court.
9. The interested parties equally filed a Replying affidavit sworn by Mola Ole Yasi, who deponed, interalia,
  - i. That the Petitioner had filed ELC No.36/2021 which was heard and determined, and which directed the Land Registrar and Surveyor to resolve the boundary dispute between L.R No. Transmara/Ololchani/124 and L.R No. Transmara/Ololchani /96.
  - ii. That the Surveyor's report had been prepared pursuant to court orders and the Land Registrar and Surveyor's had testified in court.
  - iii. That the court had issued a decree in Kilgoris ELC No. 36/2021 (*Joseph Leteipa Ole Basi v. Kosika Morombi Ole Yasi and 5 Others*), and that there is nothing new the Petitioner was alleging which had not been dealt with in Kilgoris ELC Case No. 36/2021.
  - iv. That the issues raised in this Petition had been finalised and in the previous suit thus making the Petition Resjudicata and without any Legal Foundation and it ought to be dismissed; as it is bad in law and abuse of the court process.
10. The Petitioner filed a further affidavit in which he deposed interalia, that



- i. The Petition herein was commenced since there was lack of proceedings leading to the Survey report dated 6<sup>th</sup> June 2022.
  - ii. That he had learnt that the subdivision of the property Transmara/Ololchani/96 into 1643 to 1644 conformed to the boundary disputed report and some of the beneficiaries of the subdivisions were individuals related to staff working in the Lands Registry.
  - iii. That the Petition herein is different from the issues in ELC Case No. 36/2021 which was a claim of the trespass while the Petition herein relates to how the boundary dispute.
11. The court directed the petition to proceed by way of written submissions.

### **Petitioner's Submissions**

12. The petitioner framed and submitted on 4 issues for determination to wit;
- a. Whether this Honourable Court has the requisite jurisdiction and
  - b. Whether the Petition meets the threshold for Constitutional Petition.
13. Under this issue the Petitioner submitted that he had demonstrated infringement of his rights under Articles 2, 19, 20, 21, 22, 23, 27, 31, 40, 43, 47, 50, 64, 157, 159 and 258 of the Constitution.
14. He further submits that he set out with precision of the infringements and he exhausted all Available Avenues and approached the court as a last resort.
15. That the only way to challenge the Survey report was by way of judicial review on Constitutional Petition hence the court's jurisdiction is properly invoked.
16. On issue 11, whether the 1<sup>st</sup> Respondent carried out boundary identification in accordance with the law? It is the petitioner's submission that the 1<sup>st</sup> Respondent was bound to comply with Section 19 of the Land Registration Act, but having failed to hear the Petitioner failed to adhere to the law.
17. On issue 3, is whether there exist any legal justification restraining the 1<sup>st</sup> Respondent from visiting the disputed area and carrying out a fresh boundary dispute, in accordance with the law, the Petitioner submits that there was no justification by the court restraining the 1<sup>st</sup> Respondent from visiting the disputed area as the boundary dispute report was never adopted as an order of the court.
18. On the fourth and las issue of whether there is any consequential or relief that this Honourable court should grant, the Petitioner submits that he is entitled to the reliefs sought in the Petition; and urged the court to allow the Petition.

### **3<sup>r</sup> and 4<sup>th</sup> Interested Parties Submissions**

19. The 3<sup>rd</sup> and 4<sup>th</sup> Interested parties submit that the Petition herein raises issues that were heard and determined in ELC 36 of 20214, hence relitigating the same issues thus rendering the Petition Resjudicata.
20. The 4<sup>th</sup> Interested parties, submit that the Petition is an abuser of the court process.
21. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents did not file submissions but placed reliance solely on the Replying affidavit sworn on 20.01.2024.
22. From the Petition and the Respective replies, the court notes the following undisputed facts;



1. That the survey reports dated 6<sup>th</sup> June 2022 was prepared pursuant to court orders issued in Kilgoris ELC No. 36/2021.
2. The contents of the ground/report dated 06.06.2022 and filed on 8<sup>th</sup> June 2022 were considered and formed part of the judgment delivered on 16<sup>th</sup> January 2023 as capture interalia at paragraphs 6-10, 12-16, 81, 93, 105 and 108 of the said judgment.
23. Having analysed the Petition the Replying affidavits, and the submissions, the court frames the following as issues for determination
  - i. Whether the court has jurisdiction to hear and determine the Petition in view of
    - a. The fact that the Petition arises from issues emanating from the judgment delivered in Kilgoris No. 36 of 2021.
    - b. The issue of Resjudicata as raised by the Interested Parties?
      - i. Whether or not the Petition is merited.
      - ii. What reliefs ought to issue.
      - iii. Who bears the costs of the Petition.

### **Analysis and Determination**

24. The first jurisdictional sub issue framed herein has not been raised by the parties but has been raised by the court suo moto, in line with the holding in *Rafiki Enterprises Limited v. Kingsway tyres and Automart Limited* where the court of Appeal held *interalia*,

“Every court has a duty to determine its jurisdiction in a particular matter.”

25. The issue stems out from the Petition and has been foundation on the findings that the contents of the ground report dated 06.06.2022 formed part of the judgment in Kilgoris ELC Case No. 36 of 2021.
26. Indeed, the ELC Court as a court of equal status with the High Court can hear and determine constitutional petitions in matters relating to its jurisdiction, where issues of infringements of rights are raised therein, as was held by the Supreme court in the Karisa Chengo decision where the court held interalia, “By being equal status, the High Court therefor does not have jurisdiction to supritend, supervise, direct, guide, sleplord and/or review the mistakes real or perceived of the ELRC and ELC administratively or judiciously as was the case in the past.

“To us it simply means that the ELRC and ELC exercise the same powers as the High Court in performance of its judicial function, in its specialized jurisdiction but they are not the High Court....”

27. The question arising is whether then the ELC Court exercising its jurisdiction to hear constitutional petition can entertain issues that were canvassed before a court of concurrent jurisdiction in a civil claim?



28. The Supreme Court of Kenya in its decision in the Case of *Kenya Hotel Properties v. Attorney General* (Petition No. 16 of 2020) 2022 eKLR had occasion to answer a similar issue. At paragraph 55 held as follows

“As was thus rightly noted by the High Court and the Court of Appeal, the Rule of thumb is that superior courts cannot grant orders to reopen or review decisions of their peers of equal and competent jurisdiction much less those court higher than themselves.....” It follows that if the Petitioner was dissatisfied with the decision rendered in Kilgoris ELC 36/2021, he ought to have preferred an appeal against the said decision of Hon. Mr. Justice E.M Washe, and not to file this constitutional petition in effect which amounts to an abuse of the court process.

29. Having noted the said position as espoused by the supreme court it follows that this court lacks jurisdiction to deal with the issues raised in this petition including the issue of *Resjudicata* and/or other issues of the merits of this petition as framed above.

30. The court finds that this petition ought to be struck out, but since it is an abuse of the court process the petition is thus dismissed; with costs to the Respondents and the Interested Parties.

31. I had reserved the issue of the removal of restriction filed in against titles No. Transmara/Ololchani/1673 that was sought to be removed in Kilgoris ELC Misc No. E009 of 2024 (*Ole Ketuno Ole Basi v. Directorate of Criminal Investigation and 2 Others*) whose ruling was delivered on 28.07.2025 to await the outcome of this petition.

32. The petition having been dismissed there would no basis for the restriction to be in force and the court hereby orders the removal of the restrictions registered by the 1<sup>st</sup> Respondent over Transmara/Ololchani/1673.

**DATED AT KILGORIS THIS 30<sup>TH</sup> DAY OF JULY, 2025.**

**HON. M.N MWANYALE**

**JUDGE**

In the presence of

CA – Emmanuel/Sylvia/Sandra

Mr. Tawo for the Petitioner

Mr. Nderitu h/b for Mr. Ranah for Respondent

Mr. Ochwangi for the Interested Party

