



THE JUDICIARY



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

ELCLA NO E006 OF 2023

KISANDA KILANDA ENTERPRISES

APPELLANT

=VERSUS=

LETEIPA OLE NKENDINYE.....1ST

RESPONDENT

TWAPAI OLE TENKEET.....2ND

RESPONDENT SOONI OLE TENKET.....

3RD RESPONDENT

(Being an 2nd Appeal from the Award of the Rift Valley Appeals Committee in Case No 6 of 2001, after Court of Appeal directions dated 31st March 2023, which Appeal emanated from the entire Judgment and Orders of Justice Onyanja (as he then was) in HCCAPPEAL NO 863 OF 2001)

JUDGMENT

1. The Appeal herein emanates from the Judgment of the Court of Appeal dated **31st March 2023**, wherein the said court in its ultimate paragraph (42) of the Judgment held as follows;

“the upshot of the foregoing is that we allow this appeal and set aside the High Court decision and remit the appeal back to the Environment and Land Court for it to determine

the exact extent of which the parcel of Land LR CIS MARA /OLOLULUNGA/144 overlaps into LR NO CIS MARA/OLOLULUNGA/ 126. Since the appeal has been partially successful, each party should bear its own costs.”

2. From the above extract of the Court of Appeal Judgement and holding, it is clear that the appeal before it as filed by the Respondents herein partially ***succeeded, and*** the said Court did narrow down the issue for determination being; the Environment and Land Court to determine the exact extent of which ***Land Parcel No. 144*** overlaps over Land ***parcel No 126.***

3. This Appeal is therefore being the one remitted from the Court of Appeal was narrowed down to the above determination, and it is not an appeal on the entire Amended Memo of Appeal dated ***29th July 2003,*** as submitted by the Respondents herein

4. The matter herein emanated from the decision of the ***Land Disputes Tribunal*** in ***Ololulunga Narok,*** wherein the Appellant herein had complained that the Respondents had encroached on its parcel of land ***Cis Mara /Ololulunga/126.*** After hearing of the parties, the Land Disputes Tribunal in its decision of ***27th February 2001,*** held that;

“the tribunal court together with the Government offices of District Registrar of Lands and the District Surveyor do visit the

area to mark these boundaries as well as mark the road between land parcels No. 80,81, 82 and 144 and 126.”

5. The Respondents herein were dissatisfied with the determination of the **Narok Land Disputes Tribunal**, and they filed an Appeal before the **Rift Valley Provincial Appeals Committee**, being **Tribunal Appeal No. 6 of 2001**, and on **7th November 2001**, the Appeals Committee made its determination, and set aside the decision of the **Narok Land Disputes Tribunal**, and replaced it with an Order that the end point of beacon on the road of land parcels **No. 81** and **82** at the swamp is also the end point of land parcels **No. 144** and **126** to the original beacon at **Enosagaomi River**.
6. The said **Rift Valley Provincial Land Disputes Tribunal** ordered the **Narok District Surveyor** to assist the parties identify these aforesaid boundary points in the presence of the parties. The Appellant herein was aggrieved by the said decision of the **Provincial Land Disputes Appeals Committee**, and he proffered an Appeal before the High Court, being **HCCCAPPEAL NO.863 OF 2001**.
7. When the Appeal came up for hearing before the High Court on **16th November 201**, a consent was recorded by Counsels for both parties wherein among the issues consented upon is that within **60 Days** of making that order, the Chief Land Registrar in conjunction with Narok District Land Surveyor do establish the boundaries shared

by land parcels no **Narok /Cis Mara/Ololulunga /126, 144, 80 and 81.**

8. It is evident that the parties had agreed that the main issue in was the boundary disputes between the referred parcels of land. The Chief Land Registrar and District Surveyor did prepare a report dated **12th June 2012**, which formed the basis of the said Court Judgment of **4th March 2015**, which Judgment aggrieved the Respondents herein.
9. Consequently, the Respondents appealed against the said Judgment to the Court of Appeal vide **Appeal No 428 of 2018**, which **Appeal partially** succeeded, and the said court remitted the appeal back to this court (ELC) to determine the extent upon which Land Parcel **No. 144**, had overlapped into parcel **No. 126**.
10. The Court of Appeal had faulted the High Court to the effect that the court should have called additional evidence from the Chief Land Registrar and District Surveyor Narok to establish the exact extent of the overlap that land parcel **144**, had overlapped on land parcel **No. 126**, instead of relying on the evidence that had been introduced through submissions.
11. It was on the basis of the above holding of the Court of Appeal that the Court did summon the **District Land Registrar** and **Surveyor** to Appear in court and be cross-examined on the content of the report filed in court dated **12th June 2012**, which report had been prepared by

Aubrey G. Kibebe, District Surveyor and **P. M Mengi**, the District Land Registrar who have long left the jurisdiction of this court.

12. Before, the two lands officers could be called for cross-examination, the Respondents filed an application dated **12th March 2024**, wherein they sought for orders that the consent order that was entered by the parties on **16th May 2011**, be varied and / or set aside, which application was disallowed by the court, since the said consent formed the basis of the Court of Appeal holding that this court should determine the extent of encroachment as stated in the Report filed in court.
13. Before the current Land Registrar and Surveyor could appear in court for cross examination, they sought leave from the court to visit the ground and familiarize themselves with the parcels of land, since they are not the ones who had prepared the Report in issue (Dated 12th June 2012). The court allowed their Application and after the ground visits, two Reports were filed in court in regard to this visit.
14. The first report is by the **Assistant County Commissioner, Jared Owino**, who informed the court that initially when the two officers together with the security team visited the ground where the parcels of land are situated, there was hostility from the locals and neighboring land owners. However, with much persuasion, calm and peace prevailed and the two officers carried out some observations.

15. The second Report is by the Land Registrar **Mr. P. M. Odindah** who informed the court that together with the surveyor, they visited the ground as allowed by the court, but they could not pick out the boundaries of land parcel **No. 144**, because then owners of land parcels **No. 80** and **81** resisted the exercise, on allegations that they were not parties to the court orders and proceedings that culminated in the said exercise. He reported that they were unable to appreciate the ground and substantiate and/or criticize the Report dated **12th June 2012**. However, they were cross examined on the contents of the said report.

16. When **Mr Odinda** was called to the witness box, he testified that together with the surveyor, they visited the ground where the parcels of land are situated, and they were given the historical background of Land Parcels No. **Cis Mara/ Ololulunga /126** and **144**. That when they asked the proprietor of land parcel **No. 144**, to show them the beacons which parcel of land was bordering land parcels **No. 80** and **81**, they received resistance from the owners of two land parcels **No. 80** and **81**, reasons being that they were not parties to the proceedings.

17. Therefore, the owner of parcel **No. 144**, could not show them where the beacons of its border with parcels **No. 80** and **81** was. He further testified that without confirmation of the beacons, he could not tell if land parcel **No. 144**, had encroached on land parcel **No. 126**, and to what extent.

18. It was his testimony that from the **Green card**, and title deed, land parcel **No. 126** is **91.5 ha** and **144** is **169 ha**. He could therefore not defend the Report of **12th July 2012**.
19. Upon being cross examined by **Mr Kinyanjui for the Respondents**, he confirmed that the basis of his ground visit was the consent of the parties, and the early report filed by the Land Registrar and Surveyor dated **12th June 2012**. He also confirmed that the Judgment of the court of **4th March 2015**, referred to the two parcels of land which formed the basis of the consent of **16th November 2011**, being parcels No. **126** and **144**.
20. He also confirmed that land parcel **No. 126**, belongs to the Appellant herein **Kisanda Kilanda Enterprises**, and that the said land was first registered on **12th September 1980**, to **Augustino Kirika Mungai**. That the said parcel of land arose from **Ololulunga Adjudication Section**, and there are three distinct maps over this adjudication section. It was his evidence that Land Parcel **No. 126**, also borders land parcel **No. 206**, and he needed to establish boundaries with the adjoining parcels of land.
21. The Surveyor **Emmanuel Kipkurui Keitany** was also cross examined and he confirmed that together with the Land Registrar, **Mr Odindah**, they visited the disputed parcels of land as per the court directives. That they went to the ground and made observations, but they met resistance and hostility on the ground from the locals and

neighboring land owners. Therefore, they did not make any meaningful observations.

22. Though he had seen the Report made by the Land Registrar and Surveyor, he could not confirm that **Report of 12th November 2012**, but it was his evidence that the parcels of land are in **Ololulunga Adjudication Section**, and the relevant maps were **No.132/iii, 146/1, 131/iv**, and all the maps were to the scale of **1:50,000/=**. Further that land parcels No. **144** and **126**, border each other.
23. Upon cross examination by **Mr Kinyanjui** for the Respondents, he confirmed that when they visited the ground they did not establish the beacons, and he could not give the exact measurements of the parcels of land. He could not confirm the Report dated **12th June 2012**, by the surveyor, until when he goes to the ground and takes his own measurements on the ground.
24. After the cross examination, parties filed their respective written submissions, and also highlighted them in open court on **12th May 2025**.
25. **Mr Kerongo** for the Appellant filed his submissions dated **15th April 2025**, and submitted that the Court of Appeal gave directions in its Judgement of 31st March 2023, to the effect, upon remitting the appeal to the ELC, the Court was only to deal with the cross examination of the Land Registrar and Surveyor to determine this Appeal, but not to determine the appeal based on the Memorandum of Appeal.

26. **Mr Kerongo** referred the court to the consent dated **16th November 2011**, which was entered by the parties voluntarily. He urged the Court to order the Land Registrar and Surveyor to fix the boundaries as mandated by **Sections 18 and 19** of the **Land Registration Act**.
27. **Mr Kinyanjui** for the Respondents submitted on the entire Appeal, and it was his argument and submissions that the Court of Appeal set aside the entire decision of the High Court, and remitted the Appeal back to the **Environment and Land Court** for determination on all the issues raised in the Amended Memo of Appeal dated
28. However, based on the last Paragraph of the Judgment of the Court of Appeal dated **31st March 2023**, the Appeal before the said court partial succeeded, and the said court remitted the file back to the **Environment and Land Court** to determine the extent upon which land parcel **No. 144** had overlapped into land parcel **No. 126**. That was the reasons that the Land Registrar and Surveyor were summoned by the court to give additional evidence as suggested by the Court of Appeal, which additional evidence would aid this court to determine the extent of encroachment.
29. It is trite that when the Court of Appeal remits a matter back to the Superior Court, being High **Court, Environment and Land Court or Environment and Labour Relations Court**, with specific issues for determination, the primary effect is that the superior Court

is bound by the directions and findings of the Court of Appeal, and its scope of action is limited to addressing only those specified issues, and cannot depart from those issues.

30. The effect of such directions of Court of Appeal is that the said directions are ***binding directions***, and the superior court must adhere strictly to the said directions and the issues framed by the Court of Appeal. The Courts of Appeal decision on the points of law or fact that it has determined becomes binding on the Superior Court based on the doctrine of stare decisis and hierarchical authority of courts.
31. Further, the Court upon which the matter is remitted back to has limited Jurisdiction, and this jurisdiction upon remittal is constrained to the specific issues outlined in the remittal order. The court in which the matter is remitted cannot revisit matters already decided by the Court of Appeal or entertain new issues outside the scope of the directions, unless those new issues are necessary and directly arise from the need to determine the specified points, and the parties have had an opportunity to be heard on them.
32. In the instant Appeal, the Court of Appeal narrowed the issued that the Environment and Land Court should determine; The ELC was limited to only determine the extent of encroachment and or overlap of Land parcel No 144 into 126, and not the whole appeal.

33. This court is bound by the said directives, and cannot depart from those directions. The purposes of such direction are to expedited resolution of the matter by narrowing the scope of the new proceedings to specific, unresolved issues, the process aims to facilitate the just and expeditious resolution of the overall dispute, avoiding a full, fresh retrial of all matters, in line with the overriding objectives of the **Civil Procedures Act** in **Sections 1A** and **1B**, and **Article 159** of the Constitution.
34. This court finds and holds that the Court of Appeal did set out the issue for determination in this appeal; which is to determine the extent of encroachment and /or overlap of land parcel **No. 144**, upon land parcel **No 126**, and nothing more, because the consent order of **16th November 2011**, had already been adopted by the court as its order, and the issue in dispute was indeed boundary disputes.
35. This Court in its determination is only limited to determining what extent upon which land parcel **No. 144**, has encroached upon land parcel **No. 126**. The basis of this determination would have been the evidence of Land Registrar and Surveyor basing that evidence on the ground Report of **12th June 2012**.
36. However, the Land Registrar and Surveyor who appeared in Court for examination, were not the makers of the said Report of 12th June 2012, and they informed the court that when they visited the ground, they could not determine

the extent of encroachment and/ or overlap, as suggested by the Court of Appeal, because they encountered resistance from the proprietors of land parcels **No. 80** and **81**, which borders land parcel **No. 144**.

37. The two land officials could therefore not own or disown the Report of **12th June 2011**, and their evidence was not helpful in determining to what extent land parcel **No. 144** has encroached and / or overlapped into land parcel **No.126**.

38. The interest of the court is to do justice. It is evident that there is a conflict herein between land parcels **No. 126** and **144**, and that conflict is whether the proprietors of land parcel **No. 144**, have encroached and/ or overlapped onto land parcel **No. 126**. This dispute is indeed a boundary dispute, and from the Report filed in court on **12th June 2012**, and the evidence adduced by the Land Registrar and the Surveyor upon cross examination on the ground visit, and the earlier report, that evidence cannot aid the court in determining the extent of the encroachment and/ or overlap.

39. This case being a boundary dispute, how can the court determine the extent of the encroachment and/ or overlap? Boundary disputes are first handled by the Land Registrar, who has the jurisdiction to determine them under **Sections 18** and **19** of the **Land Registration Act**. The Land Registrar with the assistance of the District Surveyor should revisit the disputed parcels of land and fix the

boundaries, basing such exercise on the available Registry ***Index Map***.

40. ***Sections 18 and 19*** of the ***Land Registration Act, 2012*** provides that the duty of resolving boundary disputes and fixing boundaries of Registered parcels of land is the mandate of the Land Registrars. See the case of ***George Kamau Macharia v Dexka Limited (2019) eKLR***, where the Court held as follows; -

“From the above provisions of the law, it is manifestly clear that the above section gives the mandate to the Land Registrar to resolve boundary disputes of land with general boundaries. Registry Index Map (RIM) only indicate approximate boundaries and the approximate situation on the ground. Even if this Court was to hear and determine this matter it will still require the input of the Land Registrar. The framers of Section 18 (2) of the Land Registration Act placed this matter before the Land Registrar who has the technical advice and resources of the district surveyor to determine and ascertain the boundaries.”

41. Further, given that there is history of hostility and resistance from the neighboring land owners, in carrying out this exercise of ***fixing the boundaries***, the ***Narok County Land Registrar and Surveyor*** should be accorded sufficient security to carry out the said exercise. The said security should be given by the ***OCS Melelo***

Police Station, and the **County Commissioner**, so that the issue of the sizes of the two parcels of land **No 144** and **No 126** can be determined **and** resolved once and for all. Further, the said exercise shall also determine the extent of encroachment and / or overlap if any of land parcel **No144**, into Land Parcel **No. 126**, in accordance to the directions issued by the court of appeal.

42. Having considered the available evidence, the Judgment of the High Court **HCCAPEAL No. 863 of 2001**, and the Judgment of the Court of Appeal dated **31st March 2023**, and the rival written submissions, this court determines the issue that was reemitted to this court by the Court of Appeal as above.

This Appeal is determined accordingly as above.

Dated, signed and Delivered virtually at Narok this 17th day of December 2025.

***L. Gacheru
Judge.***

Delivered online in the presence of; -

Court Assistant - Meyoki

Appellant's Counsel - Mr Kerongo

Respondents Counsel - Mr Harrison Kinyanjui

***L. Gacheru
Judge.***