



REPUBLIC OF KENYA



KENYA LAW
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**Kapario v Tasur & another (Environment and Land Appeal E017 of 2025)
[2025] KEELC 8653 (KLR) (11 December 2025) (Judgment)**

Neutral citation: [2025] KEELC 8653 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
ENVIRONMENT AND LAND APPEAL E017 OF 2025
MN MWANYALE, J
DECEMBER 11, 2025**

BETWEEN

SOLOMON KAPARIO APPELLANT

AND

DICKSON OLOITIPITIP TASUR 1ST RESPONDENT

**LAND REGISTRAR TRANSMARA WEST, EAST AND
SOUTH 2ND RESPONDENT**

JUDGMENT

1. This Appeal arises from the Ruling and orders of Hon. C.W Waswa (SRM) delivered on 25th February 2025 in Kilgoris ELC Misc. Application No. E003/2025.
2. The Appellant Mr. Solomon Kapario being aggrieved by the said Ruling penned 4 grounds of Appeal vide the Memorandum of Appeal dated 24th of March 2025 and sought for the following reliefs:
 - a. That the Appeal be allowed.
 - b. That the Ruling and orders of Hon. W.C Waswa delivered on 25.02.2025 at Kilgoris Law Courts in ELC Misc Application No. E003 of 2025, be set aside and substituted with an order allowing the Applicants Notice of Motion Application dated 28.02.2025.
 - c. That in the alternative the court do make such orders as it deems just to grant.
3. The grounds of Appeal are: -
 - a. That the Learned Trial Magistrate erred in Law and in fact by failing to appreciate that the registered owners of land parcels numbers Transmara/Shartuka/450, 815 and 822 were not necessary parties in the circumstances.



- b. That the Learned Trial Magistrate erred in law and in fact by failing to appreciate that the process of boundary determination is a standard procedure which had commenced and the registered owners of land parcels number Transmara/Shartuka/450, 815 and 822 were already participating except for the 1st Respondent who scatted the whole process.
 - c. That the Learned Trial Magistrate erred in law and in fact failing to appreciate that denial of the said orders promoted the 1st Respondents aggression thereby occasioning great injustice to the Applicant.
 - d. That the Learned Trial Magistrate erred in law and in fact by dismissing the application dated 28.01.2025 with costs to the 1st Respondent whose wanton and imprudent conduct necessitated filing of the Application.
4. upon admission of the Appeal directions were issued on the same proceeding by way of written submissions.

Appellant's submission

5. The Appellant submits that he is the registered owner of Transmara/Shartuka/820 while the 1st Respondent occupies Transmara/Shartuka/450.
6. The two parcels are neighbouring parcels and there is a boundary identification and re-establishment process that the 2nd Respondent had commenced but the 1st Respondent has frustrated the same.
7. The Appellant places reliance on Order 1 Rule 9 of the Civil Procedure Rules and submits that no suit should be defeated by reason of misjoinder or non-joinder of the parties.
8. The Appellant submits that the Trial Magistrate ought to have ordered joinder of the proprietors of the adjoining parcels of land who were not part of the Miscellaneous Application and hence not to dismiss the application.
9. The Appellant in support of grounds 3 and 4 of the Appeal submits that the dismissal of the Application greatly causes hardship on the Appellant as no boundaries of his land determined and established.
10. Fundamental rights to freedom will be infringed without any needy.

1ST Respondents' submission

11. The 1st Respondent's submitted on the 4 grounds of Appeal seriatim.
12. On ground 1, the 1st Respondent submitted that the non-joinder or non-involvement of the owners of the adjoining parcels offended the rules of natural justice and that the Trial Magistrate was right in disallowing the application on account of their non-joinder.
13. On ground 2, the 1st Respondent submitted that boundary determination conducted without affording all proprietors a hearing are null and void. The 1st Respondent placed reliance on the decision in Wamutu Vs. Kiarie.
14. On the third ground, the 1st Respondent submitted that the same was speculative and the Trial Magistrate did not promote any aggression and that the same was unmeritorious.



15. On the 4th ground, the 1st Respondent submitted that the award of costs to the successful party was lawful and justified under section 27 of the Civil Procedure Act, as costs follow the event and no proper reason had been advanced to justify a departure from the same.
16. On the strength of the above the 1st Respondent submits that the Appeal lacks merit and that the same ought to be dismissed.
17. The 2nd rESPONDENT did not file submissions in this Appeal.

Issues for Determination

18. Having analyzed the Record of Appeal the rival submissions as well as considered the law the court frames the following as issues for determination?
 - i. Whether or not the Appeal is merited? In deciding this issue, the court shall consider whether the application before the trial court could be salvaged?
 - ii. What orders ought to issue.
 - iii. Who bears the costs of the Appeal?

Analysis and Determination

19. In order to determine this Appeal the court shall fulfil its duties as a first Appellate court, the duties to “reconsider the evidence, evaluate it and draw its own conclusion” as was stated in *Selle and Another Vs. Associated Motor Boat and 3 Others Limited*.
20. The gravamen of the Appeal, is that the Learned Trial Magistrate erred in law in dismissing the application for reasons of non-joinder of the other proprietors of adjoining parcels.
21. Indeed, the Appellant as Applicant before the trial court had sought for the Land Registrar to determine and fix boundaries between parcels Transmara/Shartuka/820, 450, 815 and 822.
22. In his supporting affidavit, the Applicant provided prima facie evidence of his registration as proprietor of Transmara/Shartuka/820 by exhibiting a copy of a title as well as a copy of official search. The Applicant exhibited a copy of a letter dated 21.08.2024, from the Land Registrar addressed to other persons including the 1st Respondent stating of the intention to fix the boundary of Transmara/Shartuka/820.
23. The Respondent in his Replying affidavit stated that he owned Transmara/Shartuka/641 which was not an adjacent parcel to the parcel in dispute and stated further that no evidence was adduced by the Applicant to suggest that he was the registered owner of parcel number Transmara/Shartuka/450. At paragraph 6 and 7, the Respondent conceded to a dispute of trespass and made a subtle admission to ownership at paragraph 8 of his Replying affidavit.
24. In his Ruling the Learned Trial Magistrate at paragraph 10 of the Ruling, held as follows; “this court notes that the applicant has not availed any evidence to demonstrate that the 1st Respondent owns either of the properties known as Transmara/Shartuka/450/ 815 and 822”.



25. However, in view of the subtle admission to ownership as stated at paragraph 8 of the Replying affidavit which reads

“That if the said orders are granted to the Applicant herein, the fixing of the said boundaries without a substantive hearing will have me evicted from my parcel of land. I will be evicted from the property through orders improperly obtained”.

26. The powers to fix boundaries bestowed upon the Land Registrar under sections 18 and 19 of Land Registration Act, there ought to be notice to all the proprietors of adjoining parcels. Whereas the said proprietors were not made parties to the Application, there was proof that other persons other than the 1st Respondent had been informed of the boundary fixing exercise.

27. Whereas the court rightly found that the other proprietors were necessary parties to the boundary fixing, their non-joinder could be cured by striking out the Application rather than dismissal of the application, since order 1 Rule 9 of the Civil Procedure Rules provides

“No suit shall be defeated by reason of misjoinder or non-joinder of the parties....” hence the Application could be salvaged.

28. Having established that there is indeed an issue that requires the involvement of the Land Registrar to determine whether there is trespass or encroachment, it follows that the Appeal is merited, more so since the Application could be salvaged in any event.

29. Accordingly, having found merit in the Appeal the court allows the appeal in terms that’

- i. The Appeal is hereby allowed.
- ii. The order for dismissing the Application dated 28.01.2025 is hereby set aside and in place an order for striking out the Application dated 28.01.2025 is issued.
- iii. Costs of the Application and the Appeal are awarded to the Appellant.

DATED AT KILGORIS THIS 11TH DAY OF DECEMBER, 2025.

HON. M.N MWANYALE

JUDGE

In the presence of

CA – Emmanuel/Sylvia/Sandra

Mr. Tawo for the Appellant

Ms. Mireri for the 1st Respondent

Mr. Ranah for the 2nd Respondent

