



**Ol-Kalou Farmers Co-operative Society Limited v Kabue & another (Environment and Land
Judicial Review Case E001 of 2025) [2025] KEELC 8573 (KLR) (3 December 2025) (Judgment)**

Neutral citation: [2025] KEELC 8573 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E001 OF 2025**

JM KAMAU, J

DECEMBER 3, 2025

BETWEEN

OL-KALOU FARMERS CO-OPERATIVE SOCIETY LIMITED PLAINTIFF

AND

FRANCIS KINYANJUI KABUE 1ST DEFENDANT

MOSES NDUNGU KABUE 2ND DEFENDANT

JUDGMENT

1. Before me is a Motion. dated 20/6/2025 filed in Court on 20/6/2025. The same was filed after leave was granted on 27/5/2025. In the suit, Motion., the Ex-parte Application, Ol -Kalou West Farmers Co-operative Security Ltd, sought for the following orders:-
 1. That the orders of surveyor of Nyandarua to visit and conduct a resurvey of the parcel of land known as Nyandarua/Ol -Kalou West/879 situated in Ol -Kalou West which is the subject of this dispute.
 2. That the County land surveyor refused to come to the ground and carry out the resurvey be declared unlawful and unreasonable.
 3. That the costs of this Application as well as those of the Summons to the County Surveyor be in the cause.
 4. That the Court do grant any other relief that it may deem fit and just to grant.
2. The Ex-parte Applicant supports his Motion. on the grounds that:-
 - a. She is the registered owner of Nyandarua/Ol -Kalou West/ 879.
 - b. She has been restrained by a Court order issued by the Senior Principal Magistrate Nyahururu Civil Case No 116 of 2005 dated 25/1/2018 from interfering with the said land parcel.



- c. This order was issued in response to an ongoing dispute, yet the Applicants Title to the land remains valid and indefeasible.
 - d. There has been significant interference and confusion regarding the exact boundaries of the land.
 - e. The land was improperly surveyed which is the root cause of the disputes leading to the Court Order.
 - f. The Ex-parte Applicant's several attempts to have the County Land Surveyor conduct a resurvey to clarify and re-demarcate the boundaries have bore no fruits.
 - g. In his Statutory Statement of even date, Mr Samwel Wairegi chairman of the Ex-parte Applicant says that the Respondents is the owner of Nyandarua/Ol -Kalou West/142 which is registered in the name of David Kibue Kinyanjui which is a complete distinct parcel of land from the Ex-parte Applicants Nyandarua/Ol -Kalou West/879 through the 2 boarder.
 - h. There was an Appeal to this case after the Judgment of the lower Court but the same was dismissed which according to the Ex-parte Applicant has left the Applicant without any meaningful remedy and have resulted in continued uncertainty over the ownership and boundaries of the land.
 - i. That the refusal by the surveyor to carry out the resurvey is irrational, unreasonable and contrary to the Applicants legitimate expectation as a lawful title holder of the land.
 - j. This has deprived the Applicant of her property rights without any due process of law.
 - k. The Applicant believes that a resurvey could clarify the boundaries of the parcel of land and resolve the ongoing dispute.
3. On their part, the 2nd Respondents jointly serve a Replying Affidavit on 3/7/2025 in which they deponed that the Application by the Ex-parte Applicant is bad in law, incompetent, a non-starter, an abuse of the Court process and does not meet the well settled principles of granting orders of mandamus sought in the Application and that the same is meant to delay the Ex-parte Applicant's enjoyment of her fruits of an otherwise successful Judgment and right to use and occupy the parcel of land L.R No Nyandarua/Ol -Kalou West/142 and that it is also misusing the Court.
 4. In the Judgment of the Court in Nyahururu 116, their late father David Kibue Kinyanjui was declared the owner of L.R Nyandarua/Ol -Kalou West/142 while the Ex-parte Applicant the trespasser being hived off one (1) acre thereof and issued an Order of Rectification of Title No L.R Nyandarua/Ol -Kalou West/879 by removing 1 Acre from the land and to have the same included in L.R Nyandarua/Ol -Kalou West/142.
 5. Mutation forms were prepared thereafter reflecting the correct acreage which were signed on the 3rd Respondent's part but the Ex-parte Applicant refused to sign the same. An Application by the 3rd Respondent to have the said Mutation and transfer documents by the Deputy Registrar of the Court was to be heard by the Court on 7/7/2025 (now past).And therefore this Application is unmerited.
 6. Having given the parties herein a chance to submit, only the Ex-parte Applicant took advantage of the opportunity. I wish to state from the outset that this Court has jurisdiction to issue an Order to any Court or tribunal below it by way of a writ of mandamus.
 7. However, when issuing the orders, the Court must act with a lot of care and caution so that the Court does not sit to decide matters that are the subject of the said Court and determine on the merits of



the same. But the Court can compel the Court to act where it has failed to do so for instance if the Court refuses to decide on certain issues. For example, if the Deputy Registrar refused to execute the Mutation forms or transfer documents where the proprietor of the land has refused to do so. But this is not the case herein. In fact, the Court was told that such an Application was to have come for hearing on 7/7/2025.

8. I have not been told what became of it. In any case the prayer was made by the 3rd Respondent and not the Ex-parte Applicant. But this case has been heard and an Appeal decided.
9. What were the prayers in the initial suit? i.e Nyahururu SMPCC No 116 of 2004 between the late David Kabue Kinyanjui being represented by the 3rd Respondents herein (as Plaintiff) and the Ex-parte Applicant herein being the Defendant in the Nyahururu case?
 - a. A Declaration that the Defendant (Ex Parte Applicant) is a trespasser on a portion of the Plaintiff's land which is included in land reference No Nyandarua/Ol -Kalou West/879, and an order of eviction of the Defendant from the said parcel.
 - b. An order of rectification of title No L.R No Nyandarua/Ol -Kalou West/879 in so far as it includes a portion of one (1) Acre from L.R Nyandarua/Ol -Kalou West/142 so as to exclude the portion of one (1) acre alienated from the Plaintiff's land and a mandatory injunction restraining the Defendant , its servants, agents and employees or otherwise howsoever from encroaching , interfering with or in any other manner dealing with L.R Nyandarua/Ol -Kalou West/142 and the portion of the Plaintiff's (3rd Respondents) land illegally included in L.R Nyandarua/Ol -Kalou West/879.
 - c. Ksh 33,000/- by the value cut trees together with interest thereon at Court rates.
 - d. Costs and interest.
10. The learned Trial Magistrate the learned C. K Obara (Resident Magistrate) having had the case held that:-

.....The evidence adduced in Court is that within the boundary of plot 142 when the same was allocated the Plaintiff and the Defendant were both residing there and even when the plot was registered, the plot had trenches which marked the boundaries. The suit land was owned by the Settlement Fund Trustees and they were the original owners before they transferred the land to their successor.
11. The Defence witnesses in their evidence did not testify that an inquiry was never made before registration of the plot to the Plaintiff. In absence of such factual evidence, the Court is not able to rule in favour of the Defendant. The issue of law raised by the Defence cannot alter the facts of the case. It was not part of the Defendant's Defence.

Whether the Plaintiff is entitled to the claim of Ksh 33,000 being the value of the cut trees

12. PW1 did testify that he planted Cypress trees in the suit land and the same was illegally cut by the Defendants. DW1 and DW2 testified and said it is them who planted the trees. One thing that is certain is that trees were cut. Having ruled that the suit plot belonged to the Plaintiff and in the absence of any minutes by the Defendant showing that it had resolved to plant trees or carry out any such other



activities, I am persuaded that the trees were planted by the Plaintiff. He only failed to prove that the trees cut costed Ksh 33,000/=. I hence decline to allow this prayer.

“.....The Plaintiff (3rd Respondent) having proved his case on a balance of probabilities, I direct that the Defendant bears the costs of this case.....”

13. In the upshot I do hereby enter Judgment in favour of the Plaintiff (3rd Respondent) and against the Defendant (Ex-parte Applicant) in terms of prayers (a) and (b) of his Plaint with costs and interest from the date of this Judgment. Stay of execution 60 days.
14. Judgment as drawn in the Decree was therefore as follows: -
 - a. A Declaration that the Defendant is a trespasser on a portion of the Plaintiff's land which is included in the land Reference Number Nyandarua/Ol -Kalou West/879, and an order of eviction of the Defendant from the said portion.
 - b. An order for rectification of Title L.R Nyandarua/Ol -Kalou West/879 in so far as it includes a portion of one (1) acre from L.R Nyandarua/Ol -Kalou West/142 so as to exclude a portion of one (1) acre alienated from the Plaintiff's land and a mandatory injunction restraining the Defendant, its servants, agents, employees or otherwise howsoever from encroaching, interfering with or in any other manner dealing with L.R Nyandarua/Ol -Kalou West/142, and the portion of the Plaintiff's land illegally included in L.R Nyandarua/Ol -Kalou West/879.
 - c. THAT costs of this suit and interests be and is hereby awarded to the Plaintiff.
 - d. That stay of execution is granted for 60 days.
15. The Ex-parte Applicant having been dissatisfied with this Judgment appealed to this Court in ELC Appeal No 3 of 2017 when the Court was in Nyahururu. The Appeal was dismissed with costs to the Respondent (the Estate of the 3rd Respondent). The 1st and 2nd respondents did not participate in this appeal.
16. The matter having been decided by this Court, the Court cannot be called upon to interfere in another jurisdiction. If any orders granted by this Court have not been executed, execution orders or interventions can only be canvassed in the same matter but not in another jurisdiction by the name of Mandamus. The orders sought herein are therefore declined with costs.

JUDGMENT DATED, SIGNED AND DELIVERED AT NYANDARUA THIS 3RD DAY OF DECEMBER, 2025.

MUGO KAMAU

JUDGE

In the Presence of: -

Court Assistant: Samson.

Applicant's Counsel: Ms. Karanja.

Respondent's Counsel: Ms Wambui.

