



**Olekoyo & 4 others v Kasayiani & 5 others (Land Case E018 of 2025)  
[2025] KEELC 8586 (KLR) (3 December 2025) (Ruling)**

Neutral citation: [2025] KEELC 8586 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
LAND CASE E018 OF 2025  
LC KOMINGOI, J  
DECEMBER 3, 2025**

**BETWEEN**

**NKANYAGA KESUI OLEKOYO ..... 1<sup>ST</sup> PLAINTIFF  
MOTITET KESUI OLE KOYO ..... 2<sup>ND</sup> PLAINTIFF  
NGEENDI KESUI OLE KOYO ..... 3<sup>RD</sup> PLAINTIFF  
NTOODO KESUI OLE KOYO ..... 4<sup>TH</sup> PLAINTIFF  
NATINGOYE KESUI OLE KOYO ..... 5<sup>TH</sup> PLAINTIFF**

**AND**

**TIMA OLE KASAYIANI ..... 1<sup>ST</sup> DEFENDANT  
PANAI OLE TONKEI ..... 2<sup>ND</sup> DEFENDANT  
LASOI OLE PARTORORA ..... 3<sup>RD</sup> DEFENDANT  
THE DISTRICT SURVEYORS KAJIADO ..... 4<sup>TH</sup> DEFENDANT  
THE DISTRICT LAND REGISTRAR KAJIADO ..... 5<sup>TH</sup> DEFENDANT  
THE HON ATTORNEY GENERAL ..... 6<sup>TH</sup> DEFENDANT**

**RULING**

1. This ruling is respect of three applications dated 13<sup>th</sup> February 2025, 12<sup>th</sup> June 2025 and 24<sup>th</sup> July 2025.
2. The Notice of Motion dated 13<sup>th</sup> February 2025 by the Plaintiffs is brought pursuant to Order 40 Rule 1, 2, and 4, and Order 51 Rule 1 of the Civil Procedure Rules; Section 1A and 3A of the *Civil Procedure Act*; Section 13 of the *Environment and Land Court Act*; Article 40 and 159 of *the Constitution*; and all other enabling provisions of the law. It seeks for orders that:



- i. Spent
  - ii. The Court be pleased to issue an order of injunction restraining the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants by themselves, their servants, agents, proxies and/or persons exercising authority from them from dealing, trespassing, intermeddling and/or in any other manner interfering with the Plaintiffs use, possession, quiet use, occupation possession and/or ownership of all that piece of land known as Kajiado/ Dalalekutuk/ 17260 pending hearing and determination of the Application.
  - iii. The Court be pleased to issue an order of injunction restraining the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants by themselves, their servants, agents, proxies and/or persons exercising authority from them from dealing, trespassing, intermeddling and/or in any other manner interfering with the Plaintiffs use, possession, quiet use, occupation possession and/or ownership of all that piece of land known as Kajiado/ Dalalekutuk/ 17260 pending hearing and determination of the suit.
  - iv. The Honourable Court be pleased to issue an order directing the Officer Commanding Station Kajiado Police Station to ensure enforcement and compliance with the orders of the Honourable Court.
  - v. Costs be provided for.
3. The grounds are on the face of the application as set out in paragraphs 1 to 7. It is supported by the sworn Affidavit of Nkanyaga Kesui Olekoyo, the 1<sup>st</sup> Plaintiff/Applicant herein.
  4. He claims that the Plaintiffs are the registered owners of parcel Kajiado/ Dalalekutuk/ 17260 measuring 81.09 hectares. The 1<sup>st</sup> defendant is the beneficial owner of parcel known as Kajiado/ Dalalekutuk/ 1068 measuring 37.85 hectares registered in the name Moinah Lorkanduka Kalela (deceased); the 2<sup>nd</sup> defendant is the beneficial owner of Kajiado/ Dalalekutuk / 1066 measuring 37.70 Ha registered in the name of Tonkei Ole Butu (Deceased) and the 3<sup>rd</sup> defendant the registered owner of Kajiado / Dalalekutuk/ 1065 measuring 71.51 Ha. The three parcels border the Plaintiffs suit property in which the 1<sup>st</sup> – 3<sup>rd</sup> defendants have trespassed thereon, caused destruction and continue to graze their livestock thereby causing substantial loss to the Plaintiffs.
  5. He stated that sometime in 2020, he filed a boundary dispute and a report dated 18<sup>th</sup> June 2021 was filed which decision has never been set aside since the Appeal filed against the decision was withdrawn. The other suit (ELC E031 of 2022) was terminated before being heard or determined. It is his case that, the Plaintiffs are the legal owners of the suit property and are entitled to the orders sought.
  6. The Plaintiffs also filed the Notice of Motion dated 12<sup>th</sup> June 2025 pursuant to the same provisions of law as well as Section 68, 69, 70 and 101 of the [Land Registration Act](#) and Section 150 of the [Land Act](#). It seeks for orders that:
    - i. Spent.
    - ii. The Honourable Court be pleased to issue an order of inhibition stopping transfer, charge, lease, dealings, registration, transactions and subdivision over property Kajiado/ Dalalekutuk/1068, Kajiado/ Dalalekutuk /1066 and Kajiado / Dalalekutuk/ 1065 pending hearing and determination of the Application.
    - iii. In the alternative to prayer No 2 above, the Honourable Court be pleased to order for status quo pending hearing and determination of the application which status quo is to the effect that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants shall not transfer, charge, lease, deal, register, transact and



subdivide property Kajiado/Dalalekutuk/1068, Kajiado/ Dalalekutuk /1066 and Kajiado / Dalalekutuk/ 1065 pending hearing and determination of the Application.

- iv. The Honourable Court be pleased to issue an order of inhibition stopping transfer, charge, lease, dealings, registration, transactions and subdivision over property Kajiado/Dalalekutuk/1068, Kajiado/ Dalalekutuk /1066 and Kajiado / Dalalekutuk/ 1065 pending hearing and determination of the suit.
  - v. In the alternative to prayer No. 4 above, the Honourable Court be pleased to order for status quo pending hearing and determination of the application which status quo is to the effect that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants shall not transfer, charge, lease, deal, register, transact and subdivide property Kajiado/Dalalekutuk/1068, Kajiado/ Dalalekutuk /1066 and Kajiado / Dalalekutuk/ 1065 pending hearing and determination of the suit.
  - vi. Costs of the Application be provided for.
7. The grounds are on the face of the application as set out in paragraphs 1 to 8. It is also supported by the sworn Affidavit of Nkanyaga Kesui Olekoyo. He claimed that he had discovered that the 1<sup>st</sup> to 3<sup>rd</sup> defendants were in the process of subdividing parcels Kajiado/Dalalekutuk/1068, Kajiado/Dalalekutuk /1066 and Kajiado / Dalalekutuk/ 1065. It is his case this would defeat the substratum of the suit unless the conservatory orders sought were issued to preserve the suit.
8. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants then filed an the Notice of Motion dated 24<sup>th</sup> July 2025, brought pursuant to Section 1A, 1B, 3A, 7 and 63 (e) of the Civil Procedure Act; Order 2 rule 15 (1)(b) and (d) Order 51 Rule 1 of the Civil Procedure Rules; and Article 50 and 159 (2)(d) of the Constitution seeking orders that:
- i. The Plaintiff dated 13<sup>th</sup> February 2025 be and is hereby struck out for being res judicata and therefore an abuse of Court process.
  - ii. Costs of this Application of this Application be provided for.
9. The grounds are on the face of the application as set out in paragraphs a to i. it is supported by the sworn Affidavit of Panai Ole Tonkei and Lasoi Ole Partorora the 2<sup>nd</sup> and 3<sup>rd</sup> defendants respectively.
10. They claim that this suit is res judicata on grounds that the Land Registrar in the report dated 18<sup>th</sup> June 2021 in ELC E032 of 2021 increased the acreage of parcel Kajiado/Dalalekutuk/1067 registered in the Plaintiff's name from 39.45Ha to 81.09Ha and issued them with a title deed illegally. The Defendants then filed ELC Appeal No. E022 of 2021 against the said decision which they later withdrew.
11. When the matter came up in ELC E032 of 2021, a consent was entered and the Land Registrar together with the Surveyor were to undertake another survey in the presence of the Deputy Registrar Environment and Land Court. This was done and a report dated 6<sup>th</sup> September 2022 was filed. The Land Registrar and Surveyor were directed to implement the report and fix the beacon. The fixing of the beacon was done on 31<sup>st</sup> March 2023 and on 2<sup>nd</sup> May 2023, the Court directed the Land Registrar to file the implementation report. The report dated 27<sup>th</sup> July 2023 was thus filed. On 15<sup>th</sup> May 2024, the Court pronounced that the dispute had been settled and marked the suit as settled.
12. The issues raised in this suit were thus similar to the issues determined in ELC E032 of 2022 which is contrary to Section 7 of the Civil Procedure Act. They pray that the suit be dismissed with costs.



### **Submissions of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents**

13. On whether the Plaintiff's suit is res judicata as provided under Section 7 of the *Civil Procedure Act* and held in *Uhuru Highway Development Ltd vs Central Bank of Kenya & 2 others* [1996] eKLR the Respondents submitted that this instant suit and ELC 302 of 2022 bore the same parties, with the Plaintiffs herein being the 1<sup>st</sup>, 2<sup>nd</sup> 3<sup>rd</sup> Defendants in suit ELC 302 of 2022 and the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants in this suit being the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Plaintiffs in suit ELC 302 of 2022. Suit ELC 302 of 2022 was in relation to a boundary dispute between parcels Kajiado/Daleleikutuk/1065-1067 and Kajiado/Daleleikutuk/17260 (formerly Kajiado/Daleleikutuk/1072), which was the same issue as in the instant suit. And that suit 302 of 2022 addressed the boundary dispute and a final binding decision made. As such, the current suit was akin to forum shopping and should be dismissed citing with reference *IEBC vs Maina Kiai & 5 others* (2017) eKLR, *George W. Omondi vs Ntaional Bank of Kenya* (2001) eKLR and *Ndibithi Farmers Co. Ltd vs Agricultural Development Corporation & 15 others* [2024] eKLR.
14. It was further submitted that even if the question of res judicata was not in play, the Applications dated 13<sup>th</sup> February 2025 and 12<sup>th</sup> June 2025 did not meet the grant for temporary injunction as established in *Giella vs Cassman Brown Ltd* case.

### **Submissions of the Plaintiffs**

15. These submissions are in support of the Plaintiffs Applications dated 15<sup>th</sup> February 2025, 12<sup>th</sup> June 2025 and opposing the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants' Application dated 24<sup>th</sup> July 2025.
16. On whether the Plaintiffs are entitled to injunctive reliefs sought, it was submitted that they had established grounds for grant of interim injunctions as set out in *Giella vs Cassman Brown & Company Limited* (1973) E A 358 and *Nguruman Limited versus Jan Bonde Nielsen & 2 others* (2014) eKLR. This is because the Plaintiffs are the registered owners of Kajiado/ Daleleikutuk/ 17260 measuring 81.09 hectares which the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants had trespassed upon and undertaken destructive activities thereon.
17. The Plaintiffs therefore stand to suffer irreparable damage which cannot be compensated by damages because the Defendants activities were negatively affecting the Plaintiffs' property resulting in economic loss and prejudice. Therefore, the balance of convenience tilted in favour of the Plaintiffs.
18. On whether the Court should issue an order of inhibition, it was submitted that this order was meant to preserve the property as provided under Section 68 and 69 *Land Registration Act* and held in *Mwambeja Ranching Company Limited& another vs Kenya National Capital Corporation Limited (Kenya) & 6 others* [2015] eKLR and *Boniface Mutwiri Kungania vs Gladys Kathuni M'rinkanya* [2020] KEELC 2982 (KLR).
19. On whether the suit was res judicata, the Plaintiffs claimed that in 2020, the 1<sup>st</sup> Plaintiff registered a boundary dispute Complaint with the 4<sup>th</sup> and 5<sup>th</sup> Defendants since the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants had destroyed, removed beacons and encroached into the suit property. The 3<sup>rd</sup> and 4<sup>th</sup> Defendants carried out resurvey on the disputed boundaries and placed beacons as per the report dated 18<sup>th</sup> June 2021. The Defendants being aggrieved filed Kajiado Environment and Land Court Appeal No E022 of 2021 which was withdrawn on 5<sup>th</sup> October 2022. As such the report dated 18<sup>th</sup> June 2021 has not been set aside by a court of law.
20. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants subsequently filed, ELC E032 of 2022 against the Plaintiffs and the matter was closed on 15<sup>th</sup> May 2024 without being heard on its merits. The elements of res judicata had therefore not been established as espoused in *John Maritime Florence Services Limited and Another*



vs Cabinet Secretary and Transport and Infrastructure 2021 (KESC) 39 and that the causes of action were different.

21. As such, the Plaintiffs applications dated 13<sup>th</sup> February 2025 and 12<sup>th</sup> June 2025 should be allowed and the Defendants application 24<sup>th</sup> July 2025 dismissed.

### **Analysis and Determination.**

22. I have considered the Notice of Motions, the affidavits in support and the responses thereto. I have considered the rival submissions and the authorities cited. The issues for determination are;

- i. Whether the suit is res judicata.
- ii. Whether the plaintiffs Notice of Motion has met the threshold for grant of temporary injunction.
- iii. Who should bear costs?.

23. Section 7 of the [Civil Procedure Act](#) provides as follows;

“No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.

Explanation. — (1) The expression "former suit" means a suit which has been decided before the suit in question whether or not it was instituted before it.

Explanation. — (2) For the purposes of this section, the competence of a court shall be determined irrespective of any provision as to right of appeal from the decision of that court.

Explanation. — (3) The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation. — (4) Any matter which might and ought to have been made ground of defence or attack in

such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation. — (5) Any relief claimed in a suit, which is not expressly granted by the decree shall, for the purposes of this section, be deemed to have been refused.

Explanation. — (6) Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this Section, be deemed to claim under the persons so litigating”.

24. The Supreme Court of Kenya in John Maritime Florence Services Limited and Another Vs. Cabinet Secretary and Transport and Infrastructure 2021 (KESC) 39 where the court held interalia:-

“59. For Resjudicata to be invoked in a civil matter the following elements must be demonstrated;

- a. There is a former judgement or order which is final;
- b. The judgement or order was on merit;



- c. The judgement 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 action identical parties, subject matter and cause of action.....”

25. I am guided by the above authority in finding that the suit herein is not resjudicata. I have gone through the plaint and I am convinced the issues are different and the subject matter is different. I am satisfied that the final decision has been rendered on the previous matter. The Notice of Motion dated 24<sup>th</sup> July 2025 is therefore dismissed.

26. I have considered the conditions set out in the Giella Case and I am satisfied that the Plaintiffs, who are registered owners of the suit property have established a prima facie case with a probability of success as the trial.

They also stand to suffer irreparable loss that cannot be compensated by an award of damages if these orders are not granted. This is because the actions of trespass is prejudicial to the plaintiffs.

27. In conclusion I find merit in the Notice of Motions dated 13<sup>th</sup> February 2025 and 12<sup>th</sup> June 2025 and I grant the orders sought namely;

- a. That an order of temporary injunction is hereby issued restraining the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> Defendants by themselves, their servants, agents, proxies and/or persons exercising authority from them from dealing, trespassing, intermeddling and/or in any other manner interfering with the Plaintiffs use, possession, quiet use, occupation possession and/or ownership of all that piece of land known as Kajiado/ Dalalekutuk/ 17260 pending hearing and determination of the suit.
- b. That the OCS Kajiado Police Station do ensure compliance of (a) above.
- c. That an order of inhibition stopping transfer, charge, lease, dealings, registration, transactions and subdivision over property Kajiado/Dalalekutuk/1068, Kajiado/ Dalalekutuk /1066 and Kajiado / Dalalekutuk/ 1065 pending hearing and determination of the suit.
- d. That costs do abide the outcome of the main suit.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 3<sup>RD</sup> DAY OF DECEMBER 2025.**

**L. KOMINGOI**

**JUDGE.**

In The Presence Of:

Mr. Kipkurui for the Plaintiff.

Mr. Kibet Korir for Mr. Nairi for the 1<sup>st</sup>, 2<sup>nd</sup> Defendants.

N/A for the 3<sup>rd</sup> – 6<sup>th</sup> Defendants.

Court Assistant - Peter

