



**Yano v County Government of Elgeyo Marakwet (Environment and Land Petition  
E001 of 2023) [2025] KEELC 18560 (KLR) (10 December 2025) (Ruling)**

Neutral citation: [2025] KEELC 18560 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ITEN  
ENVIRONMENT AND LAND PETITION E001 OF 2023  
L WAITHAKA, J  
DECEMBER 10, 2025**

**BETWEEN**

**PIUS KIPTUM YANO ..... PETITIONER**

**AND**

**COUNTY GOVERNMENT OF ELGEYO MARAKWET ..... RESPONDENT**

**RULING**

1. The petitioner filed this suit claiming that the respondent has unlawfully and forcefully constructed a public access road measuring 9M by 135M in his two parcels of land namely, parcels 1174 and 1300 while a public road exists in the area RIM for Cherangany/ Kapcherop which was set out during land adjudication. As a result of the road construction, his perimeter fence and crops were damaged. He claims compensation for costs for restoration of the suit parcels to their original status and loss of use to the time the land is restored.
2. The petitioner amended his petition and stated that the parcels in dispute are Cherunany/ Kapcherop/1300 and Cherangany/ Kapcherop/1174. He stated that Cheranyany/Kapcherop/1300 was created by mutation of plot No. Cherangany/Kapcherop/1175 which resulted in three plots namely Cherangany/Kapcherop/1298, 1299 and 1300; that the RIM for Cherangany/ Kapcherop is yet to be corrected to reflect the other parcels including Cherangany/Kapcherop/1300 in place of Cherangany/ Kapcherop/1175.
3. The history of parcel No. Cherangany/ Kapcherop/1174 has not been given but the land parcel was registered in the name of the petitioner on 14<sup>th</sup> July, 1987 and a title deed issued to him on 12<sup>th</sup> August, 1999.
4. In the pleadings for both the petitioner and the respondent and during hearing, land parcels No. 21 and 1776 were never came up.



5. On 5<sup>th</sup> November, 2025 Mr. Wafula counsel for the respondent made an oral application that summons do issue to the County Surveyor Elgeyo Marakwet County to attend court and produce the Registry Index Map for parcel No. 1300 and to the Land Registrar, Elgeyo Marakwet County to produce the parcel file for land parcel No. 1175. The County directed that since the petitioner having admitted in his amended petition that parcel No. 1300 was not in the RIM, it was not necessary to summon the County Surveyor. However, the court found it necessary to summon the Land Registrar Elgeyo Marakwet County to produce the record for land parcel No. 1175.
6. The Petitioner filed an instant application dated 26<sup>th</sup> November, 2025 seeking orders that the court does enlarge and or vary its earlier order made on 11<sup>th</sup> November, 2025 directing the Land Registrar Elgeyo Marakwet County to produce only parcel file No. Cherangany/Kapcherop 1175 to include parcel file for Cherangany/Kapcherop/21 and all relevant mutations and registry documents relating to plot No. Cherangany/Kapcherip/1300.
7. The application is premised on the grounds that during case preparation, a material discrepancy was discovered involving a mix up of documents for parcel No. Cherangany/Kapcherop/1175 and 1176; that the physical facts on the ground contradict the registry documents specifically where mutation 1176 is illogically situated between two parcel No. 1174 and 1175, suggesting a significant typographical error and/or administratrix mix up which may have led to the omissions of mutations for plots Cherangany/Kapcherop/1300, 1299 and 1298 from the RIM; that production of the mother title known as Cherangany/Kapcherop/21 will assist to trace the history of the sub division and clarify the anomalies regarding the missing mutation of plot No. Cherangany/Kapcherop/1300 in the RIM.
8. The application is supported by the affidavit of Pius Kiptum Yano where the grounds in the application are reiterated.
9. The application is opposed vide the replying affidavit of Dorcus Cheruiyot, the County Attorney of the respondent on 4<sup>th</sup> December, 2025. She deposes that the application is an attempt to reopen and introduce new issues in a weak case after the petitioner had closed his case and the respondent's case is at its tail end; that the pleadings and evidence in this suit do not relate to land parcels Cherangany/Kapcherop/ 21 and 1176; that parties are bound by their pleadings and new issues cannot be introduced after the petitioner had closed his case; that the suit parcels sought to be introduced belong to strangers who are not parties in this suit; that allowing the application will necessitate recalling witnesses, introducing new issues and expanding the scope of the case which will severally prejudice the respondent and undermine orderly litigation.
10. In a rejoinder, the petitioner filed a supplementary affidavit sworn on 5<sup>th</sup> December, 2025. He deposes that the order summoning the Land Registrar was made by the court to ensure that the proper records are made available to clarify issues in dispute but not solely on interest of the respondent and the presence by the Land Registrar is not intended to introduce new evidence through the "back door" or patch up a weak case but rather to assist the court in understanding the matter better; that the respondent will suffer no prejudice if the orders sought are granted; that objection to production of the files for parcels 1176 and 21 suggest an attempt to conceal material discrepancies and typographical errors in the registry records that is at the heart of the dispute; that it is in the interest of justice that the Land Registrar be allowed to present the complete history and clarify the mix up of land parcel, 1176.
11. The application was argued orally on 8<sup>th</sup> December, 2025. Counsels for the parties basically reiterated the grounds taken up in support of and opposition to the application.
12. I have read and considered the application, affidavits and oral arguments and I find the sole issue for determination to be whether the applicant has made up a case to be granted the orders sought.



13. It is now a principal of trite law that parties are bound by their pleadings and that any evidence led by any of the parties which does not support the averments in the pleadings or put in another way, which is at variance with the averments of the pleadings goes to no issue must be disregarded. In that regard, see the case of Raila Amolo Odinga vs. IEBC & 2 others (2017) e KLR where it was stated/held:-

“In absence of pleadings, evidence if any, produced by the parties cannot be considered, it is also a settled legal proposition that no party should be permitted to travel beyond its pleadings and parties are bound to take all necessary and material facts in support of the case set up by them...it is neither desirable nor permissible for a court to frame an issue not arising from the pleadings...”

14. In the petition before the court, the parcels in dispute are Cherangany/Kapcherop/1174 and 1300. Parcel No. Cherangany/Kapcherop/1175 is relevant to this case because it is pleaded that Parcel No. 1300 is a subdivision of No. 1175. The other parcels 1176 and 21 are nowhere in the pleadings and did not come up during the hearing.

15. For the above reasons, I find the application dated 26<sup>th</sup> November 2025 devoid of merit and I dismiss it with costs to the respondent.

16. Orders accordingly.

**DATED, SIGNED AND DELIVERED THIS 10<sup>TH</sup> DAY OF DECEMBER, 2025.**

**L. N. WAITHAKA**

**JUDGE**

Ruling delivered virtually in the presence of:-

Mr. Kaveve for the Petitioners

Mr. Wafula for the Respondents

Court Assistant: Christine

