



mutation marked by points A4 to A4A to A6 measuring approximately 12.0ha be excised from KAJIADO/DALALEKUTUK/3134.

2. Disgruntled with the Land Registrar's decision, the Appellant lodged before this court a Memorandum of Appeal dated 11<sup>th</sup> April, 2024 seeking for the following prayers,

***a) The Appellant's Appeal be allowed.***

***b) The Ruling delivered on 13, March 2024 by the District Land Registrar at Kajiado issued therein be set aside entirely.***

***c) The 1<sup>st</sup> Respondent be compelled to carry out fresh boundary measurement and determination.***

***d) Cost be provided for.***

3. The Memorandum of Appeal was premised on the following grounds;

(1) *That the 1<sup>st</sup> Respondent erred in law and in fact by adopting the Surveyors' Reports which failed to establish the acreage of all parcels of land within the disputed area.*

(2) *That 1<sup>st</sup> Respondent erred in law and fact by adopting the Surveyor's report dated 30<sup>th</sup> August, 2023 failed to consider where the extra acreage of*

*KJD/DELALEKUTUK/3133 came from considering that the measurement on the ground for the said parcel of 61.1 hectares as per the same surveyor's report dated 30<sup>th</sup> August,2023 while the area list shows 53.92 hectares.*

*(3) That the 1<sup>st</sup> Respondent erred in law and fact by adopting the Surveyor's reports dated 8<sup>th</sup> September,2022 and 30<sup>th</sup> August,2023 which failed to take into account the measurements of the affected parcels of land, KAJIADO/DALALEKUTUK/3133,3143 and 3135, which share a common boundary, as per the Registry Map Index.*

*(4) That the 1<sup>st</sup> Respondent erred in law and fact by adopting the Surveyors Report dated 8<sup>th</sup> September,2022 and 30<sup>th</sup> August,2023 which failed to disclose the primary document used to establish the boundaries and its accuracy when the said reports acknowledged a great variance between the Registry Index Map and the ground.*

*(5) The 1<sup>st</sup> Respondent erred on law and fact by adopting the Surveyor's reports dated 8<sup>th</sup> September,2022 and 30<sup>th</sup> August,2023 which treated the dispute as a land claim rather than a boundary dispute.*

(6) *That the 1<sup>st</sup> Respondent erred in law and fact by adopting the Surveyors report dated 30<sup>th</sup> August,2023 which recommended that 12 Hectares be exercised for KAJIADO/DALALEKUTUK/3134 as opposed to the registered acreage of 25.57 Hectares thereby assuming the said parcel measured 12 Hectares.*

(7) *The 1<sup>st</sup> Respondent erred in law and fact by adopting the Surveyors report dated 30<sup>th</sup> August,2023 which showed that the line defining the boundary between parcels KAJIADO/DALALEKUTUK/3133,3134 and 3135 is a curve while the Registry Index Map shows is a straight line.*

4. The facts arising from this Appeal are as that through a letter dated 23<sup>rd</sup> February, 2022 addressed to the Kajiado Land Registrar, the Appellant through his counsel lodged a boundary dispute claim before the Land Registrar regarding a boundary dispute about ascertainment and fixing boundaries for KAJIADO/DALALEKUTUK/3134. Through the complaint, the Appellant sought for enforcement of the court directive issued in **ELC CASE No. 440 of 2017 Kaakai Mosiany Vs Kateto Miisia and District Land Registrar and another** , where **CA**

**OCHIENG, J** through a judgment delivered on 29 April 2020 issued the following orders;

*(i) That a declaration be and is hereby issued that the property known as KAJIADO/DALALEKUTUK/3134 lawfully and indefeasibly belongs exclusively to the Applicant Kaakai Ene Nankoo Mosiany herein as the bona fide registered proprietor.*

*(ii) That the Land Registrar, Kajiado be and is hereby directed to rectify by deleting, expunging and/or cancelling the registration of one Kironki Ole Misiia as the alleged proprietor of all that parcel of land known as KAJIADO/DALALEKUTUK/3134 and the resultant Certificate of Title issued to that effect be cancelled forthwith.*

*(iii) That the inhibition placed on all that parcel of land known as KAJIADO/DALALEKUTUK/3134 registered in the name of the Applicant herein be cancelled forthwith.*

5. Despite his acknowledgment that order (iii) of the Judgment was enforced, the Appellant alleged that a boundary dispute existed between KAJIADO/DALALEKUTUK/3134 and 217 as the owner of KAJIADO/DALALEKUTUK/217 had encroached onto his land. This was in spite of the District Land Adjudicator and

Settlement Office determination that 20 acres be added to the Appellant's parcel KAJIADO/ DALALEKUTUK/3134 from KAJIADO/DALALEKUTUK/217.

### **Directions**

6. This court issued directives to the effect that the Appeal be dispensed through written submissions. Only the Appellant complied by filing written submissions.

### **Submissions**

7. In support of the Appeal, counsel for the Appellant filed submissions dated 9<sup>th</sup> September, 2025 raising the issues whether the Appeal should be allowed, the setting aside of the Land Registrar decision and if the boundary measurement and determination ought to be conducted afresh. Article 162(2)(b) of the Constitution, Section 13 of the Environment and Land Court Act, Section 18, 79(3A), 80,86 and 91(9) of the Land Registration Act and various judicial authorities are put forward to submit that this court is vested with the requisite jurisdiction to hear and determine appeals emanating from the land Registrars' decisions.
8. According to the Appellant's submissions, the Appeal ought to be allowed because the 1<sup>st</sup> Respondent decision was based on

an inaccurate survey report. Given the report wrongfully increased KAJIADO/DALALEKUTUK/3133 acreage from 53.92ha to 61.1ha as well as depiction of boundary line contrary to the straight boundary line reflected in the Registry Index Map (RIM), it is submitted that this fundamental factual and legal error warrant interference with the 1<sup>st</sup> Respondent's decision by this court. This is because the decision not only significantly affected title, but also acreage as well as boundary integrity.

9. The holding in **CMC Holdings Ltd v James Mumo Nzioki (2004) eKLR**, is cited to buttress the argument that if the Appeal is not allowed as prayed, the Appellant shall lose 9ha of her land because of the erroneous expansions of the 3<sup>rd</sup> Respondent's parcel No. KAJIADO/DALALEKUTUK/3133. Further disputes and instability of land rights will arise due to the distorted boundary demarcations which are inconsistent with the official cadastral records. The Appellant's counsel argues that the 1<sup>st</sup> Respondent decision must be set aside. The holding in **Republic v Land Registrar Kilifi Ex Parte Daniel Ricci (2018) eKLR**, is cited to demonstrate that the 1<sup>st</sup> Respondent's decision ought to be nullified because it was based on an erroneous survey report which specified that

KAJIADO/DALALEKUTUK/3133 belonging to the 3<sup>rd</sup> Respondent be varied to 61.1ha yet the official area list stipulated that the parcel was 53.92ha.

10. The credibility of the survey report is further questioned by submitting that it indicated that the RIM boundary line between KAJIADO/DALALEKUTUK/3133, 3134 and 3135 was curvy yet it was a straight line on the RIM. Premised on these arguments, the Appellant maintain that the report never took into account the RIM, mutation forms or ground pickings. In addition, the report never established the acreage of all parcels within the disputed area nor take into account where the extra hectares issued to the 3<sup>rd</sup> Respondent would be derived from or how its findings affected the owners of KAJIADO/DALALEKUTUK/3133, 3134 and 3135 who shared a common boundary as shown in the RIM.

11. Given the abovementioned inconsistencies in the surveyor report, the Appellant opines that a fresh and independent boundary measurement exercise be undertaken to prevent further disputes and maintain harmonious relationship amongst the affected landowners. To build confidence while conducting the exercise again, the Appellant contend that it must be done

in compliance with relevant laws, uphold transparency and that all parties must be involved, Further, it must be based on the RIM, mutation records, official area list and actual points of boundaries.

12. On the issue of who ought to bear cost of this Appeal, Section 27 of the Civil Procedure Act is cited to argue that costs must be borne by the Respondents jointly and severally.

**Issues for determination**

13. Having carefully assessed the Appellants' Memorandum of Appeal, record of Appeal, as well the extensive submissions by his learned counsel, the singular issue for determination is ***whether the Appeal is merited.***

**Determination**

14. A rightfully submitted by counsel for the Appellant, this court is the appropriate forum in which Appeals emanating from decisions of Land Registrar with respect to determination of boundary disputes ought to be filed by any party who feels aggrieved by such a decision.
15. The findings in the Survey report upon which the Land Registrar decision was founded upon were as follows;
- (a) *The RIM differs greatly with the ground.*

- (b) *An existing road extends through points A3, A4, A6, A7 and A8. The RIM shows it at a different position confirming a different shape.*
- (c) *Owners **of** KAJIADO/DALALEKUTUK/3134 showed on ground points A4, A5 and A6 which measured 20ha approximately. The area list reads 25.57ha. The shape and position of land claimed on ground differs greatly with the RIM.*
- (d) *KAJIADO/DALALEKUTUK/3133 failed to point out their boundary extents, they claimed parcels 3134 is not within their parcel extents.*
- (e) *Mutation S/No.365080 subdividing KAJIADO/DALALEKUTUK/ 3133 into 3861 to 3863 showed the boundary extends to be A6 to A4A-A4A-A65A measuring 12ha approximately.*
- (f) *The neighbours each showed their parcels extents and confirmed they have no boundary disputes. KAJIADO/DALALEKUTUK/ 3133 measured 61.1ha approximately on ground. The RIM measures the same but different shape and position. The area list reads 53.92ha. It has been subdivided into three portions (3861-3863)*

16. In arriving at the above stated findings, the surveyor took into consideration the Sajiloni Group Ranch RIM, Land Adjudication Area list and Mutation form relating to the subdivisions of KAJIADO/DALALEKUTUK/3133. The judgment delivered in **ELC CASE No. 440 of 2017** was premised on the court findings that Lengetu Raurau was allocated KAJIADO/DALALEKUTUK/3134 from Sajiloni Group Ranch by virtue of his membership No. 174 and as well No. 218 of the Area list as per the group ranch records. Following his demise in 24<sup>th</sup> June, 1985, the property was bequeathed, transferred and registered in his daughter name, the Appellant herein, following succession proceedings in SRM Kajiado Succession No. 14 of 2006.

17. The circumstances under which the 1<sup>st</sup> Respondent failed to consider the group ranch Area list yet it was the basis upon which group ranch land was allocated to its members has not been explained.

18. Accordingly, I find that the surveyor erred when he recommended that 9ha be excised from KAJIADO/DALALEKUTUK/3134 without considering the

consequences of such actions on the Appellant's proprietary rights guaranteed by Article 40 of the Constitution.

19. Premised on the foregoing, I am in agreement with the Appellant's submission that the Appeal is merited. Consequently, I hereby proceed to issue the following orders;

**(1) The Appeal is hereby allowed.**

**(2) The Ruling delivered on 13, March 2024 by the Kajiado District Land Registrar is hereby be set aside entirely.**

**(3) The Boundary measurement and determination of KAJIADO/ DALALEKUTUK/ 3134 shall be conducted afresh by another land registrar and surveyor other than Mr. B.K Leitich and Mr. Stehphen Mutuku.**

**(4) There shall be no orders as to costs.**

It is so ordered.

**Dated Signed and Delivered at Kajiado Virtually this 29<sup>th</sup>  
Day of January 2026.**

**M.D. MWANGI  
JUDGE**

**In the virtual presence of:**

Mr. Onyonka for the Appellants

Mr. Chacha for the 3<sup>rd</sup> Respondent

N/A by the 1<sup>st</sup> and 2<sup>nd</sup> Respondent

Court Assistant: Mpoye

**M.D. MWANGI**

**JUDGE**

ORIGINAL FILE COPY