



**Tasur v Oloitalam (Environment and Land Appeal E034 of 2024)  
[2026] KEELC 282 (KLR) (29 January 2026) (Judgment)**

Neutral citation: [2026] KEELC 282 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS  
ENVIRONMENT AND LAND APPEAL E034 OF 2024**

**MN MWANYALE, J  
JANUARY 29, 2026**

**BETWEEN**

**JACKSON NKAMINEN SANKEI TASUR ..... APPELLANT**

**AND**

**MICHAEL OKUETE OLOLTALAM ..... RESPONDENT**

**JUDGMENT**

1. Being aggrieved by the judgment, decree issued on 2<sup>nd</sup> October 2024 by Hon. M.I.G Moranga C.M in Kilgoris, CMELC No. 128/2018 between Michael Okuete Oloitalam Ian and Jackson Nkaminen Sankei Tasur the Appellant Mr. Jackson Nkaminen Sankei Tasur preferred this appeal seeking the following reliefs: -
  - i. That the Appeal be allowed and Judgment, decree and/or orders of the MCELIC No. 128/2018 delivered on 2<sup>nd</sup> day of October 2024 be set aside.
  - ii. The Hon. Court be pleaded to substitute therefore an order dismissing the Respondent's Lower court suit in No. MCELIC No. 128/2018 in its entirety with costs.
  - iii. Costs of this Appeal be paid by the Respondent.
2. The Appellant penned 8 grounds of Appeal as follows; -
  - i. The Learned Trial Magistrate erred in law and fact that the Appellant acquired his title deed No. Transmara/Shartuka/907 legally and procedurally through allocation in terms of section 7 of the [Land Registration Act](#) 2012 and reach a finding that the Appellant's land title No. Transmara/Shartuka/907 was not procedurally cancelled as had been alleged.
  - ii. The Learned Trial Magistrate erred in law and fact by misdirecting herself fundamentally in not holding that the Appellant and Respondent were not parties in the Kakamega High Court



Misc. Civil Application No. 103 of 2003 and Kisii High Court Judicial Review No. 52 of 2009 referred decision.

- iii. The Learned Trial Magistrate erred in law and fact by not taking cognisance of the precedents set by Honourable Justice S. Okongo in the two authorities whose judgment were supplied.
  - iv. That the Learned Trial Magistrate erred in law and fact by not taking cognisance of the fact that the Appellant had been and is in possession and occupation of his land title No. Transmara/Shartuka/907 for a long time.
  - v. The Learned Trial Magistrate erred in law and fact by not appreciating and upholding the sancticity of the Applicant's land title No. Transmara/Shartuka/907 enshrined in Article 40(1) of the *Constitution*.
  - vi. The Learned Trial Magistrate erred in law and fact by making a decision against the Appellants overwhelming evidence on record that he legally owned land title No. Transmara/Shartuka/907.
  - vii. In the premise the Learned Trial Magistrate gravely caused miscarriage of justice and misdirected herself on the laws governing ownership of land.
3. On the strength of the grounds as set out above the Appellant prayed for judgment as set out above the Appellant prayed for judgment as set out at paragraph 1 of this judgment.
  4. The Appeal was admitted for hearing and directions issued that the same be disposed off by way of written submissions which the court summarises as herefollows; -

#### **Appellant's Submissions**

5. The Appellants did not frame any issues for determination but submitted generally on the Appeal. It was his submission that under section 26(1) of the Land Registration title his title was indefeasible.
6. That Article 40 of the *Constitution* guaranteed the right to own property.
7. The Appellant relied on the decision by the Kisii ELC in Kisii ELC Case No. 11 of 2009 John Kiine Musharu Vs. Ole Tasur Koonti as consolidated with Kisii ELC No. 28/2009, between Koonti Ole Tasur Vs. John Kiine Masharu to the effect that parcel No. 1063 was not cancelled in the Gazette Notice; dated 7<sup>th</sup> June 2011.
8. He further placed reliance in the decision in the case of Olenkarie Simon Vs. Samuel Naiduiya Meito, Kilgoris ELC Appeal No. 340 of 2021, which the court held interalia that Gazzette Notice published on 15<sup>th</sup> July 2003 did not identify parcels that had been cancelled and/or expunged in Shartuka Group Ranch.
9. The Appellant submits that in so far as his parcel was not expunged by the said Gazette Notice, his title to be protected by law.

#### **Respondent's Submission**

10. On grounds 1, 2, 6 and 8 of the Memorandum of Appeal, the Respondent submits that he is the registered owner of the suit property enjoying the rights bestowed upon him under section 24 and 25 of the *Land Registration Act*.
11. The Respondent submits that the title to the property registered in the name of the Appellant had been revoked and Appellant was laying claim to his property.



## Issues for Determination

12. Having analysed the record of Appeal, the rival submissions, considered the applicable law and judicial precedents the court frames the following as issues for determination
  - a. Whether or not the appeal is merited? In deciding this issue the court shall consider which of the plaintiff's claim or the defendants defence before the trial court was merited?
  - b. What reliefs ought to issue?
  - c. Who bears the costs of the Appeal?

## Analysis and Determination?

13. This being a first appeal, this court is duty bound to "reconsider the evidence, evaluate it and draw its own conclusion", as was stated in the decision in *Selle and Another Vs. Associated Motor Boat Limited*.
14. Aware of that duty, the court shall analysis the pleadings, proceedings and the judgment before the trial court, so as reach its own conclusion.
15. The court notes that the Record of Appeal as drafted did not include the Plaintiff filed before the trial court. The supplementary record of Appeal equally left out the said Plaintiff.
16. The court was able to trace the Plaintiff from the trial court file that had been availed before court.
17. In the Plaintiff dated 21<sup>st</sup> August 2012 initially before the High Court at Kisii, later transferred to the ELC Kisii, then to Narok and eventually to the CM's court at Kilgoris, the Plaintiff Michael Okuet Ololtalam pleaded inter alia that the Defendant had in the year 2006 trespassed on his suit property to wit Transmara/Shartuka/450 which was registered in his name on 14<sup>th</sup> of August 1998, and he sought declaration that he was the registered owner of Transmara/Shartuka/450, sought eviction of the Defendant and a permanent injunction against the Defendant, his agents, servants, and/or anyone claiming under the Defendant.
18. In his Defence, the Defendant before the trial court now Appellant herein pleaded inter alia,
  - i. That he had no knowledge of the Plaintiff's claim in respect of Transmara/Shartuka/450, and that he denied trespass in respect of the said parcel but pleaded ownership and occupation of Transmara/Shartuka/907.
19. After a full hearing of the case, the Learned Trial Magistrate Hon. M.I.G Moranga CM in her judgment delivered on 2<sup>nd</sup> October 2024, found in favour of the Plaintiff provoking this Appeal.
20. In the impugned judgment the Learned Magistrate held inter alia, that the Defendant now Appellant's title that had been cancelled and that the said cancellation meant that the Defendant had no proprietary rights over the parcel known as Transmara/Shartuka/907.
21. The Appellant placed reliance in the decision in the case of Kilgoris ELC Appeal No. 34 of 2021 between Olenkarie Simon and Samuel Naiduya Metto where the court (Washe. J) handled identical issues in respect of the Shartuka Group Ranch. At paragraph 93-100 of the said decision, the court concluded that the Gazette Notice dated 25<sup>th</sup> July 2003 did not specifically identify the particular parcels to be cancelled or expunged and at paragraph 97, the court (Washe J) interpreted the judgment Kakamega High Court Misc. Application 103 of 2003 as reinstating the cancelled titles; and the parcels litigated upon therein were specific.



22. At pages 54 of the impugned judgment the Learned Magistrate held that the Appellant's title had been cancelled by Gazette Notice No. 6331 of 08/06/2011; appearing at page 126 of Record of Appeal, Gazette Notice 6331 of 2011 essentially cancelled Gazette Notice No. 501 of 2008 which was a subsequent Gazette Notice to the one that Washe J. had alluded to in his decision.
23. As observed by Washe J. in ELC Appeal No. 34 of 2021, the Gazette Notice number 25<sup>th</sup> July 2003 was not specific on the titles to be cancelled.
24. Further the titles cancelled vide the said Gazette Notice were reinstated by the Kakamega High Court Misc. Application No. 103/2003 leading to the issuance of Gazette Notice No. 501/2008, which was cancelled by Gazette Notice Number 6331/2011 which the Learned Magistrate based her decision on to find that the Appellant title had been cancelled.

The said Gazette Notice is reproduced herewith

Gazette Notice No. 6331

The Government Lands Act Cap 250

The Trust *Land Act* cap 288.

In the matter of cancellation of Shartuka Group Ranch title deeds, Green cards and maps whereas it has come to the Notice of Chief Land Registrar the Gazette Notice No. 501/2008 was issued in contravention of High Court Ruling in Miscellaneous Civil Application No. 103 of 2003 at Kakamega on 20<sup>th</sup> day of May 2009 and Miscellaneous Civil Application No. 52/2009 at Kisii High Court.

Be it known by all affected persons/organizations that; -

- i. The said Gazette Notice No. 501/2008 is hereby cancelled.
- ii. All title deeds, green cards or register and maps prepared pursuant to the said Gazette notice are null and void.
- iii. All titles deeds, green cards or register maps cancelled vide the said gazette notice are hereby reaffirmed as valid.

Dated the 8<sup>th</sup> July 2001.

C.W. Natia

Chief Land Registrar”.

25. The court has noted that Learned trial magistrate in making her findings interpreted the Kakamega High court Misc. application No. 103/2003. Pexhibit 5, the contempt of court proceedings in Kakamega High court Misc. Applications 103 of 2023, court of Appeal Civil Appeal No. 5 of 2004 and Gazette notice no. 6331/2011 and found at page 54 of the impugned decision, ‘that a reading of the above exhibits confirms that the Defendant’s title had been cancelled, and was non-existent’.
26. Washe J. in interpreting the said Ruling Kakamega High Court Misc. application, in ELC Appeal No. 34 of 2021, found that the said decision had actually reinstated the cancelled titles.



27. I have equally read the Kakamega High court ruling in Misc. Application no.103/2003 appearing at page 127-133 of the Record of Appeal decision of Justice G,B.M. Kariuki as he then was who observed interalia as follows; -

“It is my finding that the Gazette Notice no. 4983 by the Transmara District Land Registrar dated 25/07/2003 linked on the ruling of the C.A in C.A Civil application No. 195 of 1998, in its purport that the plots it enumerated were irregularly issued but as the appeal no. 237/98 on which the Ruling had been issued was struck out the gazette Notice lost the legal basis on which it had been issued. No longer would the Registrar purport to have Legal jurisdiction to make the claim regarding irregular insurance of plot to non-members of Shartuka Group Ranch.

In the result. An order of certiorari shall issue to remove into this court for quashing the decision of the Chief Land Registrar dated 14.7.2003 contained the Kenya Gazette of 25.07.2003 purporting to expunge from the land Register as null and void title deeds relating the parcels referred to in the application costs this application shall be borne by the Respondent.....”

28. I agree with the interpretation of Washe J. with regards to the above ruling, it had the effect of reinstating the cancelled titles, and certainly the learned trial Magistrate erred in finding that the said Ruling cancelled the certain titles including the Appellants.

29. The court shall now consider the import of Plaintiff's exhibit 8 and 9 being the letters dated 30/04/2009 and 08/10/2010, that the Learned Trial Magistrate relied on to reach the conclusion that the Defendant's title had been cancelled.

30. In the letter dated 30/04/2009 the same emanated from the Chief Land Registrar's office under the hand of Mr. T.N. Mburu addressed to the District Land Registrar Kilgoris and It forwarded;

- i. An area list for parcel 763 (parcel 906-1671) and
- ii. Registry index map sheet 1-39, while Pexhibit No. 9, was a letter dated 8<sup>th</sup> October 2010 under the hand of Mr. C.W. Ngatia indicated that the letter dated 30<sup>th</sup> of April 2009 had been reversed, any title issued pursuant to the said letter were to be recalled, and cancelled.

31. It is on the basis the above letters produced as exhibits together with the Ruling in Kakamega High Court Misc. Application 103 of 2003 that Learned Magistrate found that the Appellant's title had been cancelled.

32. After the said letters Gazette notice no. 6331 of 2011 was published and the said notice produced at paragraph 30 hereof reinstated the cancelled titles.

33. It follows that in so far as the Applicant's title had been sent for registration vide the letter dated 30/04/2009 but the registration recalled by the letter of 30<sup>th</sup> October 2010, the import of the Gazette Notice no. 6331/2011 was to regularize the said recalling and the learned Magistrate thus erred to find otherwise.

34. Upon re-evaluation of the evidence, the court finds that on the material placed before the trial court, the Learned Magistrate reached a wrong conclusion of the cancellation of the Applicant's title, and the Appeal is thus merited.

35. On what reliefs ought to issue, the court having found that the Appeal is merited allows the same in terms;



i. The Land Registrar and Surveyor to verify the boundary on the ground between parcel Transmara/Shartuka450 and Transmara/Shartuka/907 using the additional maps and RIM that had been sent to the District Land Registrar vide the letter dated 30/04/2009 which letter was reinstated by the Gazette Notice no. 6331/2011.

ii. Each party to shall bear its own costs, in the Appeal and in the Lower Court.

**DATED AT KILGORIS THIS 29<sup>TH</sup> DAY OF JANUARY, 2026**

**HON. M.N MWANYALE**

**JUDGE**

In the presence of

CA – Sylvia/Sandra/Clara

Mr. Mulisa for the Respondent

Mr. Moracha for the Appellant

