



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KABARNET**

**ELC LOS NO. 1 OF 2025**

**EMMANUEL ARGUT LIMO**

**CATHERINE JEMATIA LIMO** (Suing as legal  
representatives of the Estate of Andrew H. Toroitich  
Arap Limo **(Deceased)** .....

**APPLICANTS**

**= VERSUS =**

**KIPKECHEM KANDIE WALTER** .....

**RESPONDENT**

**J U D G M E N T**

1. The dispute that culminated into filing of this suit relates to ownership of the parcel of land known as land parcel number Baringo/Sergonjun/656 (hereinafter referred to as the suit property).
2. As can be discerned from the pleadings, evidence and submissions filed in this suit, the suit property was subject matter of a dispute between Andrew H.

Toroitich Arap Limo, whose Estate is represented by the Applicants herein, before the Land Adjudication Officer (LAO). The LAO's decision concerning the dispute presented before him was as follows:-

**“... I hereby direct that the Defendant, Mr. Kipkechem be awarded the portion of his homestead covering approximately 2 acres to follow the fence of the cypress trees whichever is less and the rest of the land is awarded to the Plaintiff, Mr. Andrew H T Limo”.**

3. The decision of the LAO was made on 29<sup>th</sup> March, 1985. The parties to the dispute were notified of their right of appeal to the Minister.
4. The evidence produced by the Defendant, comprised in Receipt No.266746 dated 22<sup>nd</sup> May, 1985 and appeal form dated 22<sup>nd</sup> May,1985 among other documents, shows that the Defendant appealed against the decision of the LAO.

5. Whilst in their pleadings the Plaintiffs contend that the appeal was filed outside the time stipulated in law for appealing against the decision of the LAO, the totality of the evidence adduced by the Defendant shows that the appeal was filed within the time stipulated by law for filing an appeal to the Minister. The evidence adduced by the Defendant shows that the appeal was filed on 22<sup>nd</sup> May 1985, 53 days or so from the date the decision of the LAO made on 29<sup>th</sup> March, 1985. Subsequently, the appeal was allocated a case number to wit Case No. 589/96.
6. The claim by the Plaintiff that the appeal was filed out of time appears to be premised on the fact that the appeal was admitted in 1996 and given a case number for that year. It is the considered view of this Court, that allocation of a case number of the appeal in 1996 is not proof that the appeal was

filed in 1996 as claimed or contended by the Plaintiffs.

7. The evidence produced by the parties, particularly the Defendant, shows that the appeal was heard by the Deputy County Commissioner (DCC) Baringo North Sub County, on 19<sup>th</sup> July, 2022. The proceedings of the case before the Minister/the Minister's appointed representative, shows that the Applicants participated in the appeal.
8. Upon considering the case presented before him, the Minister stated/held as follows:-

**“This is a land claim filed by Walter Kandie on grounds that parcel No.656 belongs to him having bought it from Joshua Kiptui in the year 1967. This was way before demarcation which began in the year 1976 and this is the time someone else laid claim on the disputed land.**

**Upon cross examination, the appellant confirmed to the Court that he has a sale agreement to support his claim which he produced a copy dated 30/1/1967 indicating that he bought ten acres of land and a semi permanent house. He also confirmed that he has been the one occupying the land in question from the time he bought in 1967, to date.**

**His two witnesses hold the same stance that the land in dispute was occupied by Joshua Kiptui in early 1960's and that the appellant gained access in the late 60's and has been utilizing the land up to date and no one has raised any complaints.**

**The Respondent on the other hand believes that the disputed land is their family land acquired through land exchange between African Inland Mission**

**and their grandfather, Paul Cheptoo, with another parcel at Kapropita. Paul Cheptoo then entrusted the land to his brother-in-law, Jeremiah Kiptui as a caretaker who later on passed the same to his son Joshua Kiptui who in turn sold it to the appellant.**

**Upon cross examination, the Respondent could not tell when the alleged exchange of land was done because he was not party to it. It is also evident that the sale was done when their grandfather was alive but they only took action eighteen years later by filing a case at the objection stage.**

**The Respondents' witness during cross examination confirmed to this Court that when demarcation was done, Walter Kandie was the one occupying the**

**disputed land. This explains why the land was demarcated to him.**

**I did visit the ground to ascertain certain facts and made the following observations:-**

- 1. The appellant is the one occupying the land for the past over fifty years;**
- 2. He has developed the disputed parcel of land. His developments include fencing off the entire piece of land, cultivated maize, grown trees, rearing cattle, he has some semi permanent houses.**
- 3. The Respondents who accompanied us to the ground visit seemed more of strangers in the land than owners. They did not know how the land looks like, where the**

**boundaries are and could not point out anything that could amount to ownership unlike the appellant who has extensively developed the land in question.**

**From the evidence produced before this Court by the two parties and their witnesses and the ground visit findings, I strongly feel the appellant has a case against the Respondent because of the following:-**

- 1. Both parties are in agreement that the land was sold to the appellant by a person known to them. The only point of departure is that the Respondents' family feels that their consent was never sought. The appellant supported his buying claim by presenting a banker's slip indicating he deposited**

**part of the money in the account of Joshua Kiptui at Barclay's Bank.**

**2. Both parties are in agreement that the appellant has been the one occupying the disputed land even before demarcation was done up to date.**

**3. The appellant has extensively developed the land over the years. This I confirmed when I did a ground visit. On the other hand, the Respondents' family has never utilized the disputed parcel not even their grandfather whom they clearly stated has never lived there or utilized it.**

**4. The narrative that land was given to Jeremiah Kiptui as a caretaker cannot be verified. The fact that Jeremiah gave out the land to his son leaves a lot to be desired.**

**The assumption here is Joshua inherited the parcel of land from his father. Since land adjudication process essentially deals with existing rights and interests in the land, the appellant has met this requirement beyond any reasonable doubt.**

**Decision**

**Appeal to the Minister Case No.589 of 1996 on parcel number 656 is allowed. Land transferred to Kipkechem Kandie Walter of ID No.0603230. Name of Andrew Limo deleted from the records.”**

9. The decision of the Minister was implemented by the lands office leading to registration of the Defendant as the proprietor of the suit property and issuance of a title deed to the Defendant in respect of the suit property, on 15<sup>th</sup> September, 2022.

10. By dint of the provisions of **Section 29** of the Land Adjudication Act, Cap 84 Laws of Kenya and numerous decisions of superior Courts and the Court of Appeal, the decision of the Minister on the issue of entitlement to the suit property is final. For instance, in **Dofu & 3 Others v Ngome & 7 Others (Constitutional Petition E021 of 2024) [2025] KEELC 3896 (KLR) (15 May 2025) (Ruling)** the Court stated/held:-

**“... Sections 29 and 30 of the Act have been interpreted through judicial decisions, as exemplified in the case of Robert Kulinga Nyamu v Musembi Mutunga & another [2022] eKLR, with which I agree; the Court determined:**

**“The Appellant submitted that there is no provision that limits the Appellant right after exhausting the adjudication mechanisms from filing a suit before the**

**Magistrate’s Court for determination. However, it is the Courts view that the above provision of Section 29 of the Land Adjudication Act that the Ministers decision is final is couched in mandatory terms. If the legislature meant to give the right to a party to re-litigate a dispute which had been heard through the entire dispute resolution process provided under the Land Adjudication Act, nothing would have been easier than to state so clearly.”**

**20. Regarding the conclusiveness of the Minister's decision, the Court additionally pronounced:**

**“In addition to this, Section 29 (3) of the Land Adjudication Act provides that after the decision in the appeal to the Minister is made, the register**

**will become final in all respects. This means that one cannot re-open an adjudication process that has been completed.”**

**21. The entities established by the Land Adjudication Act, Cap 284, to determine rights and interests in land within an Adjudication Section hold quasi-judicial authority; the Court may only contest the decisions of these bodies under its supervisory jurisdiction, specifically through Judicial Review Proceedings. In this case, the Petitioners have bypassed the proper channels by submitting the current Petition to challenge the Minister's decision - an appeal through the back door.**

**22. This position is substantiated by precedents set forth by this Court and the Superior Courts, illustrating that the appropriate legal procedure for addressing grievances arising from the adjudication process is through Judicial Review. For instance, in Amarnath (Suing on Behalf of the Estate of the Late Amarnath Gupta) v Kazungu & 2 others (Civil Appeal E033 of 2021) [2023] KECA 1280 (KLR) (27 October 2023) (Judgment), the Court of Appeal determined: “The prayers sought, among others, included the prayer for the setting aside of the Ministerial decision. Even though the Appellant denies that the suit was an appeal, we are convinced that it was one for all practical**

**purposes. 20. In regards to whether the ELC had the requisite jurisdiction to entertain the suit, there is no dispute that the suit was challenging the decision of the Minister made pursuant to Section 29 of the Act. That Section, under Section 29(1) (b) provides: “(b) and the Minister shall determine the appeal and make such order thereon as he thinks just, and the order shall be final.” 21. In addition to declaring that the decision of the Minister is final, Section 30 of the Act all together ousts the jurisdiction of the Courts, providing as follows: “30. Staying of land suits(1)Except with the consent in writing of the adjudication officer, no person shall institute, and no**

**Court shall entertain, any civil proceedings concerning an interest in land in an adjudication section until the adjudication register for that adjudication section has become final in all respects under section 29(3) of this Act.” 22. The Act is clear that any person aggrieved by a decision made under Section 26 of the Act must follow the process under Section 29 and appeal to the Minister. Once the Minister, or the panel delegated to, makes a determination, his order is final. That means the Minister’s decision cannot be appealed, whether under the Act or in Court. The option the Appellant had was to pursue the Judicial Review process provided under Article 47 of the Constitution,**

and the Fair Administrative Action Act, 2015, a statute enacted pursuant to Article 47 of the Constitution. He could not re-open the case and challenge it except through Judicial Review. The Appellant was attempting to undo the process he participated in using a process that is not provided for, and that is not allowed.<sup>23</sup>In *Julia Kaburia vs. Kabeera & 5 Others* [2007] eKLR, this Court commenting on Section 30 of the Act, held: “The Land Adjudication Act provides an exclusive and exhaustive procedure for ascertaining and recording land rights in an adjudication section. By Section 30 (1) (2), the jurisdiction of the Court is ousted once the process

**of land adjudication has started until the adjudication register has been made final ...In our respective view, the consent envisaged by Section 30 to institute or continue with civil proceedings is not a consent to file a suit challenging the decision of the Land Adjudication Officer himself on the merits of his decision. Rather, the consent is given to a person to file a suit or continue with a suit against persons who have a competing claim on the land under adjudication. This protection was availed to the parties herein by the appellate process, which culminates with Section 29 of the Act. “(1) Any person who is aggrieved by the determination of an objection under section 26 of this Act**

**may, within sixty days after the date of the determination, appeal against the determination to the Minister by -**

**a. delivering to the Minister an appeal in writing specifying the grounds of appeal; and b. sending a copy of the appeal to the Director of Land Adjudication, and the Minister shall determine the appeal and make such order thereon as he thinks just, and the order shall be final.”** 24. The ELC commenting on the role of the Court vis -a-vis that of the adjudicating bodies under the Act in the persuasive authority of Tobias Achola Osindi & 13 Others vs. Cyprian Otieno Ogalo & 6 Others [2013] eKLR by Okongo J., as follows: “The whole process leading up to the registration

**of land as aforesaid is undertaken by the Adjudication Officer together with other officers appointed under the Act for that purpose. It follows from the foregoing that once an area has been declared an adjudication area under the Act, the ascertainment and determination of rights and interests in land within the area is reserved by the law for the officers and quasi-judicial bodies set up under the Act... The Act has given full power and authority to the Land Adjudication Officer to ascertain and determine interests in land in an adjudication area prior to the registration of such interest. As I have mentioned above, the process is elaborate. It is also inclusive in that it involves the**

**residents of the area concerned. I am fully in agreement with the submission by the advocates for the Defendants that the Land Adjudication Officer cannot transfer the exercise of this power to the Court. The Court has no jurisdiction to ascertain and determine interests in land in an adjudication area. In my view, the role of the Court is supposed to be supervisory only of the adjudication process. The Court can come in to ensure that the process is being carried out in accordance with the law. The Court can also interpret and determine any point or issue of law that may arise in the course of the adjudication process. The Court cannot, however,**

**usurp the functions and powers of the Land Adjudication Officer or other bodies set up under the Act to assist in the process of ascertainment of the said rights and interests in land...” 25. Having carefully considered this appeal, we find no fault with the finding and holding of the ELC Judge that it had no jurisdiction to entertain the Appellant’s suit. The process of land adjudication had effectively come to its logical conclusion and could not be re-opened otherwise than in the manner contemplated by the law. In the circumstances, the ELC properly struck out the Appellant’s suit. The Appellant did not have any separate cause of action against the 1<sup>st</sup>**

**Respondent other than the matters which were adjudicated upon and determined by the Ministerial Appeals Committee during the appeal to the decision of the objection proceedings. That decision was final.”**

**23. The same position was reaffirmed in the matter of John Masiantet Saeni v Daniel Aramat Lolungiro & 3 others [2017] eKLR, wherein the Court, upon dismissing a petition, articulated the following: “In the matter before Court, the Petitioner did not move the Court by way of Judicial Review but rather opted to file a petition albeit after the lapse of 13 years from the decision of the Minister was given. In my view, the Petition is**

**tantamount to seeking to appeal the decision of the Minister through the back door ..... The Kenyan Constitution cannot be invoked to resurrect matter that had been duly resolved through due process such as the matter the Petitioner wishes to revive through the Instant Petition.”**

11. It is clear from the cases cited in the case of **Dofu & 3 Others v Ngome & 7 Others** (*supra*), that the only avenue for challenging the decision of the Minister is by filing judicial review proceedings seeking to quash it on grounds of illegality or any other grounds on which judicial review proceedings may be commenced.
12. The Plaintiffs’ herein who appear to have been dissatisfied with the decision of the Minister decided to use other means to challenge/circumvent the decision of the Minister.

In that regard, the Plaintiffs lodged a complaint with the Directorate of Criminal Investigations (DCI). The DCI purportedly investigated the circumstances in which the Defendant acquired his interest in the suit property and citing suspected fraud, recommended that the title held by the Defendant be cancelled.

13. The Land Registrar, purportedly acting on the recommendations of the DCI, cancelled the title of the Defendants and registered the Plaintiffs as the proprietors of the suit property.

14. After being registered as the proprietors of the suit property, the Plaintiffs took up the summons dated 1<sup>st</sup> October, 2024 seeking the following reliefs:-

**1. Spent**

**2. Spent**

**3. An order of permanent injunction restraining the Respondent whether by himself, his servants, employees**

**and/or agents from taking any step or further steps towards constructing on, entering into or remaining up, selling, disposing, charging or in any other way dealing with the suit property;**

**4. An order of permanent injunction compelling the Respondent to vacate the suit property and deliver vacant possession thereof to the Respondents;**

**5. The officer commanding Kabartonjo Police Station do ensure compliance with the orders of the Court;**

**6. The Respondent to pay the Applicants such sum as the Court shall determine as mesne profits for the period of unlawful occupation and possession of the suit property;**

**7. The costs of the application be borne by the Respondent.**

15. From the pleadings, evidence and the submissions by the parties to this dispute, I find the sole issue for the Court's determination to be whether the Plaintiffs have made up a case for being granted the orders sought. Tied to this question is, what orders should the Court make?
16. On whether the Plaintiffs have made up a case for being granted the orders sought, as pointed out herein above, the dispute which culminated to the suit before this Court was the subject matter of suit/proceedings filed before the Tribunals established in the Land Adjudication Act. In particular, the dispute was presented before the LAO who made a decision in respect thereof. The decision of the LAO was appealed from by the Respondent to the Minister leading to reversal of the decision of the LAO by the Minister.

17. The decision of the Minister was that the suit property belongs to the Defendant herein. The decision of the Minister, which by dint of **Section 29** of the Land Adjudication Act is final on matters touching on its merit which was never challenged by the Plaintiffs using the legally available means or channel of challenging such a decision that is to say Judicial Review. Instead, the Plaintiffs used an unknown method of challenging the decision of the Minister that is filing a complaint before the DCI claiming that there was fraud in registration of the Defendant as the proprietor of the suit property.
18. The Land Registrar, purportedly acting on the recommendation of the DCI that the Defendant's title be cancelled and purportedly acting on the powers conferred on him under **Section 79** of the Land Registration Act, 2012 cancelled the Defendant's title and registered the Plaintiffs as the proprietors of the suit property.

19. The process that led to cancellation of the Defendant's title and registration of the Plaintiffs as the proprietors of the suit property was *prima facie* erroneous because of the following:-

- i) It purported to set aside or override the decision of the Minister on entitlement of the suit property which decision is by dint of **Section 30** of the Land Adjudication Act final on the issue of entitlement to the suit property, at least as relates to the merits of the decision;
- ii) The Land Registrar does not have powers to cancel title of a registered owner in circumstances like the ones presented before him; alleged fraud in registration of title to land;
- iii) Only a Court of law, in particular the Land and Environment Court, has power to

cancel title to land in circumstances presented before the Land Registrar.

20. The above position was laid bare in **Republic v Land Registrar, Mombasa & 3 Others Ex-parte Alladina Properties Limited [2018] eKLR** where the Court stated:

**“The power to rectify the register of titles for reason of fraud or mistake is the preserve of the Court under section 143 of the Registered Land Act (Cap.300) (similar to section 80 of the Land Registration Act Cap. 300). These clauses show that the only occasion in which the Registrar could have interfered with the titles was where there was an error or omission not materially affecting the interest of any proprietor. The Land Registrar of Mombasa had no power to revoke the Applicant’s title. Indeed,**

**section 28 of The Registered Land Act does not give any powers to the Respondents to revoke titles in case of an illegal allocation or fraud or nullity if at all it is established. The title can only be declared null and void by a Court of law after determination.”**

21. In the end, I find that the process through which the Plaintiffs acquired their interest in the suit property cannot avail them the reliefs sought, the same having been acquired unprocedurally.
22. Consequently, I find the Plaintiffs case to be lacking in merit and dismiss it with costs to the Defendant.
23. Orders accordingly.

**Dated, signed and delivered virtually at Busia**

**this 16<sup>th</sup> day of February, 2026**

**L. N. WAITHAKA**

**JUDGE**

**In the presence of;**

Ms. Kiage Sirma for the Applicants

Mr Kiptoon for the Respondent

Court Assistant; Ian

ORIGINAL