



**Likama v Nyaipawa & 5 others (Environment and Land Case  
496 of 2017) [2025] KEELC 5696 (KLR) (29 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5696 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT AND LAND CASE 496 OF 2017  
MN GICHERU, J  
JULY 29, 2025**

**BETWEEN**

**WANJIRU NJUNGE LIKAMA ..... PLAINTIFF**

**AND**

**LENTEI KITUNGAT NYAIPAWA ..... 1<sup>ST</sup> DEFENDANT**

**JOEL KANCHORI OLE SINKEEN ..... 2<sup>ND</sup> DEFENDANT**

**DANIEL KISHIL OLE SANKITI ..... 3<sup>RD</sup> DEFENDANT**

**AMOS TAJAIA SANKITI ..... 4<sup>TH</sup> DEFENDANT**

**DISTRICT LAND REGISTRAR KAJIADO ..... 5<sup>TH</sup> DEFENDANT**

**JOHN KALEIYA OLE KIPAS ..... 6<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. The Plaintiff seeks the following reliefs against the Defendants.
  - a. An order of injunction restraining the 1<sup>st</sup> Defendant from entering, cultivating, developing and or trespassing on land parcel No. Kajiado/Elangata-Wuas/612, suit land.
  - b. An order directing the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and the 5<sup>th</sup> Defendants, District Land Registrar Kajiado, to rectify their records on the land register and register the Plaintiff as the rightful owner of the suit land.
  - c. In the alternative, a declaration be made that the Plaintiff has by adverse possession acquired ownership of the suit land.
  - d. That the costs of the suit be borne by the Defendant.
  - e. Any other and better relief that this court may deem fit and just to grant in the circumstances.



This is as per the amended complaint dated 15-3-2010.

2. The Plaintiff's case is as follows.

One, her late husband, Njunge Likama, was a member of Elangata -Wuas Group Ranch. During the demarcation of land in the group ranch, the deceased Njunge Likama was allocated parcel No. 346. Two, upon allocation of the land, the family of the deceased settled on the land and developed it by building permanent structures thereon. The deceased Njunge Likama and his mother were buried on the land. Three, there was disagreement within the group ranch when the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants were elected as officials of the Group Ranch. The suit land was allocated by the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants to the 1<sup>st</sup> Defendant. This allocation was irregular. As a result, when title deeds were being issued, the Plaintiff was issued with the one for L.R. No. Kajiado/Elangata-Wuas/371 which is not the land that she was allocated in the first place.

Four, upon discovery of the anomaly, the Plaintiff complained to the land adjudication committee and the 5<sup>th</sup> Defendant but they both failed to rectify the errors. By the time she filed this suit, she had been on the suit land for a period of over 18 years. Five, the 1<sup>st</sup> Defendant invaded the Plaintiff's land and started putting up structures and excavating stones. When she complained about the invasion, she was shown her new parcel No. 371. This parcel is more than 70 Kilometers away from the parcel shown to her more than 18 years earlier. Six, the Plaintiff is aware that the 1<sup>st</sup> Defendant was allocated L.R. Kajiado/Elangata -Wuas/182 which he leased to Athi River Mining for the purpose of harvesting stones. When the lease expired, he invaded the Plaintiff's suit land. Earlier on the Plaintiff had been shown the beacons of the suit land. When the dispute could not be resolved at the offices of the land adjudication and the Land Registrar, the Plaintiff had no option but to file this suit in Court.

3. In support of her case, the Plaintiff filed the following evidence.

- i. Witness statements by the Plaintiff, Jonathan Loontasati, Joel Lelit, Stephen Olanana, Judah Ordination and Malei Teretoi.
- ii. Copy of title and search for L.R. No. Elangata-Wuas/371.
- iii. Certificate of official search for L.R. No. 613.
- iv. Map, members list and subdivision list for Elangata Wuas Group Ranch.
- v. Beacon certificate for L.R. No. 182.
- vi. Mining lease agreement dated 23-6-1997.
- vii. Copy of letter dated 23-6-2005.
- viii. Photograph showing development on L.R. No. Elangata Wuas 612.
- ix. Copy of letter dated 19-3-1983.
- x. Copy of affidavit dated 12-11-1992 by Wali Mutungi Njunge.
- xi. Copy of letter dated 3-11-1992.
- xii. Copy of letter dated 20-8-2012.



- xiii. Copy of letter dated 31-5-2012.
  - xiv. Copy of letter by Chief Lodokilani.
4. The 1<sup>st</sup> Defendant in a written statement of defence dated 8-9-2016 denies the Plaintiff's claim in its entirety and pleads as follows.

Firstly, the Plaintiff is the registered owner of L.R. No. Kajiado/Elangata –Wuas/371 pursuant to an order dated 11-5-2004 issued in Nairobi HCCC No. 385/2002 and she is in occupation of the said parcel. Secondly, the 1<sup>st</sup> Defendant is the legitimate owner of L.R. No. Kajiado/Elangata-Wuas-612 which he has occupied for a period of over 30 years. He was issued with the title deed for L.R. No. 612 on 24-5-2005 by virtue of being a legitimate member of the Group Ranch No. 482. Thirdly, no allegations of fraud, deceit, misrepresentation or collusion have been made against him. Fourthly, the Plaintiff's husband Wali Mutungi Njunge was group ranch member No. 149 and after his demise she became registered and she was allocated parcel No. 92 and not the number 346 that she claims. Fifthly, there are no permanent structures on the suit land as the Plaintiff's permanent house is at KMQ Trading Centre, 5 Kilometres away. The graves of the Plaintiff's husband and mother in law are on L.R. Kajiado/Elangata –Wuas/613 and not on L.R. No. 612 owned by the 1<sup>st</sup> Defendant.

Finally, the Plaintiff has failed to disclose that there were various resolutions passed by the Group Ranch and directions issued in Nairobi HCCC No. 385/2002 and she is not entitled to L.R. No. 612 and her suit should be dismissed with costs.

5. In support of his case, the 1<sup>st</sup> Defendant filed the following evidence.
- i. Witness statements by the Plaintiff, Benson Lente, Joel Kanchori Ole Sinkeen, Daniel Kishil Ole Nkinyi and John Moile Kareya.
  - ii. Copies of orders issued by Justices Nyamweya, Okwengu and Ransley dated 19-3-2013, 10-11-2010, 4-4-2005 and 19-5-2005.
  - iii. Copy of certificate of title deed for Kajiado/Elangata-Wuas/1, notification of change of Group representatives dated 19-7-1996 and certificate of incorporation dated 23-9-1996.
  - iv. Copy of letter by Land Adjudication and Settlement Director dated 26-9-1997.
  - v. Copies of minutes of AGM meetings of the Group Ranch held on 29-4-1999 and 8-8-2001.
  - vi. Copy of agreement for Planning, Surveying, Registration and Processing of individual title deeds dated 24-8-2001.
  - vii. Copy of title deed for L.R. No. 612 together with certificate of official search and copy of register.
  - viii. Similar documents for L.R. No. 317 to those in (vii) above.
  - ix. Other relevant documents .
6. On 26-9-2024 John Kaleiya Ole Kipas was joined in this case at the request of the Plaintiff because he was said to be constructing on the suit land. When he joined the suit, the 6<sup>th</sup> Defendant filed an affidavit dated 29-9-24 in which he says that he is the registered owner of L.R. No. Kajiado/Elangata-



- Wuas /1742 which mutated from L.R. No. 613, which no longer exists. He annexed a copy of title deed for L.R. No. 1742 dated 23-10-2013 showing the size of his land as 85.43 hectares.
7. At the trial on 5/3/2019, 11/12/2019, 17/1/2023, 20/2/2024, 14/11/2024 and 5/12/2024, a total of ten(10) witnesses testified. They included Warunga Masinde, District Surveyor Kajiado, Wanjiru Likama, Jonathan Nkaldes, Malei Ole Teleboi, Judah Ordination, Stephen Olanana, Lente Kitungat Nyapaina, Benson Koitee, Susan Awour and Collins Okoth.
  8. The witnesses for the Plaintiff generally restated her case that she is the one in occupation of L.R. No. 612 and that is where she has lived all her life besides burying her husband and mother in law on the same land which is the suit land.  
  
The 1<sup>st</sup> Defendant's witness said that it is them and not the Plaintiff in occupation of L.R. No. 612. According to them, the graves of the Plaintiff's husband and mother in law are located on L.R. No. 613 and not on L.R. No. 612.
  9. The first witness as well as the last two were all surveyors and their evidence was largely on what they found on the ground when they visited the locus in quo at different times. Warunga Masinde(PWI) could not tell where the boundary between L.R. Nos. 612 and 613 was because the boundaries are not well maintained. Only the Land Registrar could establish the boundaries according to Warunga Masinde the District Surveyor.
  10. Counsel for the parties filed written submissions dated 14/5/2025, 30/5/2025 and 3/7/2025 respectively. Only counsel for the 6<sup>th</sup> Defendant and the Plaintiff identified issues for determination. The issues identified by the 6<sup>th</sup> Defendant's counsel are as follows.
    - a. Whether any order can lawfully issue against the 6<sup>th</sup> Defendant in the absence of any prayer or cause of action against him in the amended plaint, and
    - b. Who should bear the costs of this suit.  
The issue identified by the Plaintiff's counsel is simply,
      - i. Whether the Plaintiff is the legitimate owner of land parcel No. Kajiado/Elangata-Wuas/612.
  11. I have carefully considered all the evidence adduced in this case by both sides including the witness statements, the documents and the testimony at the trial. I have also considered the written submissions by the learned counsel for the parties including the law cited in those submissions. I find that the two issues identified by the Plaintiff's counsel and the counsel for the 6<sup>th</sup> Defendant will determine the dispute.
  12. Starting with the Plaintiff's issue, I find that she has not proved that she is the legitimate owner of L.R. No. Kajiado/Elangata-Wuas/621 for the following reasons.  
  
Firstly, it is the Plaintiff who bears the burden of proof in this case. She is the one seeking to be registered as the owner of the suit land. This land is already registered in the name of the 1<sup>st</sup> Defendant Lente Kitungat Nyapaiwa. At the same time the Plaintiff already has L.R. No. Kajiado/Elangata-Wuas/371. Under Sections 107 and 108 of the *Evidence Act*, it is the party who would fail if no evidence was adduced on either side who has the burden of proof. This burden is a heavy one because it involves fraud. In the case of Ndolo vs. Ndolo Civil Appeal No. 132 of 1995 it was held that where fraud is alleged, the burden of proof on the party alleging fraud is to a standard higher than a balance of probabilities but not beyond reasonable doubt like in criminal cases. In this case this heavy burden has not been discharged.



13. The Plaintiff has not proved that she has any homes on the suit land. It was upon her to prove this. The reports by the surveyors, as unreliable as it is shows that the graves of the Plaintiff's husband and mother in law are on L.R. No. 613. I say that the reports of the surveyors are unreliable because PW 1 said he could not determine the boundaries of the suit land because the Land Registrar had not demarcated the boundaries. To me, that is a very lame excuse. It is the surveyor's duty to establish boundaries and for the Registrar to ratify the surveyor's work. It cannot be the other way round. The surveyor is the expert in land surveying and photogrammetry. Under Regulation 40 paragraphs (3) and (4), of the Land Registration Regulations 2017, the District Surveyor is expected to assist the Land Registrar in boundary determination and not vice versa.

The other two surveyors prepared reports which missed the basic requirements like a legend. The witnesses were not confident of what they were saying and it seems that they were not present on the suit land at the same time. This makes it doubtful if they visited the suit land or other parcels.

14. There is evidence from the 1<sup>st</sup> Defendant to the effect that the Plaintiff has no structures on the suit land and the structures that she has that are permanent are near KMQ Trading Center, 5 Kilometers away from the suit land. The Plaintiff was not able to disprove this evidence and the survey report, though unreliable shows that the graves of the Plaintiff's kin are not on the suit land. After all, the Plaintiff has not adduced any evidence to prove that after the subdivision of the ranch all the members of the ranch remained on the land that they had occupied and buried their dead kin.

15. Under Order 2 rule 10 of the Civil Procedure Rules, it is provided as follows.

“Subject to subrule (2), every pleading shall contain the necessary particulars of any claim, defence or other matter pleaded including ...

a. Particulars of any misrepresentation, fraud...”

In this case, it was very necessary to plead the particulars of fraud relied upon by the Plaintiff. The Plaintiff dated 20-6-2007 and the one amended on 15-3-2010 have not particularized fraud. Since parties are bound by their pleadings, the Plaintiff ought to have been clear at the outset that she is pleading fraud and that she is out to prove it as per the law.

From the above, it is clear that the Plaintiff has not proved that she is the legitimate owner of the L.R. No. 612. Her letter of 23-6-2005 weakens her claim to L.R. No. 612. She states as follows in the last paragraph.

“The purpose of this letter is to request you to rectify the detected anomaly before plot No. 613 is allocated to somebody else. I therefore request you to issue me with title number Kajjado/Elangata-Wuas/613 as I surrender the wrong title number 317.”

The Plaintiff should have made clear what system was used to allocate her the suit land, such as balloting or allocation by occupation and then shown how the abuse of the system of allocation resulted in her not getting the land that she had balloted for or occupied for long. Without such evidence, she has not succeeded in her case.

16. Regarding the issue raised by the Counsel for the 6<sup>th</sup> Defendant, I find that no order can lawfully issue against the 6<sup>th</sup> Defendant in the absence of any suit against him. The 6<sup>th</sup> Defendant should have been served with the Plaintiff and all the accompanying documents and summons to enter appearance. He should have been given time to file a defence and all the accompanying documents and then accorded a fair hearing as envisaged under Article 50(1) of *the Constitution*. All the above did not happen because



the 6<sup>th</sup> Defendant was joined in the suit on 25-9-2024 when eight (8) out of the ten(10) witnesses who testified in this case had already given their evidence.

17. In summary and for the reasons already given, I find no merit in the Plaintiff's suit and I dismiss it with costs to the 1<sup>st</sup> and 6<sup>th</sup> Defendants.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 29<sup>TH</sup> DAY OF JULY, 2025.**

**M.N. GICHERU JUDGE.**

Delivered online in the presence of; -

Court Assistant – Mwangi Njonjo

Plaintiff's Counsel – Miss Kanini h/b for Mr. Charagu

1<sup>st</sup> Defendant's Counsel – Mr Kamau

6<sup>th</sup> Defendant's Counsel – Mr. Sakimpa

