



REPUBLIC OF KENYA



**Naniwet & another v Tum & another (Environment and Land Case E016 of 2025) [2026] KEELC 557 (KLR) (5 February 2026) (Ruling)**

Neutral citation: [2026] KEELC 557 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KERICHO  
ENVIRONMENT AND LAND CASE E016 OF 2025  
LA OMOLLO, J  
FEBRUARY 5, 2026**

**BETWEEN**

**RHODA CHEPKORIR NANIWET ..... 1<sup>ST</sup> PLAINTIFF**

**CATHERINE CHEPWOGEN KIRUI ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**MARY CHEMUTAI TUM ..... 1<sup>ST</sup> DEFENDANT**

**JOSEPH KIPKEMOI TUM ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

**Introduction**

1. This ruling is in respect of the Plaintiffs/Applicants Notice of Motion application dated 11<sup>th</sup> March, 2025. The application is expressed to be brought under Sections 1A & 3A of the *Civil Procedure Act*, Order 51 Rule 4 of the Civil Procedure Rules, Section 13(5) of the *Environment and Land Court Act* and Article 159 of the *Constitution* of Kenya.
2. The application seeks the following orders;
  - a. That an order do issue directing the County Land Surveyor, Kericho County to visit land parcel Title (sic) No. Kericho/Sosiot/3965, for purposes of re-ascertaining and fixing its boundaries.
  - b. That an order do issue directing the Officer Commanding Station (OCS) Sosiot to provide security for the Applicants, their representatives and the County Surveyor during re-ascertainment and fixing of boundaries of the property known as Title No. Kericho/Sosiot/3965.
  - c. That the costs of this application be provided for.



3. The application is based on the grounds on its face and the supporting affidavit of Rhoda Chepkorir Naniwet sworn on 11<sup>th</sup> March, 2025.

### **Factual Background.**

4. The Plaintiffs/Applicants commenced the present proceedings vide the Plaint dated 11<sup>th</sup> March, 2025 wherein they seek the following prayers;
  - a. A declaration that the Plaintiffs are the bonafide registered owners of all that property known by reference (sic) as Title No. Kericho/Sosiot/3965 measuring 2.428 hectares, or thereabouts.
  - b. That the Defendants are illegal occupants and/or trespassers on the Plaintiffs' property known as Title No. Kericho/Sosiot/3965 measuring 2.428 hectares, or thereabouts.
  - c. A permanent injunction does issue restraining the Defendants, their proxies, agents, servants and/or, any other person claiming through them from entering, remaining on, cultivating, selling and/or otherwise interfering with the Plaintiffs' quiet possession, use and enjoyment of the parcel of land comprised in all that property known as Title No. Kericho/Sosiot/3965.
  - d. General damages for trespass and/or illegal encroachment on the Plaintiff's property known as title No. Kericho/Sosiot/3965.
  - e. Costs of this suit.
  - f. Interest on (e) and (f), above. (sic)
  - g. Any other relief as this Honourable Court may deem fit or just to grant.
5. As at the time of writing of this ruling, the Defendants/Respondents have not filed their Statement of Defence.
6. The application under consideration first came up for hearing on 17<sup>th</sup> March, 2025 when the Court issued directions that it be served upon the Defendants/Respondents.
7. The application came up for hearing on 30<sup>th</sup> April, 2025 which hearing was adjourned to 15<sup>th</sup> July, 2025.
8. On 15<sup>th</sup> July, 2025 the Court issued directions that the application be canvassed by way of written submissions. On 24<sup>th</sup> September, 2025 it was mentioned for submissions and then reserved for ruling.

### **The Plaintiffs/Applicants Contention.**

9. The affidavit in support of the application is sworn by Rhoda Chepkorir Naniwet the 1<sup>st</sup> Plaintiff/Applicant. She contends that she has the consent and authority of the 2<sup>nd</sup> Plaintiff/Applicant to swear the affidavit.
10. She also contends that she is a beneficial owner of a six-acre portion of land parcel No. Kericho/Sosiot/46 as per the Certificate of Confirmation of Grant issued on 23<sup>rd</sup> June, 2022 in Kericho HC PA No. 182 of 2003.



11. She further contends that the Court issued an order in Kericho HC PA No. 182 of 2003 on 7<sup>th</sup> November, 2022 which directed the County District Surveyor, Kericho to survey and subdivide land parcel No. Kericho/Sosiot/46.
12. It is her contention that sometime in October, 2024, the County Land Surveyor went to land parcel No. Kericho/Sosiot/46 and upon surveying the land, placed beacons on its resultant subdivisions.
13. It is also her contention that thereafter land parcel No. Kericho/Sosiot/46 was subdivided and one of the resultant subdivisions, that is Kericho/Sosiot/3965 was registered in their names and a title deed issued.
14. It is further her contention that questions relating to the rights of ownership of the dependants of Kiptum Arap Naniwet (deceased) over land parcel No. Kericho/Sosiot/46 have been litigated upon and an appeal filed at the Court of Appeal. She goes on to state that all the parties in the present suit are dependants of Kiptum Arap Naniwet (deceased).
15. She contends that the estate of the deceased was finally distributed by the High Court in line with the directions issued by the Court of Appeal.
16. She also contends that the beacons demarcating their portion of land have been tampered with and it is now impossible to ascertain the boundaries as demarcated by the surveyor.
17. She further contends that if the boundaries are not re-ascertained, the prevailing situation could lead to disputes.
18. It is her contention that due to the tampering of the beacons, they cannot effectively utilize their property and they are therefore not enjoying their rights of ownership and quiet possession of land parcel No. Kericho/Sosiot/3965.
19. It is also her contention that there is a possibility of the Defendants/Respondents herein resisting and/or disrupting the re-ascertainment of the boundaries if the exercise proceeds without police security.
20. It is further her contention that it is therefore necessary that the OCS Sosiot Police Station be ordered to maintain order and ensure the safety of all the parties during the exercise.
21. She contends that initially, she filed Kericho CM Miscellaneous Application No. E165 of 2024 which application she later withdrew. The orders that had been issued were also vacated. This was because the Defendants/Respondents herein had opposed the said orders on the ground that they had not been heard.
22. She also contends that the said miscellaneous application was withdrawn on 10<sup>th</sup> March, 2025 to pave way for the filing of the present suit and the application under consideration.
23. She further contends that no party will suffer prejudice if the boundaries are re-established and goes on to state that the said exercise will ensure a peaceful co-existence with the other beneficial owners of the said parcel of land.
24. She ends her deposition by stating that the application under consideration has been brought in good faith and in the interest of justice.

#### **The Defendants/Respondents Response.**

25. In response to the Plaintiffs/Applicants application, the Defendants/Respondents filed a Replying Affidavit sworn by Mary Chemutai Tum the 1<sup>st</sup> Defendant/Respondent.



26. She deposes that she has the authority of the 2<sup>nd</sup> Defendant/Respondent to swear the affidavit.
27. She also deposes that the application under consideration is seeking that an order be issued directing the County Land Surveyor, Kericho to visit land parcel No. Kericho/Sosiot/3965 to fix and/or re-ascertain its boundaries.
28. She further deposes that the said prayer is premature, misconceived and legally untenable as it seeks a substantive relief at the interlocutory stage and goes on to state that the suit has not been heard and no determination has been made on the ownership and rights over the said parcel of land.
29. It is her deposition that granting such an order before the issues in dispute are conclusively determined by the Court will amount to prejudging the suit and adds that the issuance of the said orders have the effect of finality which will undermine their right to a fair trial.
30. It is also her deposition that the boundaries of land parcel No. Kericho/Sosiot/3965 have never been fixed in accordance with the law and the Plaintiffs/Applicants cannot therefore purport to claim and/or enforce boundary rights over boundaries that are yet to be legally established.
31. It is further her deposition that they deny the Plaintiffs/Applicants claim as set out in the Plaint dated 11<sup>th</sup> March, 2025 and adds that they are disputing the Plaintiffs/Applicants ownership of land parcel No. Kerichi/Sosiot/3965.
32. She deposes that the orders sought in the interim will deny the Defendants/Respondents an opportunity to be heard as the entire suit will be rendered nugatory.
33. She deposes that if the prayers sought in the application under consideration are granted, they will be prejudiced as they would not have been accorded an opportunity to present their case through viva voce evidence. She goes on to state that the orders sought would effectively alter the status quo to their detriment.
34. She ends her deposition by stating that the application under consideration is an abuse of the Court process, is intended to circumvent the normal trial process and should therefore be dismissed with costs.

#### **Issues for Determination.**

35. The Plaintiffs/Applicants filed their submissions dated 18<sup>th</sup> September, 2025 while the Defendants/Respondents filed their submissions dated 19<sup>th</sup> September, 2025.
36. The Plaintiffs/Applicants reiterate their averments in their affidavit in support of the application and set out a summary of the Defendants/Respondents Replying Affidavit.
37. The Plaintiffs/Applicants submit on the following issue;
  - a. Whether this Court is vested with jurisdiction to grant the orders sought in view of the provisions of Sections 18(2) of the *Land Registration Act* taking into account the circumstances of this case.
38. The Plaintiffs/Applicants rely on Section 18(2) of the *Land Registration Act* and reiterate that the boundaries of the suit parcel of land were ascertained and fixed after the High Court issued an order on 7<sup>th</sup> November, 2022.



39. The Plaintiffs/Applicants submit that there is no boundary dispute in the present suit and that they are only seeking for the re-ascertainment of the boundaries of the suit parcel of land which boundaries had already been fixed.
40. The Plaintiffs/Applicants reiterate that land parcel No. Kericho/Sosiot/3965 is one of the resultant subdivisions of land parcel No. Kericho/Sosiot/46.
41. The Plaintiffs/Applicants submit that land parcel No. Kericho/Sosiot/46 was subdivided as per the Certificate of Confirmation of Grant dated 29<sup>th</sup> June, 2022.
42. The Plaintiffs/Applicants also submit that the Defendants/Respondents contention that the issues raised herein ought to be canvassed before the Land Registrar and Survey Department in the first instance, cannot lie since the said officers already executed their mandate as per the orders of the High Court issued on 7<sup>th</sup> June, 2022.
43. The Plaintiffs/Applicants further submit that under prayers (c) and (d) of the Plaint, they are seeking for orders of permanent injunction and general damages for trespass.
44. It is the Plaintiffs/Applicants submissions that they will canvass those issues during the hearing and determination of the suit.
45. It is the Plaintiffs/Applicants submissions that the application under consideration will not therefore have the effect of determining the suit at the interlocutory stage.
46. The Plaintiffs/Applicants reiterate that the parties in the present suit are beneficiaries of the estate of Kiptum Arap Naniwet (Deceased) and any issues over the subdivision of land parcel No. Kericho/Sosiot/3965 (sic) have been canvassed and an appeal filed at the Court of Appeal.
47. It is also the Plaintiffs/Applicants submissions that the Defendants/Respondents should not be allowed to canvass any other claim over the suit parcel of land other than the fact that they are beneficiaries of the estate of Kiptum Arap Naniwet (Deceased).
48. It is further the Plaintiffs/Applicants submissions that they are asserting their rights over the suit parcel of land pursuant to the judgement of the Court of Appeal that was delivered on 17<sup>th</sup> June, 2017.
49. The Plaintiffs/Applicants submit that the Defendants/Respondents have not filed their Statement of Defence which is an indicator that they have no plausible defence.
50. The Plaintiffs/Applicants conclude their submissions by urging the Court to exercise its discretion under Section 13(5) of the *Environment and Land Court Act* and allow their application as prayed.
51. The Defendants/Respondents submit on the following issues;
  - a. Whether the Applicants have satisfied the legal threshold for grant of the orders sought at the interlocutory stage.
  - b. Who bears costs of the application.
52. On the first issue, the Defendants/Respondents reiterate their averments in the Replying Affidavit and submit that the prayers sought in the application under consideration are substantive in nature and cannot be granted at an interlocutory stage.
53. The Defendants/Respondents rely on Section 18(2) of the *Land Registration Act* and submit that it is the Land Registrar and the Survey Department that have the mandate to ascertain boundaries.



54. The Defendants/Respondents also submit that the Plaintiffs/Applicants are seeking to circumvent this statutory procedure by filing the application under consideration.
55. The Defendants/Respondents further submit that the Land Registrar is the lawful authority who hears and determines boundary disputes before the Court can assume jurisdiction.
56. The Defendants/Respondents rely on Section 27(1) of the Civil Procedure Rules and urge the Court to dismiss the Plaintiffs/Applicants application dated 11<sup>th</sup> March, 2025.

**Analysis and Determination.**

57. I have considered the Plaintiffs/Applicants application, the response thereto and the rival submissions.
58. It is my view that the only issue that arises for determination is whether the application dated 11<sup>th</sup> March, 2025 has merit.
59. The Plaintiffs/Applicants are seeking that the Court issues an order directing the Kericho County Land Surveyor to visit land parcel No. Kericho/Sosiot/3965 to re-ascertain and fix boundaries.
60. The Plaintiffs/Applicants are also seeking that the Officer Commanding Station (OCS) Sosiot be ordered to provide security during the re-ascertainment and fixing of boundaries.
61. The Plaintiffs/Applicants contend that in October, 2024, the County Land Surveyor visited land parcel No. Kericho/Sosiot/46 and set out the beacons of the intended subdivisions.
62. The Plaintiffs/Applicants further contend that they are the registered owners of land parcel No. Kericho/Sosiot/3965 which is one of the resultant subdivisions of land parcel No. Kericho/Sosiot/46.
63. It is the Plaintiffs/Applicants contention that the beacons for land parcel No. Kericho/Sosiot/3965 have been interfered with and that is why they were now seeking that its boundaries be re-established.
64. Among the documents attached by the Plaintiffs/Applicants to their affidavit in support of the application, is an order issued in Kericho HC Succession Cause No. 182 of 2003 In the matter of the Estate of Kiptum Arap Naniwet (deceased). The orders were issued on 7<sup>th</sup> November, 2022 and they are as follows;
  - “ 1. That the District Surveyor do hereby visit and cause survey and sub-division of the property LR No. Kericho/Sosiot/46, prepare mutation forms facilitate and effect final distribution of the estate of the deceased.
  2. That the Deputy Registrar of this honorable Court do hereby execute an application for consent to sub-divide and transfer, mutation and transfer forms for purposes of effecting final distribution of the estate of the deceased in compliance with the confirmed Grant of Letters of Administration dated 20<sup>th</sup> June, 2022.
  3. That OCS Sosiot Police Station do hereby provide security to the Applicant and the District Surveyor for purposes of enforcing peace during the survey and subdivision exercise to be carried out on LR No. Kericho/Sosiot/46.
65. The Plaintiffs/Applicants have also attached a copy of the title deed for land parcel No. Kericho/Sosiot/3965. It shows that Rhoda Chepkorir Naniwet and Catherine Chepwogen Kirui (the Plaintiffs/Applicants) are the registered owners. The title deed was issued on 18<sup>th</sup> September, 2024.



66. On the other hand, the Defendants/Respondents contend that the orders sought in the application under consideration are final orders which cannot be granted at the interlocutory stage.
67. The Defendants/Respondents also contend that the boundaries of land parcel No. Kericho/Sosiot/3965 have never been legally established.
68. The Defendants/Respondents further contend that the application under consideration has been filed prematurely and they submit that the Plaintiffs/Applicants ought to have approached the Land Registrar and the Survey Department before coming to Court.
69. Section 18 (2) of the [Land Registration Act](#) provides as follows;

“The Court shall not entertain any action or other proceedings relating to a dispute as to the boundaries of registered land unless the boundaries have been determined in accordance with this section.”
70. In the judicial decision of *Kario v Sekento; County Surveyor, Kajiado County & another (Interested Parties)* [2025] KEELC 7340 (KLR) the Court held as follows;

“Section 18(2) enjoins the Court not to entertain any action or other proceedings relating to a dispute as to the boundaries of registered land unless the boundaries have been determined by the Land Registrar.”
71. The Plaintiffs/Applicants contend that the boundaries of the suit parcel of land were established sometime in October, 2024.
72. They also contend that the beacons placed on the boundaries of the suit parcel of land have been tampered with and they are now seeking that the County Land Surveyor, Kericho be ordered to re-establish them.
73. The Defendants/Respondents on the other hand contend that the boundaries of the suit parcel of land have never been fixed. They also contend that the Plaintiffs/Applicants ought to have first approached the Land Registrar before coming to Court.
74. The Plaintiffs/Applicants have attached to their affidavit in support of the application, an order issued in Kericho HC Succession Cause No. 182 of 2003 In the matter of the Estate of Kiptum Arap Naniwet (deceased) on 7<sup>th</sup> November, 2022. The order directed the District Surveyor to survey and sub-divide land parcel No. Kericho/Sosiot/46.
75. It is not disputed that the suit parcel of land is one of the resultant subdivisions of land parcel No. Kericho/Sosiot/46.
76. On one hand, the Plaintiffs/Applicants contend that a survey was done as ordered by the High Court while on the other hand the Defendants/Respondents contend that no such survey took place.
77. Even though the Plaintiffs/Applicants have attached a copy of a Court order in support of their contention that a survey was done, no evidence has been adduced to show that indeed the said survey was done.
78. The Plaintiffs/Applicants in their submissions contend that there is no boundary dispute in the present suit.



79. In the Complaint, the Plaintiffs/Applicants aver as follows under paragraphs 7 and 8;

“7. The Plaintiff avers that upon conclusion of the survey, sub-division/mutation of the parcel of land known as title No. Kericho/Sosiot/46 conducted sometime in the month of September, 2024, beacons were duly placed demarcating their property known as title No. Kericho/Sosiot/3965 from the Respondent’s apportionment comprised in all that property known as title No. Kericho/Sosiot/3964.

8. Further, the Plaintiff avers that between October and December, 2024, the Defendants and/or their servants, agents or proxies however illegally removed the beacons demarcating their property and over time gradually obliterated the boundary marks delineating their property. (sic)

9. The Defendants have also trespassed onto the Plaintiff’s property known as Title No. Kericho/Sosiot/3965 on numerous occasions and committed acts of trespass including, but not limited to, plucking tea planted thereon by the deceased.”

80. From the averments in the Complaint, it is apparent that there is a boundary dispute in addition to the allegations of trespass.

81. In the judicial decision of *Nangurai v County Government of Kajiado & 2 others*; Chief Land Registrar (Interested Party) [2025] KEELC 7438 (KLR) the Court held as follows;

“The Plaintiff has not demonstrated that the Land Registrar has determined the boundary as required under Section 18(2) of the Act. No determination, plan, or note evidencing such demarcation has been produced before this Court. Consequently, the statutory bar in Section 18(2) is operative.

16. Section 18(2) of the *Land Registration Act* in essence takes away the jurisdiction of the Court until the Land Registrar has discharged his statutory duty of ascertaining and fixing the boundaries.”

82. In the above cited judicial decision, the Court held that parties ought to first approach the Land Registrar under Section 18(2) of the *Land Registration Act* and apply for the re-establishment and/or ascertainment of boundaries.

83. In the present suit, it is evident that the Plaintiffs/Applicants have not made any such application before the Land Registrar.

**Disposition.**

84. Taking the foregoing into consideration, I find that the Plaintiffs/Applicants application dated 11<sup>th</sup> March, 2025 lacks merit and it is hereby dismissed with costs.

85. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO THIS 5<sup>TH</sup> DAY OF FEBRUARY, 2026.**

**L. A. OMOLLO**

**JUDGE.**



In the presence of: -

Mr. Koech for the Plaintiffs/Applicants.

Miss Chepngetich for Jausiku for the Defendants/Respondents.

Court Assistant; Mr. Joseph Makori.

