



REPUBLIC OF KENYA



**KENYA LAW**  
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**Sampuengwe v Samtuenkwe (Environment and Land Appeal  
E018 of 2025) [2026] KEELC 575 (KLR) (9 February 2026) (Judgment)**

Neutral citation: [2026] KEELC 575 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS  
ENVIRONMENT AND LAND APPEAL E018 OF 2025  
MN MWANYALE, J  
FEBRUARY 9, 2026**

**BETWEEN**

**JULIUS SAMPUENGWE ..... APPELLANT**

**AND**

**SAMSON KINYAMAL SAMTUENKWE ..... RESPONDENT**

**JUDGMENT**

1. Aggrieved by the whole Judgment of Hon. W.C Waswa delivered on 7<sup>th</sup> of March 2025 in Kilgoris C.M No. E095 OF 2025, the Appellant Julius Sampuengwe penned a total of 21 grounds of Appeal vide his Memorandum of Appeal dated 24<sup>th</sup> of March 2025 and sought the following reliefs; -
  - i. That the Appeal be allowed.
  - ii. That the judgment of W.C Waswa delivered on 7<sup>th</sup> of March 2025 be set aside.
  - iii. That costs of the Appeal and costs so far incurred in the Environment and Lands court be paid by the Respondent to the Appellant.
  - iv. Any further orders or reliefs that this Honourable court may deem.
2. In view that the grounds of Appeal are 20 in number the court shall not set them out seriatim but all shall be considered in this Appeal.
3. Upon admission of the Appeal, direction were issued on the disposal of the application by way of written submissions which the court summarizes as follows; -



## **Appellant Submissions**

4. Mr. Kiprotich learned counsel for Appellant framed and submitted on two issues for determinations, he submitted that the trial court ought to have applied the provisions of the repealed Registered [Land Act](#) and customary trust principles existing at the time of the death of the father to the parties.
5. That the Respondent had a duty to prove the legality of his registration. The Application placed reliance on the decision in the case of Munyu Maina vs Hiran Gathitha Maina (civil Appeal number 239 of 2009); as well as Isack Míranga Kiebia vs Isaya Theuri M’lintari and others (2018) eKLR which the Applicant submits the trial court ignored thus unjustly denying the Applicant his beneficial entitlement.
6. The Applicant further submits that the trial court misapplied section 26(1)(b) of the [Land Registration Act](#), and ignored that no boundary demarcation were undertaken and that the real issue was overlapping boundaries and RIM error not ownership; and further that the court declined the Registrar’s finding without a well reassured justification.
7. That the Respondent occupied 30 acres which exceed his righteous share of 20 acres as confirmed by the Registrar’s report.
8. The Applicant thus submitted that the appeal be allowed.

## **Respondent’s Submission**

9. Mr. Shira for the Respondents did not frame any issue for determination but submitted generally on the Appeal.
10. The Respondent relied on section 24, 25 and 26 of the [land Registration Act](#) (2012) and submitted that the Respondent’s title was protected by virtue of the said section of the law and the placed reliance on Joseph N.K. Arap Ngok vs Moiyo Ole Keiwua and 4 others as well as Kibuchi vs Githinji 2024 KELC 6299(KLC).
11. The Respondent submits that the Appellant did not adduce any evidence of fraud/ misrepresentation against him or illegal acquisition.
12. The Respondent submits that there was no evidence that he had expanded his title to measure 13.01 Ha, as the same was consistent with Adjudication Records /RIM and that the suit property had been family land or subdivision of the family land.
13. The Respondent submitted that customary trust must be specifically pleaded and strictly proved through evidence, and the Appellant did not do so.
14. The Respondent submitted that expert opinion must be given appropriate weight relative to the entire body of evidence.
15. The Amendment of the RIM to reflect the ground would be to sanction trespass or violate Article 40(3) of [the constitution](#).
16. The Respondent on the strength of the above submitted for the dismissal of the Appeal.

## **Issues For Determination**

17. Having analyzed the Record of Appeal, factored the rival submissions, as well as considered the applicable laws the court finds the following as issues for determination;



- I. Whether or not the Appeal is merited, in determining this the court shall determine which between the Plaintiff's suit and the Defendant's defence and counterclaim should be upheld?
- II. What relief ought to be issued.
- III. Who bears the cost of the suit?

### **Analysis Determination**

18. The court in recognition of the duties of the duties of as first appellate court, the duties to "reconsider the evidence, evaluate it and draw its own conclusion", as held in *Selle and Another Vs. Associated Motor Boat Limited*; shall now embark to analyze the pleadings and proceedings before the trial court.
19. In his Plaint before the trial court, the plaintiff now Respondent pleaded interalia;
  - i. That he was the registered proprietor of Transmara/Olosakwa A/804 while the Defendant was the registered owner of Trasmara/Olosakwa A/1164, the two properties with clear boundaries, which the plaintiff had fenced off his parcel with a barbered wired.
  - ii. That the defendant unlawfully encroached on portions of the plaintiff land by cutting off the fence without consent of the Plaintiff and the plaintiff sought for judgment against the defendant for an order to the Land Registrar to fix boundaries, and a permanent injunction against the Defendant, General damages for trespass and costs of the suit.
20. Vide the statement of Defendant and Counterclaim, dated 10/4/2024
  - i. the defendant denied the averment in the plaint, and in his counterclaim, pleaded that both parcels of land were hived from an ancestral land that belonged to their father, but the plaintiff in collusion with officers in the Land Registry and District Surveyor took a larger share than what was agreed on the sharing of the ancestral land.
  - ii. That the two parcels were separated by a distinct feature which was the road but the plaintiff stretched his portions so as to encroach the Defendant's property which should be measuring 20 acres.
  - iii. He sought for a permanent injunction against the plaintiff.
  - iv. An order directing the land Registrar Transmara West to amend the tittles in both the parcels of land.
21. In his judgment, the Learned Trial Magistrate, after hearing the parties and considering the evidence found in favour of the plaintiff provoking this Appeal.
22. In his judgment, the Learned Trial Magistrate at paragraphs 69-74 of the impugned judgment observed interalia, that implementing the Land Registrar's report in retaining the current boundaries on the ground would mean that the plaintiff would loose land and defendant would gain more land.
23. He thus upheld the plaintiff's claim and dismissed the defence and counterclaim.
24. The plaintiff produced evidence of ownership of the parcel of land known as Transmara / Olosakwana/804, by producing a copy of the certificate of official search and a copy of tittle deed and RIM as Pexhibit 1, 2 and 4 as captured at 56 of the record of Appeal.



25. On his part the Defendant testified that he ought to have 20 acres but 5 acres as the plaintiff had 30 acres. The Defendant stated that the Plaintiff ought to have equal acreages with him and he claimed that the parcel belonged to his father initially.
26. From the above, the Plaintiff proved ownership of Transmara/Olosakwana/804, which measures 13.01Ha. While the Defendant in cross examination conceded that succession in respect of his father's Estate had not been done, it follows thus the Defendant's claim that he was entitled to equal shares with the Plaintiff in respect of their father's Estate was not factual and was not supported by evidence either.
27. The Defendant had no claim over the plaintiff property and his actions were thus not justified.
28. The Land Registrar's report confirms that the total area for the Plaintiff was 13.01 Ha as per the title but was occupying 10.85 Ha, while the total acre of the Defendant was 5.16 hectares but was occupying 7.17 Ha.
29. The Land Registrar proposed that the boundaries as are current be maintained.
30. The trial court was of the view that if the current boundaries are to be upheld, then the Plaintiff would lose a portion of his land, while the Defendant would gain a portion, to the detriment of the plaintiff.
31. Having taken into consideration the above and the fact that the Defendant did not lay basis for his claim of 20 acres as the succession cause relating to their father's Estate has not been done, the court finds that the plaintiff proved his case before the trial court and that the Defendant's defence and counterclaim were not merited.
32. That being the same findings as the trial court, I find that the trial court did not err in law and in fact, but reached the correct decisions on the materials placed before court, there is no need to amend the RIM to reflect the current boundaries, but the plaintiff is entitled to his acreage as it was initially before the trespass by the Defendant.
33. Thus, in answer to issue No.1 the court finds that the Defendant's Appeal herein lacks merit.
34. On what reliefs ought to issue, the court having found the Appeal to lack merits has no other than to dismiss the same.
35. The Respondent shall have costs of the Appeal as well as costs suit before the trial court.

**DATED AT KILGORIS 9<sup>TH</sup> DAY OF FEBRUARY, 2026**

**HON. M.N. MWANYALE**

**JUDGE**

In the presence of

CA – Sylvia/Sandra/Clara

Mr. Shira for Respondent

Mr. Kiprotich for Appellant

