

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ELC PETITION NO. 3 OF 2019

MUSEMBI KINGUTA..... 1ST PETITIONER
ELIZABETH MUTAVI KINGUTA..... 2ND PETITIONER
JOSEPH MUTUNE NDINSYA..... 3RD
PETITIONER
NZOU KINGUTA..... 4TH PETITIONER
-VERSUS-
HENRY KAVOLU NDISYA..... 1ST
RESPONDENT
RICHARD NZOU NDISYA 2ND
RESPONDENT
THE INSPECTOR GENERAL OF POLICE..... 3RD
RESPONDENT
THE PRINCIPAL SECRETARY, MINISTRY OF INTERIOR &
CORDINATION..... 4TH
RESPONDENT
THE ATTORNEY GENERAL..... 5TH RESPONDENT

JUDGMENT

1. The Petitioners filed a constitutional petition dated 2nd May, 2019 in which they sought the following reliefs:
 - a. A declaration that 2nd Respondent's acts are ultra vires by his wrongful:
 - i. Arrest and confinement of the 1st and 4th Petitioners;
 - ii. Subject of the 1st 4th and 2nd petitioners to psychological and physical torture;
 - iii. Depriving the 3rd petitioner of the care of her family;
 - iv. Threatening the 3rd petitioner with dire consequences in default of vacating LR No. Makueni/Kitundu/4957; contravened the petitioners fundamental rights and freedoms as guaranteed by the Constitution of Kenya 2010.
 - b. General damages.

4. On 23rd September, 2025, the 2nd cross petitioner gave evidence on his own behalf and on behalf of the 1st cross petitioner. The 1st Petitioner stated that he had no evidence to call. He stated that he was relying on a replying affidavit sworn on 1st September, 2023.

Cross Petitioner's evidence

5. The 2nd cross petitioner testified that he is a retired chief and a brother to the 1st cross petitioner. He stated that the 1st cross petitioner is the registered owner of LR No. Makueni/Kitundu/5291 which he purchased from Robert Mutua kitungu (suit property). On 10th March, 2016, the 1st and 4th petitioners trespassed into the suit property and uprooted sisal plants marking the boundary. On 11th March, 2016 the 1st and 4th Petitioners admitted at Kikima police station that they had uprooted the sisal boundary marking the suit property and they agreed to reinstate the same which they did.
6. He stated that the 3rd petitioner has since continued to and has since trespassed into the 1st cross petitioner's land and commenced construction on it and that the petition which has since been withdrawn was a cover up for the trespass.

Parties submissions

7. The cross petitioners filed their submissions dated 30th October, 2025. The Respondents in the cross petition did not file any submissions.

Submissions of Cross Petitioners

8. The cross petitioners submitted that they had proved that the suit property belongs to the 1st cross petitioner and that they had proved that the 3rd petitioner had trespassed on to the suit property and erected structures on it.

Analysis and Determination

9. I have carefully considered the evidence adduced by the cross petitioners as well as the submissions filed. There is no contention that the 1st cross

petitioner is the registered owner of the suit property. There is also no contention that LR No. Makueni/Kitundu/4957 is registered in the name of the 3rd Petitioner. These two parcels border each other. There is also on contention that the 1st and 4th Petitioners uprooted the sisal boundary marking the suit property. They rectified what they did as admitted by the cross petitioners. The issue which remains for determination is whether the 3rd petitioner has trespassed on to the suit property. The other issue is on which order should be made on costs.

10. The 3rd petitioner and the 1st cross petitioner who own Makueni/Kitundu/4957 and the suit property respectively are brothers. Their parcels border each other. Apart from production of a photograph of an incomplete house coming up, there was no evidence from a surveyor to confirm that the house was being put up on the suit property. Without evidence of a surveyor, there is no way the court can make a finding that there is trespass or encroachment on to the suit property.

11. There is no evidence which was adduced that after the 1st and 4th Petitioners made good what they had done on 10th March, 2016, they again did any other thing which will amount to trespass. As the cross petitioners have failed to adduce evidence from a surveyor to confirm encroachment, I find that the cross petitioners have failed to prove their cross petition which is hereby dismissed with costs to the petitioners.

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HON. E. O. OBAGA

JUDGE

JUDGMENT DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 26TH DAY OF FEBRUARY, 2026.

IN THE PRESENCE OF:

Mr. Muumbi for cross petitioners

Ms. Munyao for Mr. Muumbi for Petitioners

Court assistant Steve Musyoki

ORIGINAL