



Basi v Directorate of Criminal Investigation & 2 others; Basi (Interested Party) (Environment and Land Miscellaneous Case E009 of 2024) [2025] KEELC 5562 (KLR) (28 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5562 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
ENVIRONMENT AND LAND MISCELLANEOUS CASE E009 OF 2024
MN MWANYALE, J
JULY 28, 2025**

BETWEEN

OLE KETUNO OLE BASI APPLICANT

AND

DIRECTORATE OF CRIMINAL INVESTIGATION 1ST RESPONDENT

THE LAND REGISTRAR TRANSMARA WEST,EAST AND SOUTH 2ND RESPONDENT

THE HONOURABLE ATTORNEY GENERAL 3RD RESPONDENT

AND

JOSEPH LETEIPA OLE BASI INTERESTED PARTY

RULING

1. Vide the Notice of Motion application dated 12th November 2024, the Applicant Ole Ketuno Ole Yiasi sought for the following orders; -
 - i. Pent.
 - ii. That this Honourable Court do issue an order declaring that a restriction filed by the 1st Respondent’s employees, servants and/or agent against land parcels No. CIS Transmara/ Ololchani 1673 vide a letter dated 4th October 2024 addressed to Ministry of Lands, Public Works, Housing and Urban Development is illegal and amounts to interference with legally binding orders of this Honourable Court.
 - iii. That having so declared as prayed above, this Honourable Court further be pleased to issue an order directing the Land Registrar, Sub-county Land Registrar Transmara West, East and



South to immediately and unconditionally remove the said restrictions on parcel known as CIS Transmara/Ololchani/1673.

2. The application is made under Section 1A, 1B, 3, 3A and 63[e] of the Civil Procedure Act Section 78[2] of Land Registrations Act Order 51[1] and [3] of the Civil Procedure Rules, and on the grounds that interalia that; -
 - i. The application is strong and has overwhelming chances, and application will be rendered useless, meaningless and nugatory if the orders are not granted pending the hearing and determination of this application.
 - ii. Applicant's property is at the eminent risk of being wasted to the detriment of the Applicant.
 - iii. The restriction is being used as a means to an end by the complaints in DCI inquiry file No. 200/2024 who lost a civil suit against the Applicant herein in Kilgoris ELC Case No. 36/2021.
 - iv. The application is supported by the Applicant's supporting affidavit, who depones being the registered owner of Transmara/Ololchani/1673, annexing a copy of a title deed thereof.
 - v. That the 1st Respondent vide a letter dated 4th October 2024 instructed the 2nd Respondent to place a government restriction on the said parcel, a copy of letter is annexed, yet a judgment in ELC No. 36/2021 had resolved the matter, and no appeal was filed against the judgment.
3. The 1st Respondent filed a Replying affidavit deponed by Inspector Kennedy Mulei Ndeto who deposes that; -
 - i. A report was made by Joseph Leteipa Ole Basi to the DCI Headquarters vid his Advocates, that their neighbours had invaded his father's parcel being Transmara/Ololchani/124 measuring 61.42 Hectares illegally transferring and subdividing it and that another report was made on 6th June 2024 vide Boaz Lemiso concerning the said invasion.
 - ii. That the complainant involved a fraudulent portion of land parcel No. Transmara/Ololchani/124 which was fraudulently hived off and annexed to Transmara/Ololchani/96 and subdivided thereof.
 - iii. That pursuant to a judgment in Kilgoris ELC Case No. 36/2021, the Registrar Transmara West was directed to register, resolve, point out and affix necessary boundaries separating the two parcels of land, but the Registrar relied on a previous report dated 6th June 2022 to establish the boundaries and the said report had reduces by 27.41 hectares of Transmara/Ololchani/124 and increased the acreage of Transmara/Ololchani/96 by 22.05 hectares contrary to adjudication records.
 - iv. That the said discrepancy was the basis of the lodged complaints.
 - v. That the investigations have been undertaken within the tenets of the Constitution, and the National police service Act.
4. An Interested Party Mr. Joseph Leteipa Ole Basi sought leave for joinder in this application and on 24.02.2025 his application was allowed and he did not file a Replying affidavit to the present application but filed submissions, to this application.
5. The Application was canvased by way of written submissions, only the interested party filed its submissions, the Applicant and the Respondent did not file submissions.



Interested party's submissions

6. The Interested Party has submitted on two issues that he has framed for determination
 - i. Whether the Application herein is fatally defective and was prematurely filed?
 - ii. Whether the Land Registrar should lift the restriction registered against suit property in favour of the 1st Respondent?
7. On issue 1, the Interested Party submits that before invoking the provisions of Section 78[2] of the *Land Registration Act*, the Applicant ought to have exhausted the procedure under Section 78[1] of the *Land Registration Act*.
8. Reliance on this proposition was placed on the decisions in the cases of Anna Chesaina Kenduiywa v Nandi County Land Registrar [2022] eKLR and Mwangi Rukwaro and Another v Land Registrar, Nyeri [2019] eKLR].
9. On issue number 2, the Interested Party submits that the restriction ought to be maintained till the determination of ELC Petition E007/2024 and outcome of Criminal Investigations.
10. That removal of restrictions will amount to interference with investigations.
11. On the strength of the above, the Interested Party seeks for dismissal of the Application.
12. The court observes that the subject matter herein being Transmara/Ololchani/96 and its subdivisions including Transmara/Ololchani/1673 were subject of a dispute in Kilgoris ELC No. 36/2021 [formerly Narok Case No. E004/2020] and the court rendered its determination vide the judgment delivered on 16th January 2023.
13. The plaintiff in E036/2021 Mr. Joseph Leteipa Ole Base, who is the Interested Party herein after delivery of the said judgment reported the same to the Directorate of Criminal Investigations who filed a restriction against title number Transmara/Ololchani/1673 provoking this Application.
14. Equally Mr. Joseph Leteipa Ole Basi, the Interested Party herein filed Kilgoris Land Petition No. E007/2024, whose decision comes up on 30.07.2025.
15. Hence it is the court's observation that the subject matter of this application and Petition No. E007/2024, as well as Kilgoris ELC No. 36/2021 is the same.
16. Having analysed the application, the affidavits, and the submission on record, the court frames, the issue for determination as follows;
 - i. Whether or not the application is merited?
 - ii. Who bears the costs of the application?

Analysis and Determination?

17. Paragraph 5 of the supporting affidavit of the Applicant Mr. Ole Ketuno Yiasi raises an arguable ground and issue that the action by the 1st Respondent, action of registering the restriction goes against a decision of the court in ELC Case No. 36/2021. Once a court of law determines an issue, the 1st Respondent could not be heard to institute parallel proceedings at the behest of the losing party herein, since their action outrightly undermines what a court of law vested with the requisite jurisdiction had determined. It needs no restating that a party who was dissatisfied with the court's decisions ought to have preferred an Appeal and not lodged a complaint with the DCI; as



constitutionally the ELC Court is vested with jurisdictions to determine the issues of ownership and occupation, and DCI and the criminal justice system as a whole cannot determine the said issues.

18. That whereas 1st Respondents in its Replying affidavit sworn by Inspector Kennedy Mulei Ndeto, acknowledges the existence of the decision in Kilgoris ELC No. 36/2021, paragraph 8 thereof makes scandalous allegations of the said decision having being predetermined and the said paragraph being scandalous is hereby expunged from record.
19. It is this brazen conduct of the 1st Respondent to re-open determined matters, instead of advising parties to prefer appeals that has resulted to this application.
20. Whereas there is merit in the contention by the Applicant, especially on the actions by the 1st Respondent to register a restriction over his parcels of land, and noting further that the 1st Respondent has no mandate whatsoever to instruct the 2nd Respondent as he did, to register the restriction on the suit property, there is a laid down procedure under Section 73 and 78[1] of *Land Registration Act* which were to be exhausted before filing of any application to court.
21. As was observed in the decisions in the cases of Anna Chesaina Kenduiywa v Nandi County Land Registrar 2022 eKLR as well as Mwangi Rukwaro and Another v Land Registrar, Nyeri [2019] eKLR. The Applicant ought to exhaust the said procedures first before resorting to court.
22. In view of the above, the court declines jurisdiction in the first instance till the Applicant complies with Section 73 and 78[1] of the *Land Registration Act*.
23. Having declined jurisdiction, I will not go into the merits of the Application, which raises similar issues in the pending Petition No. E007/2024.
24. The Result is that the Application dated is hereby struck out, and the removal of the restriction shall abide by the outcome of Petition No. E007/2024.
25. Costs to the Respondents.

DATED AT KILGORIS THIS 28TH DAY OF JULY, 2025.

HON. M.N MWANYALE

JUDGE

In the presence of

CA – Emmanuel/Sylvia/Sandra

Mr. Kiprono for the Applicant

Mr. Ranah for 1st and 3rd Respondents

Mr. Tawo for the Interested Parties

