

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KAJIADO**

**ELC L APPEAL NO. E039 OF 2025**

**GIDEON OIBOO PELLO .....1<sup>ST</sup>**  
**APPELLANT**

**JOSEPH TURERE PELLO ..... ..2<sup>ND</sup>**  
**APPELLANT**

**VERSUS**

**OLKEJUADO HIGH SCHOOL .....1<sup>ST</sup>**  
**RESPONDENT**

**LAND REGISTRAR KAJIADO .....2<sup>ND</sup>**  
**RESPONDENT**

**DISTRICT SURVEYOR'S OFFICE KAJIADO**

**.....3<sup>RD</sup>**  
**RESPONDENT**

*(Being an Appeal against the Determination of the Office of the District Land Registrar Kajiado, T. Haithar dated 23<sup>rd</sup> May 2025 in complaint of Boundary Dispute/Identification of parcels No. Kajiado/Ildamat/28 vs. Kajiado/Dalalekutuk/2849/28 and 30)*

**J U D G M E N T**

1. In his ruling dated 23th May 2026, the Land Registrar Kajiado T Haithar states thus:-

**“We have had the opportunity to analyse the physical ground and the oral evidence provided and I also had the opportunity to analyse the**

**Surveyor's Report. It is our recommendation that according to the map, the disputed area belongs to Ildamat/28 and the beacons need to be clearly marked on the ground to avoid any further encroachment. Therefore, a date to be set for implementation of this ruling save for any appeal within 30 days from the date hereof in the Environment and Land Court from any aggrieved party"**

2. Aggrieved by the said decision, the Appellants filed **Memorandum of Appeal** dated **23<sup>rd</sup> June 2025** seeking that the Ruling be set aside and an order for the resurvey, re-establishment and fixing of the boundaries be issued on the following grounds as set out verbatim in the Memorandum of Appeal:

***1. The 2<sup>nd</sup> Respondent erred in law and in fact when the land registrar had additional Land parcel numbers Kajiado/Dalalekutuk/2849 and Kajiado/Dalalekutuk/28 on the subject matter but failed to include their findings on the aforementioned parcels of land but only included the Appellant's parcel Kajiado/Dalalekutuk/30 which led to errors and inconsistencies.***

***2. The 2<sup>nd</sup> Respondent erred in law and fact by relying on the 3<sup>rd</sup> Respondent's Report that overestimated the ground acreage from the registered acreage with difference of 9.25 ha approximately which does not explain how***

***the acreage and thus boundary should be tampered with whereas the beacons, marks and boundaries remain the same as per their observations of the two parcels on the ground.***

- 3. The 2<sup>nd</sup> Respondent erred in law and fact after heavily relying on the handheld GPS equipment that lead to inaccurate results causing substantial loss and inaccuracy in the number of acreage.***
- 4. The 2<sup>nd</sup> Respondent erred in law and fact as the 3<sup>rd</sup> Respondent's office sent different surveyors from the ones on site visit to the one who concluded the report. The 2<sup>nd</sup> Respondent relied on the 3<sup>rd</sup> Respondent's report without attaching the initial report done by the surveyors on site visit but later relied on the concluded report done by a different surveyor who was not on site this was after six months without offering an explanation.***
- 5. The 2<sup>nd</sup> Respondent erred in law and fact by letting the appellants to be present in showing the beacons but not involving them in conducting the survey.***
- 6. The 2<sup>nd</sup> Respondent erred in law and fact by relying on the 3<sup>rd</sup> Respondent's report that was concluded on the 20<sup>th</sup> March 2025 after six months from the site visit without the***

***appellants involvement, participation or knowledge. The lack of involvement is crucial as the report was used as the basis for the 2<sup>nd</sup> Respondent subsequent decision document in the boundary dispute report dated 23<sup>rd</sup> May 2025.***

- 7. The 2<sup>nd</sup> Respondent erred in law and fact when he conducted a site visit on the 30<sup>th</sup> September 2024 yet the survey report was only prepared over six (6) months later. This considerable delay between the site visit and the survey report coupled with a failure to involve the appellants in the process undermines the fairness as transparency of the decision-making process and be deemed prejudicial to the Appellant herein.***
- 8. The 2<sup>nd</sup> Respondent erred in law and fact that the appellants were not afforded the opportunity to participate in or even being informed about the survey which directly affected the outcome of the boundary dispute resolution.***
- 9. The 2<sup>nd</sup> Respondent erred in law and fact since the ruling delivered by the 2<sup>nd</sup> Respondent is unreasonable as it has inconsistencies and errors which highly contribute to the error apparent on the ruling made by the 3<sup>rd</sup> Respondent's report that purports to state that***

***Kajiado/Dalalekutuk /28 crosses through Kajiado/Imaroro road but then again contradicts itself by stating that the Kajiado - Imaroro road is not clearly marked on the map as such, the 3<sup>rd</sup> Respondent's findings and the 2<sup>nd</sup> Respondent's ruling were arrived at with contradictory information.***

***10. The 2<sup>nd</sup> Respondent erred in law and fact after the 2<sup>nd</sup> Respondent ruling was contradictory and illegal as the 3<sup>rd</sup> Respondent stated the equipment was a hand-held GPS with an accuracy of +/-2m whereas the 2<sup>nd</sup> respondent's report indicates an accuracy of +/-3. This discrepancies depending on the registered acreage can lead to substantial loss and inaccurate acreage especially when relying on the Hand- held GPS.***

3. The Appellant sought for orders that:

**a. The Appeal be allowed.**

**b. Determination of the Office of District Land Registrar Kajiado ruling on the boundary Dispute / Identification in respect of Land Parcel No. Kajiado/ Ildamat / 28 vs. Kajiado/ Dalelekutuk/ 2849/ 28 and 30 delivered on 30<sup>th</sup> May 2025 be set aside.**

**c. Additionally, the Honourable court be pleased to order a re-survey, re-**

**establishment and fixing or ascertainment of the boundaries.**

**d. Costs of this Appeal be awarded to the Appellants.**

**e. Set further or other reliefs that this Honourable court may deem just and fit to grant the circumstances of this appeal.**

4. This Appeal was canvassed by way of written submissions.

### **Submissions of the Appellants**

5. Counsel for the Appellants submitted that the Appellants' family are the registered owners of parcel Kajiado/Daleleikutuk/30 measuring approximately 91.0 Ha. On 4<sup>th</sup> September 2024, the 2<sup>nd</sup> Respondent summoned the Appellants for a site visit regarding the boundary dispute between LR No. Kajiado/ Ildamat/28 belonging to the 1<sup>st</sup> Respondent and their parcel Kajiado/Daleleikutuk/30. The 2<sup>nd</sup> Respondent's ruling relied on the 3<sup>rd</sup> Respondent's report which concluded that the disputed area was approximately 9.25Ha. It is further submitted that the findings of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents' report were flawed. As such, the 3<sup>rd</sup> Respondent's findings and the 2<sup>nd</sup> Respondent's ruling were arrived at without regard to the measurements on the ground.

6. Counsel therefore outlined the issues for determination as: Whether the Land Registrar complied with **Section 19 of the Land Registration Act**, Regulations under the Survey Act and **Regulation 40 of the Land Registration (General) Regulations, 2017**; whether

the process and outcome of the boundary determination was fair, lawful, transparent, accurate, and consistent? And whether the Appellants are entitled to the reliefs sought.

7. It was submitted that the Ruling did not comply with **Section 19 of the Land Registration Act**, and **Regulation 40 of the Land Registration (General) Regulations, 2017**, and should be set aside because:
8. Further that Parcels Kajiado/Daleleikutuk/2849 and Kajiado/Daleleikutuk/28 involved in the dispute were excluded from the determination without explanation, and that the title deeds were not attached to determine the exact acreage of the parcels. This omission rendered the report inaccurate and caused material injustice. It was also argued that the Appellants were neither informed nor involved in the site visit and survey that led to the 3<sup>rd</sup> Respondent's Report. Counsel indicated that the Appellants were only present during the beacon identification but excluded in the boundary verification process. The Appellants were not given an opportunity to present their case, object and were not supplied with the technical findings before the decision was made. This exclusion deprived them of the opportunity to meaningfully participate in the process resulting in denial of a fair hearing and breach of natural justice contrary to **Section 19(2)** of the **Land Registration Act**, **Regulation 40(5)** of the **Land Registration (General) Regulations 2017**, **Article 47(1)** and **50** of the

**Constitution, and Section 4(1) of the Fair Administrative Action Act.**

9. It is further, submitted that the said report was concluded on 20<sup>th</sup> March 2025, which was over six months between the date site visit was conducted (30<sup>th</sup> September 2024) and when the survey report was issued. It was also submitted that the statements recorded at the 2<sup>nd</sup> Respondent's report did not indicate where they emanated from thus not credible. There was also no proof of the parties present during the site visit such as signatures appended against their names.
10. Counsel went on to submit that the report relied on by the Land Registrar was also flawed because:
  - It was prepared by an officer who was not party to the site visit.
  - It heavily relied on hand-held GPS equipment with inconsistent accuracy figures (+/- 2m vs. +/- 3m) raising doubts as to the correctness of acreage and boundary delineation. Counsel argued that a land surveyor in Kenya should have a combination of modern and traditional tools, including a total station or GPS/GNSS receiver for precise measurements, a theodolite for measuring angles, and levels for elevation. The report omitted to show the co-ordinates, a copy of the map and a mutation form. Thus, leading to inaccuracy and inaccurate conclusion.
  - The ruling was arrived at using contradictory information and findings regarding the position and marking of the Kajiado/Imaroro road. The findings

indicated that Kajiado/Dalalekutuk /28 crosses through Kajiado/Imaroro road but contradicted itself by stating that the Kajiado – Imaroro road is not clearly marked on the map.

- The report also failed to explain how acreage or boundaries could be altered without physical changes to beacons or marks, undermining the credibility of the survey findings.
11. Counsel also argued that the parcels in dispute were Kajiado/Dalalekutuk/28 and 2849, yet the final ruling focused almost exclusively on Kajiado/Dalalekutuk/30 and Kajiado/Idamat/28 omitting critical findings on the other parcels.
  12. They pray that, the Appeal be allowed, and a boundary determination involving all the parties be conducted afresh to ascertain the boundaries.

### **Submissions of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents**

13. Counsel outlined the following as the issues for determination: Whether in making the impugned decision, the Land Registrar complied with the law. And whether the Applicants were entitled to the Orders sought.
14. On whether the Land Registrar complied with the law in the determination, it was submitted that the Land registrar adhered to the provisions of **Section 19 of the Land Registration Act** and **Regulation 40 of the Land Registration (General) Regulations, 2017**.
15. On whether the orders sought should be granted, counsel argued that the Appellants allegation such as the

Registrar failed to include parcels Kajiado/Delalekutuk/28 and Kajiado/Delalekutuk/2849 in the boundary determination; that the Registrar improperly relied on the Surveyor's report; and that the Surveyor employed a hand held GPS device during the exercise, were unfounded, speculative and unsupported by evidence. The Appellants had not demonstrated any legal or proprietary interest in any of those parcels and they had failed to show how the alleged omissions or technical procedures, occasioned any prejudice or affected the outcome of the boundary determination as expected of them under **Section 107 and 109** of the **Evidence Act**.

16. Therefore, the Appeal should be dismissed with costs to the Respondents.

### **Analysis and determination**

17. I have considered the grounds of Appeal, the rival submissions, and the authorities cited. I find that the issues for determination are:

- i. Whether this Appeal is merited.**
- ii. What orders should issue.**
- iii. Who should bear costs of the Appeal**

18. This Appeal emanates from a boundary dispute determination. The Appellants, being the registered owners of parcel Kajiado/Dalalekutuk/30 contest the ruling of the Land Registrar on grounds that: they were not present during the survey; that the site visit report made erroneous findings therefore arriving at an erroneous Ruling. They also pointed out that the surveyors present at

the site visit were not the ones who drafted the final surveyor's report. That parcels Kajiado/Dalalekutuk/2849 and Kajiado/Dalalekutuk 28 were also surveyed but were not included in the final report making it defective, and that the devices used by the surveyor such as the handheld GPS gave inaccurate results. It was also their contention on the time taken between the site visit conducted on 30<sup>th</sup> September 2024 and the report prepared on 20<sup>th</sup> March 2025.

19. This was contested by the Respondents arguing that the Land Registrar followed the stipulated guidelines and that the Appeal was not merited.
20. In their submissions, the Appellants submitted that they were summoned by the 2<sup>nd</sup> Respondent for a site visit regarding the dispute between parcels Kajiado/Dalalekutuk/30 and Kajiado/Ildamat/28. In their grounds of Appeal they stated that they were not present during the site visit. And that the report prepared on 20<sup>th</sup> March 2025 was done without the Appellant's knowledge or participation.
21. The Ruling dated 23<sup>rd</sup> May 2025 shows that part of the people present at the site visit conducted on 30<sup>th</sup> September 2024 were the Appellants and other members of the Tello family being Kajiado/Dalalekutuk/30. And the report dated 20<sup>th</sup> March 2025 clearly indicated that it was as a result of the site visit conducted on 30<sup>th</sup> September 2024.
22. The Ruling also shows that statements were given by the Appellants as well as their sister Mary, however the

Appellants contested these statements. The ruling further shows that the Olkejuado High School Chairman and the AIC Board Chairman who was previously in Olkejuado High School gave their statements regarding the dispute. Further, it shows that there were forty-two people present during the determination including the District Land Registrar- T. Haithar, and two surveyors -Jeremiah Toimasi and Paul Ngusur. The Appellants contest that the report dated 20<sup>th</sup> March 2025 was done Kimani Ruphus who was not present at the site visit.

23. On the issue that the report did not adhere to the set regulations, this Court finds that this is not accurate since the site visit was conducted on 30<sup>th</sup> September 2024 and the report generated on 20<sup>th</sup> March 2025 which is within the stipulated timeline as per **Regulation 40 (8)** of the of the **Land Registration (General) Regulations, 2017** which provides that: **A dispute for determination of a boundary and or parcel shall, unless in the case of special circumstances, be completed within a period not exceeding six months from the date of filing the application.**
24. This Court cannot verify the issue that parcels Kajiado/Dalalekutuk/2849 and 29 were involved in the dispute but were excluded from the determination without explanation because the Ruling shows that the dispute was between parcels Kajiado/Ildamat/28 and Kajiado/Dalalekutuk/30. However, **Regulation 40 (2)** of the of the **Land Registration (General) Regulations, 2017** bestows upon the Land Registrar the task to inform

all other persons that may be affected by the dispute: **The Registrar shall issue a notice in Form LRA 24 set out in the Sixth Schedule to all persons appearing in the register that may be affected or such other persons as the Registrar may deem necessary for resolution of the dispute if a person has complied with paragraph (I).**

25. On the issue of the methodology used, the report reads: *“In the presence of all concerned parties, picking of boundary points was carried out as shown by the land owners.... Comparison was done between the pickings, the mutations and the RIM...”* It went on to indicate as part of the findings that: *“... The shapes of both parcels as shown by the parties agree as per the different RIMs. However, Ildamaat/28 is seen to cross the Kajjado-Imaroro road to make the shape complete...”* This is an inconsistency the court has picked. If the shapes shown by both parties agree, as per the different RIMs, what does it mean that *Ildamaat/28 is seen to cross the Kajjado-Imaroro road to make the shape complete?* The findings further indicate: *“... The beacons they share are clearly shown on both maps. These two beacons are K26 and K27. Their location may have been wrongly shown by one of the parties...”* This finding also does not indicate which of the disputing parties pointed out to the wrong beacon.
26. Noting that land is an emotive issue, the Court finds that it would be imperative that a site visit and resurvey of the disputing parcels and the neighbouring parcels be conducted within 60 days of this Judgement.

27. I find merit in the appeal and I grant the orders sought namely:

- i. That the appeal against the decision of the Land Registrar delivered on 23<sup>rd</sup> May 2025 is hereby allowed.**
- ii. That a resurvey of the disputing parcels and the neighbouring parcels be conducted within 90 days of this Judgement by another Land Registrar and other than T. Haithar and other surveyors other than Jeremiah Toimasi, Paul Ngusur and Kimani Ruphus.**
- iii. That each party shall bear their own costs of the Appeal.**

**Judgment dated, signed and delivered virtually at Nakuru this 12<sup>th</sup> day of March 2026.**

**L KOMINGOI  
JUDGE**

**In the presence of : -**

Ms. Kawira for the Appellants

No appearance for the Respondents

Court assistant : Nelima