

REPUBLIC OF KENYA
ENVIRONMENT AND LAND COURT
AT KILGORIS
ELCL PET. E002 OF 2023

SIAMO OLE KANTAI.....
PETITIONER

VERSUS

THE DIRECTOR OF SURVEY.....1ST
RESPONDENT

THE LAND REGISTRAR (TRANSMARA WEST SUB-COUNTY).....2ND
RESPONDENT

THE DIRECTOR OF LAND ADJUDICATION & SETTLEMENT.....3RD
RESPONDENT

THE HONOURABLE ATTORNEY GENERAL.....4TH
RESPONDENT

CHARLES MBASIO KINAMPU.....5TH
RESPONDENT

DANIEL OLE KINAMPU.....6TH
RESPONDENT

JAMES OEL KINAMPU.....7TH
RESPONDENT

RULING

1. This matter comes for a Ruling in respect of the application dated 21st October 2025 by way of a Notice of Motion and upon consideration of the said Motion which seeks a temporary injunction to restrain the Petitioner/Respondent, his servants, employees, or agents from carrying out any construction, development or dealings on the disputed portion of land between Transmara/Oldonyati/267 and Transmara/Oldonyati/21 pending hearing and determination of

boundary dispute by the Land Registrar as directed by the Honourable court on 03.02.2025, and which applicants is expressed to have been brought under Orders 40 Rules 1, 2 and 4 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act; and further which application is equally grounded on grounds *inter alia*, that

- (i) There is a judgment delivered on 3rd February 2025, which directed the 2nd Respondent (the Land Registrar Transmara West Sub-county) to register and determine a boundary dispute between L.R No. Transmara/Oldonyati/267 and L.R No. Transmara/Oldonyati/128 within 90 days.
 - (ii) That pursuant to the said decree the Land Registrar had issued summons to implement the said decree but while pending the implementation process the Petitioner has commenced construction of a permanent house on the disputed portion; which construction will alter the character of the land and the intended boundary re-establishment and the supporting affidavit of the applicant who reiterates the grounds in support in his depositions has annexed a photograph of a building under construction.
2. Upon consideration of the Replying affidavit of Siamo Ole Kantai, sworn in opposition to the application who deposes *inter alia*,
- (i) that the Honourable court did not prohibit any party from carrying out development activities such as cultivation or building on their respective properties.
 - (ii) That a house is being constructed within his homestead where there is no disputed, and
 - (iii) That the photographs do not present the full picture.
3. The application was canvassed by way of written submissions which the court has considered.
4. The issue for determination is; -
- (i) whether the application is merited, and

- (ii) what orders ought to issue.
5. Taking cognisance of the fact that the Petition herein was determined and the decree is yet to be implemented, there is therefore no pending suit save for execution proceedings and an interlocutory injunction as sought in this application cannot issue as Order 40 Rule 1, upon which this application is premised envisages a situation where there is a pending suit.
 6. Order 40 Rule 1 provides where in any suit proved by affidavit or otherwise;
***“(a) That any property in dispute.....
(b) That the defendant threatens the court may be grant a temporary injunction to restrain such act or make such order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property as the court think fit until the disposal of the suit.”***
 7. It is thus desirable that the status quo that obtained at the time of the delivery of the judgment be maintained pending the re-establishment of the boundary, and towards this end, the court thus issues an order of maintenance of the status quo on the portion of the parcel between L.R No. Transmara/Oldonyati/267 and Transmara/Oldonyati/128 till the finalization of the boundary re-establishment ordered by the court, the status quo to mean no cultivation and/or building on the said portion.
 8. Having found that a temporary injunction cannot issue once the suit has been finalized, save for injunction pending appeal and which this application is not; it follows therefore the application is incompetent as the orders sought cannot issue.
 9. In view of the fact that there exists a decree of the court that is yet to be implemented, by way of re-establishment of the boundaries, any material shift on the ground as by way of activities in the disputed area, may change the outcome of the boundaries.

10. The Land Registrar and/or Surveyor is at liberty to issue summons so as to complete the task of re-establishing the boundaries as decreed by the court, and pending that exercise, the court hereby issues an order for maintenance of the status quo that obtained at the time of delivery of the judgment in order to facilitate the re-establishment of the boundaries, in terms of paragraph 7 above.

11. Costs of the application shall be borne by the Respondent.

Dated at Kilgoris this 11th day of May 2026

Hon. M.N. Mwanyale
Judge

In the presence of

CA – Sylvia/Clara

Mr. Kipkoech for 5th to 6th Respondent

Mr. Shira for Applicant