



**Rikoyian v Lobuko (Environment and Land Appeal E017 of 2024)
[2025] KEELC 5741 (KLR) (24 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5741 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND APPEAL E017 OF 2024**

MD MWANGI, J

JULY 24, 2025

BETWEEN

JACKSON KESHEKO RIKOYIAN APPELLANT

AND

KASHINKO OLE LOBUKO RESPONDENT

((Being an appeal from the determination of T. Haithar, District Land Registrar Kajiado, dated 8th March, 2024 regarding to Boundary dispute/ identification of L.R No. KAJIADO/DALALEKUTUK/3358 and 3374))

JUDGMENT

Background

1. In his decision dated 8th March, 2024, relating to the boundary dispute/identification in respect of Kajiado/Dalalekutuk/3358 and 3363, the Kajiado Land Registrar's finding/conclusion was that surveyor should assist in the demarcation of boundaries between the parties and implement his decision based on the findings and observations therein. While making his findings, he stated that they resonated with those in the surveyor's report.
2. The Land Registrar observations recorded in his decision are as follows;
 - a. The complaint was actually interested in ascertaining the original boundaries of Kajiado/Dalalekutuk/3358 and its acreage.
 - b. The issue that is causing a lot of friction between the neighbors is sand harvesting.
 - c. The owners of parcel 3364 and 3374 don't know the position of the boundaries that separate them.
 - d. The shaded region on the surveyors sketch shows the disputed area as 3.5ha



- e. Ground acreage differs with registered acreage.
3. Aggrieved by the Land Registrar's decision, the Appellant herein, Jackson Kesheko Rikoyian, lodged this appeal through the memorandum of Appeal dated 15th April, 2024 filed on 16th April, 2024. The Appellant listed five(5) grounds of appeal stating that;
 - a. the District Land Registrar erred by basing his decision on the report of the District Land Surveyor without considering material facts provided to both his office and that of the District Land Surveyor.
 - b. the District Land Registrar erred in not considering that save for the Riparian Reserve area, point (beacon) M in the disputed area is in the river bank (junction) and therefore the Respondent's land does not extend beyond point M or between the Appellant's land and the river.
 - c. the District Land Registrar erred in not considering that there were previous alterations made to the group ranch parcels following consultations between the group ranch officials and the members and which were not implemented in the map and the registers.
 - d. the District Land Registrar erred in not considering that following the consultations between the Group Ranch, Officials and the members, a decision was reached to use the beacons as erected and not the map as it initially appeared.
 - e. the District Land Registrar erred observed that the issue causing friction between the parties is sand harvesting, but failed if so, to explain how the Respondent claims the entire river bank strip of his own parcel of land and further bypasses two other parcels of land including the Appellant's parcel by entirely excluding them from access to the river.
 4. Consequently, the Appellant sought for the following orders;
 - a. An order certifying that the Appeal is merited.
 - b. An order setting aside the decision made by the District Land Registrar of basing his decision on the report of the District Land Surveyor without considering material facts provided to both his office and that of the District Surveyor.
 - c. A declaration that following consultations between the Group Ranch Officials and the members, the area map for Sajiloni Group Ranch was altered and new beacons erected and which become the primary point of reference in the suit property.
 - d. A declaration that, safe for the River Riparian area point (Beacon) M is in the river bank (junction).
 - e. An order do issue and is hereby issued to the District Land Surveyor and the District Land Registrar to amend the registry map to include point (beacon) M to be in the river bank and make corresponding amendment to the affected registers.
 - f. The Respondent to pay the cost of this Appeal.
 - g. Any further orders that this honorable court may deem fit to grant.

Court's directions

5. On 17th March, 2025, the parties were directed to file their respective written submissions. The directions were fully complied with.



Submissions

Appellant's Submissions

6. In support of the Appeal, Counsel for Appellant filed submissions dated 9th April, 2025 raising the three issues for determination, namely;
 - a. Whether a right of appeal lies against the registrar's ruling on a boundary dispute;
 - b. Whether the determination by the registrar was just and fair in the circumstances; and
 - c. What the reliefs sought can be granted by the court.
7. It was submitted that this court has jurisdiction to hear and determine appeals against a decision of the Land Registrar to review and countercheck excesses that may arise from perceived or real human behavior. In support of these arguments, Section 86(1) and (2) of the [Land Registration Act](#), Regulation 40(5) and (6) of the Land Registration (General) Regulation, 2017 and the decision in the case of the Estate Sonrisa Ltd & Another v Samuel Kamua Macharia & 2 Others (2020) eKLR, amongst other are cited.
8. According to the Appellant, the Land Registrar and District Surveyor report did not adequately address the issues nor establish beacons on L.R No. Kajiado/Dalalekutuk/3374 and 3358 as directed by the court in the case ELC No. 799 of 2017. It was further submitted that they ignored the evidence of the group ranch officials and the parties that the bone of contention was sand harvesting. The Respondent mischievously sought to have more access to the river to the exclusion of the Appellant.
9. While making reference to Regulation 39 of the Survey Regulations, it is argued that the surveyor failed to consider the river which was a prominent physical feature, in determining the location of the beacon marked as point M. The surveyor's findings are what informed the land registrar's decision.

Respondent's submissions

10. The Respondent argues that this Appeal originated from ELC 799 of 2017 where the issues for determination were;
 - a. Determination of beacons between L.R 3358 and 3374;
 - b. Direction of the court to the District Surveyor to visit the two parcels and prepare a report;
 - c. Consent filed in court on 26th September 2018 by the parties; and
 - d. Appeal and ruling against the decision of the land registrar.
11. It is submitted that although the previous trial court considered the survey findings which were in favor of the Plaintiff and closed the file, the Appeal herein raises new issues. The Respondent argues that the consent which was to the effect that the Kajiado Land Registrar and Surveyor to establish beacons for the two parcels and file a report on whether there was encroachment was fully complied with. He submits that that the survey exercise was undertaken in compliance with the law because all parties were present on the ground.
12. According to the Respondent, the dispute had been resolved because the beacons were fixed. Further,



Issues for determination

13. The sole issue for determination upon careful perusal of the memorandum of appeal, record of appeal and parties' submissions is whether the Appellant's appeal is merited.

Analysis and determination

14. Mativo J (as he then was) in the case of *Mursal & Ano vs Manese* (suing as the legal administrator of Dalphine Kanini Manesa){2022} (Civil Appeal E20 of 2021) KEHC 282 (KLR)(6 April 2022) (Judgement), addressed the responsibility of the appellate court when considering a first appeal and stated that,

“A first appellate court is mandated to re-evaluate the evidence before the trial court as well as the judgment and arrive at its own independent judgment on whether or not to allow the appeal. A first appellate court is empowered to subject the whole of the evidence to a fresh and exhaustive scrutiny and make conclusions about it, bearing in mind that it did not have the opportunity of seeing and hearing the witnesses first hand.”

15. That was the same position enunciated in the case of *Selle & another -vs- Associated Motor Boat Co. Ltd & others* (1968) E.A 123, where the court stated that:

“... this court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court...is by way of a retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect.”

16. This court will proceed to reconsider the evidence, evaluate it itself and draw its own conclusions.
17. On 5th July, 2017, the Respondent instituted legal proceedings against the Appellant in Kajiado ELC 799 of 2017. On 14th November, 2024, M.N. Gicheru J who had the conduct of the matter marked the suit as closed. The Judge noted that it is the Land Registrar who has the jurisdiction to determine boundary disputes relating to registered land by virtue of section 18(2) of the *Land Registration Act*. Since there was an appeal against the decision of the Land Registrar, there cannot be two files pending in respect of the same subject matter.
18. The Appellant has annexed in his Record of Appeal dated 20th July, 2020 two reports by the District Surveyor. According to the report dated 20th July, 2020 filed in ELC 799 of 2017 on 20th July, 2020, the District Surveyor made the following finding;
 - a. The Sajiloni Group Ranch Officials are the ones who demarcated the parcels and the beacons are intact and are the ones to be followed;
 - b. There were ground alterations to some parcels which were not rectified on the map among them Parcels 3374 and 3358; and
 - c. All alterations were done with the consultations of the officials and members of the group ranch.
19. In concluding, the District Surveyor opined that the group ranch officials and the proprietors of the said parcels should appear in court and explain what happened so that his office can rectify the map.



20. The 2nd Surveyor report is dated 16th November, 2024. Some findings of the report which were forwarded to the Kajiado District Land Registrar were that the owners of parcel 3363 and 3374 did not know the position of boundary that separated them and that 3.5 ha was the disputed area.
21. It is not in dispute that there exists two surveyors report in respect of the boundary dispute and whose findings contradict each other. While making his findings, the Land Registrar did not state which of the two survey reports he relied on in making his determination. Even though the Respondent has not the disputed the Land Registrar findings, which he maintains must be upheld by this court, the boundary dispute proceedings indicates that he was absent during the exercise. Further, the proprietor of parcel 3374 was represented by Jackline, wife to Rikoyia Ole Kesheko. The Land Registrar did not provide any particulars on whether she was authorized to appear on behalf of the proprietor of parcel 3374.
22. Article 50(1) of *the Constitution* guarantees every person the right to have any dispute that can be resolved by an application of law decided in a fair and public hearing before a court or, if appropriate another independent and impartial tribunal or body. Observance of this right is very critical especially in relation to land disputes which are very emotive.
23. Participation of the Sajiloni group ranch officials in resolving the dispute was critical yet they were not summoned neither were they parties to the boundary dispute resolution proceedings before the land registrar.
24. Based on the above mentioned inconsistencies and disparities, I disagree with the Respondent's submissions that the exercise of resolution of the boundary dispute between the parties herein was in compliance with the requirements of the law. Having found that the dispute was not independently and objectively resolved, it is only fair and in the interest of justice that the process be undertaken afresh by the Land Registrar. Consequently, the Land Registrars decision dated 8th March, 2024 is hereby set aside in its entirety. additionally, the court hereby, exercising its power under the provisions of section 78 of the *Civil Procedure Act* directs that;
 - a. The Boundary dispute/identification in respect of Kajiado/Dalalekutuk/3374 and 3374 be repeated.
 - b. The exercise to be conduct by another the Land Registrar and land surveyor other than T. Haithar and Loise K.
 - c. Sajiloni Group Ranch Officials to be present during the exercise and provide relevant documents to aide in carrying out the exercise.
 - d. The Appeal is hereby allowed but with no orders as to costs.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 24TH DAY OF JULY 2025.

M.D. MWANGI

JUDGE

In the virtual presence of:

Mr. Ntele for the Appellant

Mr. Ogeto for the Respondent

Court Assistant: Edwin

M.D. MWANGI

JUDGE

