



Moilo (Suing as the Personal Representative of the Estate of Roriki - Kayanga alias Toriki - ole Kayianka (Deceased)) v Kajiado Central District Land Registrar & another (Environment and Land Appeal E022 of 2024) [2025] KEELC 985 (KLR) (27 February 2025) (Ruling)

Neutral citation: [2025] KEELC 985 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND APPEAL E022 OF 2024
MD MWANGI, J
FEBRUARY 27, 2025**

BETWEEN

**SUMARE TORIKI KAYIANKA APPLICANT
SUING AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF RORIKI -
KAYANGA ALIAS TORIKI - OLE KAYIANKA (DECEASED)**

AND

**KAJIADO CENTRAL DISTRICT LAND REGISTRAR 1ST RESPONDENT
JOSEPHN LANTOO – MOILO 2ND RESPONDENT**

(In respect of the Intended Respondent's application dated 9th December, 2024 brought under Article 165(6) of the Constitution, Sections 1A, 1B, 3A, 7 and 18 of Civil Procedure Rules, 2010 & Sections 13 and 29 of the Environment and Land Court)

RULING

Background

1. The application herein by the intended 2nd Respondent/Applicant predominantly seeks for the following orders;
 - a. This Honourable court be pleased to join the Applicant herein as a Respondent in this suit.
 - b. The Honourable court be pleased to set aside the ex parte court order issued by Hon. Jane Kamau on 5th December, 2024 in Kajiado Magistrate Court Case No. MCCRmisc No. E303 of 2024, Sumare Toriki Kayianka v Kajiado Central District Land Registrar.
 - c. The Honourable court be pleased to issue an order summoning the Appellant herein to show cause why he filed two similar suits relating to the same subject matter against the same parties.



- d. Costs of this Application be borne by the Appellant herein.
2. The Application is premised on grounds on the face of it and the supporting affidavit of Joseph Lantoo Moilo sworn on 9th December, 2024. He asserts that he is the son of Mr. Mututua Moiro Keturai alias Mututa Ole Moilo (deceased), the registered proprietor of KAJIADO/METO/3 as well as the legal representative of his estate. He explains that his late father approached the district land Registrar to fix beacons following several claims from the Appellants' father over his late father's homestead. Before the beacons could be fixed, the Appellants' father filed case No.TC. 495/02/09 before the Kajiado Land Dispute Tribunal on 21st March, 2009 whereby the tribunal made an award after hearing both parties. The Tribunal award consequently adopted by the Kajiado Senior Resident Magistrate Court required the Kajiado District Land Surveyor to visit both parcels and demarcate boundaries and an access road. Subsequently, the interested Applicant's father put a fence with approval of the district surveyor. Aggrieved by the decision, the Appellant's father sought for leave in Machakos Misc. Civil Application No. 84 of 2010 seeking to commence judicial proceedings in order to quash the decisions of Kajiado Land Dispute Tribunal and the Resident Magistrate court. The Application was dismissed on 20th April, 2010.
 3. The Applicant asserts that the Appellant's father's suit against his father instituted in ELC 51 of 2017 (formerly Machakos High Court Civil Suit 121 of 2010) was dismissed on 28th February, 2018 for want of prosecution.
 4. It is contended that the boundary disputes relating to Kajiado/Meto/3 and adjacent parcels Kajiado/Meto/4 & 8 was resolved by the Land Registrar through a ruling delivered on 26th April, 2024. The Applicant avers that even though the Appellant seeks to halt the Registrars' decision, his father's estate has not been be enjoined into the matter yet it is intimately connected with these proceedings and the outcome. The Applicant avers that when the Appellant failed to obtain injunctive orders before this court, they filed MCCRmisc No. E303 of 2024 against the Kajiado Central District Land Registrar on 4th December, 2024 where they obtained the orders.
 5. It is the Applicant's position that failure by the Appellant to disclose pendency of other matters involving similar parties before the subordinate courts amounts to abuse of the court process. Further, they deliberated failed to enjoin them in this matter.
 6. According to the Applicant, the proceedings before the subordinate court are irregular because it does not have jurisdiction to determine disputes already determined by the land Registrar according to Section 18(2) of the [Land Registration Act](#). It is contended that notwithstanding that the suit is scheduled for mention on 6th January, 2025, the court issued ex parte orders contrary to the provisions of Order 40 Rule 4(2) of the Civil Procedure Rules, 2010 yet the matter had not been not certified urgent.
 7. The Applicant asserts that given there is real danger of contradictory orders being issued by different courts. It is therefore in the best interest of justice that they be granted the orders sought as it provide a framework for fair and just disposal of matters. The Court is urged to invoke its supervisory jurisdiction and set aside the subordinate court's injunctive orders halting implementation of the decision of the Land Registrar because they are prejudicial to the entire community.

Submissions

8. When the matter came up for hearing on 20th February, 2025, the 2nd Intended Respondent restated the averments of their application.



Determination

9. The main issues for determination in this matter is whether the 2nd Intended Respondent/Applicant has adequately demonstrated why he should be included in this Appeal and whether the court can set aside the order issued in MCCRmisc/E303/2024

a. Whether the 2nd Intended Respondent/Applicant has adequately demonstrated why he should be included in this appeal

10. The Applicant contends that it is in the interest of justice he be enjoined in these proceedings because its outcome will affect him. This is because his father (deceased) was one of the parties in the boundary dispute resolved by the land Registrar through a decision made on 26th April, 2024. Given that the Appellant seeks to halt the implementation of the said decision, his presence in this proceeding will assist in ensuring fair and just adjudication of the dispute.

11. Before proceeding further, it is crucial to reproduce Order 1 Rule 10 of the Civil Procedure Rules, 2010 which provides circumstances under which a party may be joined in a case. It provides as follows

“The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.”
Emphasis added.

12. The Application is unchallenged. It was not responded to by the Appellant or the 1st Respondent. The intended 2nd Respondent has filed various documents in support of the application among them proceedings before other courts.

13. Proceedings before the Kajiado Land Dispute Tribunal Case No.TC 495/02/09 indicates that the boundary dispute before the Tribunal involving the Appellant and the 2nd Intended Respondent related to KAJ/METO/03 & 04. According to the Tribunal’s award, the District Surveyor was required to visit the properties and accordingly survey it with appropriate maps and scales; identify beacons and clearly mark the boundaries of the stated properties. The award was adopted as an order of court on 12th November, 2009 in Kajiado Resident Magistrates Court Land Dispute Tribunal Case No. 37 of 2009.

14. Even though the Appellant sought to have the award and order quashed in Machakos High Court Mis Application No. 84 of 2010, the application was dismissed on 30th April, 2012 after the court declined to issue judicial review orders.

15. The Appellant then instituted Civil Suit No. 121 of 2010 in Machakos High Court against the 2nd intended Respondent. In the suit, the Appellant sought a permanent injunction restraining the 2nd Intended Respondent from claiming or interfering with its quiet possession, use and enjoyment of KJD/METO/4. This suit was dismissed on 28th February, 2018 for want of prosecution.

16. The Supreme Court in *Muruatetu & another v Republic; Kenya National Commission on Human Rights & 2 others (Interested Parties); Death Penalty Project (Intended Amicus Curiae)* (Petition 15



& 16 of 2015 (Consolidated)) [2016] KESC 12 (KLR)(Civ) (28 January 2016) (Ruling) outlined circumstances under which a party may be joined into proceedings by holding as follows;

“From the foregoing legal provisions, and from the case law, the following elements emerge as applicable where a party seeks to be enjoined in proceedings as an interested party:

One must move the Court by way of a formal application. Enjoinment is not as of right, but is at the discretion of the Court; hence, sufficient grounds must be laid before the Court, on the basis of the following elements:

The personal interest or stake that the party has in the matter must be set out in the application. The interest must be clearly identifiable and must be proximate enough, to stand apart from anything that is merely peripheral. The prejudice to be suffered by the intended interested party in case of non-joinder, must also be demonstrated to the satisfaction of the Court. It must also be clearly outlined and not something remote. Lastly, a party must, in its application, set out the case and/or submissions it intends to make before the Court, and demonstrate the relevance of those submissions. It should also demonstrate that these submissions are not merely a replication of what the other parties will be making before the Court.”

17. The Court of Appeal while dealing with the issue of joinder of party in an appeal in David Kiptugen v Commissioner of Lands, Nairobi & 4 others [2016] KECA 712 KLR, pronounced itself as follows

“We agree with Ms Kirui that whatever the outcome of the appeal, if the applicant is not joined in this appeal, he will be deprived of an opportunity to be heard on his claim to the ownership of the suit land. That will of course be unconstitutional and against the rules of natural justice. In the circumstances, we allow this application to the extent that Chepkilot Kipsang trading as Heldo Foodstuff is hereby joined in this appeal as an interested party.”

18. Even though the Appellant never enjoined the 2nd Intended Respondent in this appeal instituted on 25th May, 2024, the above sequence of events clearly shows that his participation in these proceedings will assist the court in adjudicating the appeal in a just and proportionate manner.

b. Whether the court can set aside the order issued in MCCRmisc/E303/2024?

19. The 2nd Intended Respondent/Applicant accuses the Appellant of failure to disclose the existence of this Appeal in MCCRmisc/E303/2024 when he obtained orders halting the decision of Kajiado Central District Land Registrar. According to the Applicant, the orders were secured after the Appellant failed to get them from this court.

20. The Appellant approached this court on 25th May, 2024 through a memorandum of appeal dated 24th May, 2024 seeking to challenge the decision of Land Registrar delivered on 26th April, 2024. On 28th May, 2024 & 4th November, 2024, the Appellant lodged similar Notice of Motion Applications seeking orders to the effect that the decision of the Registrar be halted pending the hearing of the application and the appeal. Upon considering the applications, the court declined to issue any orders. Subsequently, the Applicant instituted the application dated 4th December, 2024 before the Chief Magistrate Courts seeking similar orders in the aforementioned application. After considering the application, the court proceeded to issue the following orders;

“That the Defendants/Respondents are ordered to halt the full implementation of the Ruling dated 26th April, 2024 concerning Kajiado/Meto/14. This includes stopping the



beaconing of the parcels and amendment of the registry index map or green card pending the hearing of the Application.”

21. The 2nd Intended Respondent/Applicant was not a party to the above-mentioned proceedings. The Applicant asserts that given the foregoing orders were issued ex-parte, then they ought to be set aside because they are contrary to the provisions of Order 40 Rule 4(2) of the Civil Procedure Rules.
 22. The Applicant has averred that the only person mandated to determine boundary disputes is the Land Registrar according to Section 18(3) of the *Land Registration Act*. Thus, the subordinate courts do not have jurisdiction over such a matter. The court is implored to invoke its supervisory jurisdiction and set aside the said orders.
 23. Even though I agree with the intended Respondent/Applicant assertions that the subordinate court did not have the requisite jurisdiction to entertain the matter, this court as an appellate court lacks the jurisdiction to deal with any other matter other than the appeal before it. Appellate jurisdiction is limited jurisdiction; so limited by the statute. As the Supreme Court held in the case of R vs Karisa Chengo (2017) eKLR, a court’s jurisdiction flows from either *the Constitution* or legislation or both. A court cannot arrogate to itself jurisdiction exceeding that which has been conferred on it by the law.
 24. The court’s appellate jurisdiction is limited to the provisions of section 78 of the *Civil Procedure Act* and Order 42 of the Civil Procedure Rules.
 25. Undoubtedly, from the aforesaid, there is no basis of proceeding to consider the merit and demerits of the decision issued in MCCRmisc/E303/2024 because it is not the subject of this appeal.
 26. On the prayer for the order seeking to summon the Appellant to show cause why they filed similar suits over the same subject matter, I find no legal basis for that.
 27. In closing, the application dated 9th December, 2024 is allowed in the following terms;
 - a. The 2nd Respondent/Applicant is hereby joined as the 2nd Respondent in this appeal.
 - b. The costs of the application shall be in the cause
- It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 27TH DAY OF FEBRUARY 2025

M.D. MWANGI

JUDGE

In the virtual presence of:

Mr. Otieno for the Applicant

N/A for the Appellant and the 1st Respondent

Court Assistant: Mpoye

M.D. MWANGI

JUDGE

