



**One Thirty Investment Limited v Waiyaki & 2 others (Environment and Land Case Civil Suit 507 of 2017) [2024] KEELC 3339 (KLR) (23 April 2024) (Judgment)**

Neutral citation: [2024] KEELC 3339 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT AND LAND CASE CIVIL SUIT 507 OF 2017  
MN GICHERU, J  
APRIL 23, 2024**

**BETWEEN**

**ONE THIRTY INVESTMENT LIMITED ..... PLAINTIFF**

**AND**

**DR.MUNYUA WAIYAKI ..... 1<sup>ST</sup> DEFENDANT**

**LAND REGISTRAR, KAJIADO ..... 2<sup>ND</sup> DEFENDANT**

**THE NATIONAL LAND COMMISSION ..... 3<sup>RD</sup> DEFENDANT**

**JUDGMENT**

1. The plaintiff seeks the following reliefs against the defendants.
  - a. A declaration that the suit premises belongs to the plaintiff.
  - b. A declaration that the verdict of the government surveyor dated 30/9/2013 is unconstitutional and incapable of enforcement.
  - c. In the alternative the plaintiff be compensated in monetary terms at the current market value of the suit premises.
  - d. General damages.
  - e. Costs of the suit.
2. The plaintiff's case is as follows. It owns L.R. Kajiado/Kitengela/7634, suit land, measuring about 10 acres which it purchased from Sironi Ole Sane in the year 1997 and got registered as the proprietor thereof. Soon after the purchase the boundaries were marked by placing of stones along each side and the beacons marked with yellow paint on the rocks. The land remained undeveloped due to its remote location. In the year 2012 it came to the notice of the plaintiff's directors that a wall was being built over the property by some unknown persons.



It later turned out that it was the first defendant building the wall purporting that the suit land was Kajiado/Olchoro-Onyore/1327. The dispute between the plaintiff and the first defendant was reported to the 2<sup>nd</sup> defendant who prepared a report dated 30/9/2013. The report reads as follows, in part,

“The registry index map, (RIM) should be amended and aligned with physical ground boundary since an error occurred when mapping the original land parcel Kajiado/Kitengela/1806 which was surveyed on 3/2/1997 and also being the first subdivision which resulted into numbers Kajiado/Kitengela/7634 and 7635...the error should be corrected by re-surveying of the original land parcel no. 1806 as stipulated in the *Land Registration Act* 2012 Sections 16, 17 and Sections 18(1) and (3) of the *Survey Act*.

To effectively implement it, a court order should be obtained from a court of law since the exercise effects land ownership”.

3. According to the plaintiff, if the above recommendations were to be implemented, it would affect some 142 other parcels. When the plaintiff engaged a private surveyor by the name Hime, he was of the opinion that the Land Registrar and the surveyor had no facility for relocation or resurvey as suggested and the plaintiff's title was clean and it is the Government that was responsible for the overlap of the titles through faulty administration and it should be responsible for the ensuing compensation. The finding by the Registrar meant that the plaintiff's land was inside ORLY Airport.
4. In support of its case, the plaintiff filed the following evidence.
  - a. Witness statement by Patricia Ann Sherwin.
  - b. Copy of title deed and green card for the suit land.
  - c. Copy of boundary dispute summons issued to the 1<sup>st</sup> defendant dated 13/5/2013.
  - d. Copy of letter dated 17/5/2011, written by the advocates of the 1<sup>st</sup> defendant in respect of the suit premises.
  - e. Copy of map showing Olooloitikoshi/Kitengela registration section.
  - f. Copy of Land Registrar's report dated 30/9/2013.
5. The 1<sup>st</sup> defendant, through counsel on record, filed a written statement of defence dated 24/2/2015 in which he generally denies the plaintiff's claim. He then adds the following.

Firstly, the wall was being built on L.R. Kajiado/Olchoro-Onyore/1327 to which he holds a valid title deed.

Secondly, the government surveyor confirmed to the plaintiff that its land extended to Orly Airport grounds.

Thirdly, the same surveyor confirmed that the whole of the 230 acres in Title No. 1327 belongs to the 1<sup>st</sup> defendant having bought the same from Lekiroremu Ole Monirei in 1985. For these and other reasons, he prays for the dismissal of the plaintiff's suit against him. In support of his case, the first defendant filed a witness statement by Elizabeth Wairimu Waiyaki dated 14/1/2018 in which she reiterates what is in the written statement of defence.
6. The Hon. the Attorney General filed a written statement of defence for the 2<sup>nd</sup> defendant dated 2/10/2019 in which it is averred as follows.



Firstly, the plaintiff has failed to sue the party who sold the suit land to it.

Secondly, the plaintiff has not established the relationship between its land and L.R. No. 1327.

Thirdly, the dispute is about the location of the plaintiff's land and this should have nothing to do with L.R. 1327 and it is the seller to the plaintiff who pointed at the wrong location.

Fourthly, the remedy suggested by the 2<sup>nd</sup> defendant should be implemented to end the dispute.

For these and other reasons, the Attorney General calls for the dismissal of the plaintiff's suit with costs.

7. At the trial on 6/12/2021 and 18/5/2023 Patricia Ann Sherwin, a director of the plaintiff and Elizabeth Wairimu Waiyaki, a daughter of the first defendant testified. Each adopted their evidence on record and they were then cross –examined by the council for the adverse parties.
8. Only counsel for the first defendant filed written submissions on 12/6/2023. By the deadline of 29/4/2024, the plaintiff's counsel had not filed any written submissions and even by 20/3/2024, the submissions had not been filed. The submissions by the 1<sup>st</sup> defendant's counsel did not identify the issues for determination. I find that the following issues arise in this case.
  - i. Where is the plaintiff's land located?
  - ii. Whether the surveyors report is unconstitutional and incapable of enforcement.
  - iii. Whether the plaintiff is entitled to compensation for its land.
  - iv. Whether the plaintiff is entitled to general damages.
  - v. Who pays the costs.
  - vi. What is the way forward.
9. I have carefully considered all the evidence adduced in this case by both sides bearing in mind the burden on the plaintiff to establish its case against the defendants on a balance of probabilities. I have also considered the submissions by learned counsel for the first defendant dated 9/6/2023. I make the following findings on the five issues identified above.
10. On the first issue, I find that the plaintiff has not proved by evidence exactly where her land is located. Neither Sironi Ole Sane who sold the land to her nor her surveyor can tell the exact location of suit land. The fact that Ole Sane did not come to court either as a party or a witness weakens the plaintiff's case as to exactly where its land is located. Since he is the one who pointed out the boundaries, he should have appeared in court to explain how he identified the boundaries. In the absence of credible evidence from the plaintiff as to the location of the suit land, the report by the Land Registrar dated 30/9/2013 prevails over any evidence by the plaintiff's surveyor who did not testify in court. After all, the Land Registrar is the authority on the boundaries under Sections 18 and 19 of the [Land Registration Act](#).
11. On the second issue, I find that the report by the Land Registrar is not unconstitutional or incapable of being enforced. The report recognizes that there is a problem and it offers a solution to this problem. It even identifies the plaintiff's land as existing but falling within Orly Airport.
12. When it comes to the third, issue, I find that as at now, the plaintiff has not proved that it is entitled to any compensation because there is nothing to show that its land does not exist. It is only if it is proved that the land overlaps with another that issue can arise after establishing who is responsible for the overlap. This finding covers the fourth issue regarding damages.



13. For the above stated reasons, I find no merit in the plaintiff's suit and I dismiss it. As for costs, I find that since the Land Registrar has admitted that there is an error in the maps, the report dated 30/9/2013 be implemented at the costs of all parties concerned and shared on a pro - rata basis. There will be no order as to costs.

It is so ordered.

Dated Signed and Delivered at Kajiado Virtually this 23<sup>rd</sup> Day of April 2024.

**M.N. GICHERU**

**JUDGE**

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