



Tempe (Suing on behalf of Loseet Ole Rorua - Deceased) v Land Registrar, Kajiado & another; County Government of Kajiadoi & 10 others (Interested Parties) (Environment & Land Case E001 of 2021) [2024] KEELC 4949 (KLR) (25 June 2024) (Ruling)

Neutral citation: [2024] KEELC 4949 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE E001 OF 2021**

**MN GICHERU, J
JUNE 25, 2024**

BETWEEN

KEREMET OLE TEMPE (SUING ON BEHALF OF LOSEET OLE RORUA - DECEASED) PETITIONER

AND

LAND REGISTRAR, KAJIADO 1ST RESPONDENT

DISTRICT LAND SURVEYOR 2ND RESPONDENT

AND

COUNTY GOVERNMENT OF KAJIADOI & 10 OTHERS & 10 OTHERS & 10 OTHERS & 10 OTHERS INTERESTED PARTY

RULING

1. This ruling is on the notice of motion dated 19/6/2023. The motion which is brought under Sections 1A, 1B, 3A and 80 of the *Civil Procedure Act*, Orders 9 Rule 9, 22 Rule 25, 45 rules 1 (a) and 51 rule 1 *Civil Procedure Rules* seeks the following residual orders.
4. Review of the judgment dated 26/1/2022 on account of sufficient reasons to be shown and error apparent on the record, and the boundary dispute be determined under supervision of the court.
5. That the survey of Kenya Board within Kajiado and Nairobi be ordered to produce Registry Index Map (R.I.M) edition 1 and 2 for Kajiado/Purko/14 and 12.
6. That the court be pleased to make such further other orders as it may deem just and expedient in the circumstances of this case by reconsidering the reliefs in the petition.



2. The motion is based on ten (10) grounds. It is also supported by an affidavit sworn by Keremet Ole Tempe which has four annexures. In summary, the applicant states as follows. Firstly, even though the judgment herein was delivered on 26/1/2022, it is only in March 2023 that he learnt of it because his then counsel on record did not inform him. Secondly, the court relied on the findings of the Land Registrar and disregarded the crucial evidence of the allotment letter to the late Loseet Ole Rorua who was allocated 1500 acres on 15/5/1972. Thirdly, the two parcels namely Kajiado/Purko/12 and 14 are individual and not group ranches and before any changes can be effected to the land, the concerned parties would automatically be informed. Fourthly, no allotment letter was availed by either the owners of the two parcels or the Land Registrar showing the land sizes and their boundaries and such evidence is necessary for justice to be done in this case. Fifthly, even though the court was provided with the allotment letter for Purko 14 confirming the same to be 1500 acres, the court erroneously found otherwise upholding the wrong findings of 14/12/2020. Sixthly, for the court to have arrived at a just conclusion, all parties ought to have produced the very initial documentation being the letters of allotment. Seventhly, on 15/5/1979 a land certificate was issued to the late Loseet Ole Nkores Tempei which had the registrar's signature at the front but with the property section blank leaving room for mischief. Eighthly, the applicant has contracted Midland Surveys and Estates to investigate the matter and they have confirmed the suit land to be 1500 acres. In the light of the new evidence, the court ought to allow the current motion.
3. The motion is opposed by counsel for the interested party who has filed six grounds of opposition which are as follows.
 - i. It lacks merit and is an abuse of the court process.
 - ii. Delay in filing is inordinate.
 - iii. It has not satisfied the conditions necessary for review.
 - iv. The applicant should have filed an appeal not a petition.
 - v. There is no error apparent on the record.
 - vi. This is not a suitable case for review.
4. Counsel for the parties were to file and serve written submissions by 25/4/2024 but they did not do so within the timelines or even later.
5. I have carefully considered the motion in its entirety and I find that the following issues arise.
 - i. Whether there is discovery of a new and important matter or evidence which was not within the knowledge of the applicant when the judgment herein was delivered.
 - ii. Whether there is some mistake or error apparent on the face of the record.
 - iii. Whether there is any other sufficient reason.
 - iv. Whether the current motion has been brought without unreasonable delay.There four parameters are directly from Order 45 (1) (b) of the *Civil Procedure Rules*.
6. On the 1st issue, I find that there is no discovery of any new matter or evidence which was not within the knowledge of the applicant when the judgment herein was passed. Since 15/5/1979, the applicant has known the registered size of the suit land. He was aware of the boundary dispute resolution exercise of 22/11/2018. It was at that time that he should have raised the issue. He could also have raised it in



1979 after he got to know the size of his land. It is too late now to raise issues that should have been dealt with at the appropriate time.

7. A mistake or error apparent on the face of the record has been described as one that is so obvious that it stares at the Judge or presiding officer of the court on the face. I see no such error and none has been pointed out to me. To say that the court relied on the land registrar's findings and not on the letter of allotment is not to point out an error. If there was a discrepancy between the land size in the allotment letter and the register, that discrepancy should have been addressed in 1979 but not 45 years later.
8. On whether there is any other sufficient reason, I find none. In fact, I find a lot of emphasis on the old records of 1955. Those who lived then would be the right people to tell us about the land. Unfortunately, they are not available. Those old records cannot override the current ones.
9. One of the prayers is that this court supervises the boundary determination. The court has no such mandate or power. The only power that the court has in boundary disputes is appellate. That power is to be found in Regulation 40 (6) of the Land Registration (General) Regulations, 2017 which provides as follows.

“Any party aggrieved by the decision of the Registrar made under paragraph (5) may within thirty days of the date of notification, appeal the decision to the court”. Under Section 2 of the Land Registration Act, Court means the Environment and Land Court established by the ELC Act and other Courts having jurisdiction on the matters relating to land”.

Section 18 (2) of the Land Registration Act ousts the jurisdiction of the court in matters to do with boundary disputes. It provides as follows.

“The court shall not entertain any action or other proceedings relating to a dispute as to the boundary of registered land unless the boundaries have been determined in accordance with this Section”.

I need not say more on this subject.

10. On the final issue, I find that the motion has been brought after great delay. The judgment of the court was on 26/1/2022. The motion was filed on 20/6/2023 which is almost 17 months after the judgment. The petitioner's counsel was present on the date of judgment. That date had been given almost two months earlier on 29/11/2021 in the presence of the petitioner's counsel. The petitioner cannot run away from the advocate of his choice and blame him for the delay. He is part of the delay which is not accepted by Order 45 rule 1 (b) of the Civil Procedure Rules.
11. For the above stated reasons, I find no merit in the motion dated 19/6/2023 and I dismiss it with costs to the respondents and interested parties.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 25TH DAY OF JUNE 2024.

M.N. GICHERU

JUDGE

