



**Keshinga v Nkedianye (Environment and Land Case Civil Suit
179 of 2019) [2024] KEELC 13922 (KLR) (17 December 2024) (Judgment)**

Neutral citation: [2024] KEELC 13922 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND CASE CIVIL SUIT 179 OF 2019
MN GICHERU, J
DECEMBER 17, 2024**

BETWEEN

LOIS K. KESHINGA PLAINTIFF

AND

DAVID K. OLE NKEDIANYE DEFENDANT

JUDGMENT

1. The plaintiff seeks the following reliefs against the defendant.
 - a. Special damages.
 - b. A permanent injunction to restrain the defendant whether by himself, his servants or agents or otherwise however from entering or using land parcels numbers Kajiado/Kitengela/53294, 53295, 53296, 53297, 53298, 53299 or any part thereof, suit land.
 - c. A permanent injunction to restrain the defendant from selling, alienating, charging or in any other manner dealing with the suit land or any portions thereof.
 - d. An order that the defendant does forthwith pull down and remove the fence, structures, livestock and/or things on the land.
 - e. Damage for the detention and or conversion of the trees and or their value.
 - f. Mesne profits.
 - g. Damages for trespass.
 - h. Punitive and exemplary damages.
 - i. Costs.
 - j. Interest.



- k. Any other relief that this court will deem fit to grant.
2. The plaintiff's case is as follows. One, she and her late husband Keshinga Ole Oiputa were allocated L.R. No. Kajiado/Kitengela/1895 by Kitengela Group Ranch of which they were members. The land measured approximately 78.5 hectares. Two, on 23/8/2021 the plaintiff and her husband subdivided L.R. No. 1895 into eight (8) parcels which were Kajiado/Kitengela/42056, 42057, 42058, 42059, 42060, 42061, 42062 and 42063. The plaintiff sold all the subdivisions except L.R. No. 42063 which she subdivided into parcels numbers Kajiado/Kitengela/53294, 53295, 53296, 53297, 53298 and 53299. Three, the defendant owns L.R. Kajiado/Kitengela/1883 which borders L.R. No. 53294 to the west. Four, the defendant visited the plaintiff's homestead on several occasions with the following elders. Joseph Ole Juma, James Ole Turere, Samuel Ole Waititu, Thomas Ole Katoru, Samuel Ole Matanta, Stanley Sompiroi who is the area chief, Samuel Ole Natulo and Joseph Ole Keponyi. The defendant and the elders purported that there was a boundary dispute over L.R. Nos. 1883 and 1895 and that they could resolve the said dispute. They resolved the dispute in favour of the defendant who fenced part of the plaintiff's land especially parcels numbers 53294, 53295 and 53296. In the course of the fencing of the purported land, the defendant damaged a fence belonging to the plaintiff's son Walter Sironka Keshinga valued at Kshs. 400,000/-. He promised to pay for the damaged fence but only paid Kshs. 100,000/-. Five, it is the plaintiff's case that the elders brought by the defendant to the land had no power to determine a boundary dispute which relates to registered land. Six, the plaintiff claims the value of trees that defendant down cut in her land. She further claims loss of pasture and Kshs. 187, 710/= being the value of the land that the defendant has trespassed upon. The value of one acre of land was Kshs. 3, 000,000/- at the time of filing this suit around 20/11/2018.
3. In support of her case, the plaintiff filed the following evidence.
- Her witness statement dated September 2018.
 - Witness statement by Joseph Keshinga dated 13/12/2021.
 - Survey map of the area where the suit land is situated.
 - Copy of mutation form for L.R. No. 42063 registered on 4/10/2012.
 - Certificate of official search for L.R. Nos. Kajiado/Kitengela/ 53924 – 9 all dated 13/9/2018.
 - A sketch map for the land in dispute.
 - Plan showing the extent of the encroachment.
4. The defendant, through counsel on record filed a written statement dated 19/10/2020 in which he avers as follows. Firstly, the plaintiff's claim is denied in its entirety. Secondly, the defendant specifically denies entering into the plaintiff's land. Thirdly, the defendant contends that he owns L.R. No. 1883 which is distinct from the parcels owned by the plaintiff. Fourthly, after the subdivision of the Kitengela Group Ranch amongst its members and after the issue of title deeds, it was discovered that there were boundary issues involving five (5) parcels of land including those owned by the plaintiff and the defendant. Fifthly, the officials of the Group Ranch together with the area chief and elders convened a meeting after giving notice to the affected persons. Sixthly no resurvey was undertaken by the team that resolved the dispute. Seventhly, the defendant has not caused any damages to the suit land and all that he has done is to paddock and place his cattle on his parcel of land. Finally, it is the plaintiff who has previously encroached and trespassed onto the defendant's land.
- For the above and other reasons, the defendant prays for the dismissal of the plaintiff's suit with costs.
5. In support of his case, the defendant filed the following evidence.



- a. Witness statement by himself, Salan Ole Sokon Limurinke, Stanley Sompiroi and Samuel Waitito Ole Saiyori.
 - b. Copy of letter by S.M. Sompiroi, Chief of Sholinke location dated 1/12/2017.
 - c. Copy of report of survey filed by Jackson Kaesha relating to a survey carried out on 11/3/2017 which recommends a resurvey to rectify errors noted during the exercise.
 - d. Copy of surveyor's report by Geomatics Services Limited dated 12/10/2022.
6. At the trial on 14/12/2021, 29/6/2022, 20/2/2023 and on 2/11/2023, the parties testified on oath by generally adopting their filed evidence. They all called their witnesses. The witnesses were subjected to cross –examination by the adverse parties. Generally, each party stuck to their script as per the filed evidence.
 7. On 23/4/2020, the court referred the matter to the District Land Registrar Kajiado for the purposes of determining the boundary dispute. The registrar has not yet filed his report. What we have on record is a report by the District Surveyor dated 10/9/2021 which is to the effect that land reference No. 1895 agrees with the map and its acreage is 81.23 Ha. It further adds that L.R. No. 1883 encroaches into L.R. No. 1895.
 8. The report by the defendant's surveyor questions the increase of the plaintiff's land from 68 hectares to 81 Ha.
 9. The District Land Registrar filed copies of green cards for L.R. Nos. 1883 and 1895 showing the two parcels to be 22.0 and 685 Ha respectively. This was on 29/2/2024. He also filed a certified copy of transfer of parcel no. 1895 and the area list.
 10. Counsel for the parties filed written submissions on 28/5/2024 and 22/11/2024 respectively. The defendant's counsel identified the following issues for determination.
 - i. Whether this court has jurisdiction to determine a boundary dispute in view of Section 18 (2) of the *Land Registration Act*?
 - ii. Whether the defendant trespassed onto the plaintiff's property?

The plaintiff's counsel has also identified jurisdiction as one of the issues to be determined in this case.
 11. I have carefully considered the evidence adduced by the parties including the witness statements, documents and testimony at the trial. I have also considered the written submissions by the learned counsel for the parties.
 12. I find that I should determine the issue of jurisdiction at this late stage because it was not raised earlier. Since the issue of jurisdiction is everything, it should be decided at the earliest possible opportunity that it has been raised.
 13. I find that this court has no jurisdiction to determine a boundary dispute relating to registered land unless the Land Registrar has determined it first. This is clearly spelt out in Section 18 (2) of the *Land Registration Act*. It provides as follows.

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



I also find that the dispute concerns the location of the boundary between L.R. No. Kajiado/Kitengela/1895 and 1883. It is only after the court determines the boundary between the two parcels that it will be able to allow the prayers in the plaint. Yet the court has no jurisdiction to move an inch before the boundary has been determined by the Land Registrar who has the requisite jurisdiction.

14. I also find tht the Group Ranch officials and the Chief of Sholinke Location who purported to demarcate the boundary dispute between the two parcels mentioned above had no jurisdiction either by dint of the same Section 18 (2) of the *Land Registration Act* which vests exclusive jurisdiction in the Land Registrar. After the Group Ranch members were issued with title deeds, the Group Ranch officials became functus officio in matters boundary determination.
15. The report by the District Surveyor dated 10/9/2021 raises the size of the plaintiff's original land No. 1895 to 81.25 Ha from the 78.5 Ha pleaded by the plaintiff in paragraph 2 of her witness statement dated September 2018. These two sizes differ from the size in the green card filed by the Land Registrar dated 27/2/2024 which shows the size was 68.5 Ha.
16. I find that the way forward is not to dismiss this suit but to rather make orders that will serve the ends of justice considering that this suit has been pending in court since 20/11/2018 which is more than six (6) years. It is also noteworthy that the parties acquiesced to their right to raise the issue of lack of jurisdiction the moment they failed to set aside or to review the order referring the dispute to the Land Registrar made on 23/4/2020. Furthermore, under Section 1A (3) of the *Civil Procedure Act*, the court has power to issue directions to further the overriding objection of Civil Litigation and parties and their advocates have a duty to comply.
17. In conclusion and for the foregoing reasons, I direct as follows.
 - i. Land Registrar Kajiado Central to complete the exercise ordered by the court on 23/4/2020 by determining the dispute as per Regulation 40 of the Land Registration (General) Regulation, 2017.
 - ii. The land Registrar's report not to be filed in court but to be furnished to the parties.
 - iii. Whichever party is not satisfied with the decision of the Land Registrar may appeal to this court as required by Regulation 40 (6) 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 court”.

18. The suit is marked as settled in this court with no order as to costs.
It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 17TH DAY OF DECEMBER 2024.

M.N. GICHERU
JUDGE

