



**Basi v Yasi & 5 others (Environment & Land Case 36 of 2021)
[2025] KEELC 2941 (KLR) (27 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 2941 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
ENVIRONMENT & LAND CASE 36 OF 2021
MN MWANYALE, J
MARCH 27, 2025
(FORMERLY NAROK CASE NO. E004 OF 2020)**

BETWEEN

JOSEPH LETEIPA OLE BASI PLAINTIFF

AND

KOSIKA MOROMBI OLE YASI 1ST DEFENDANT

KIPIMO OLE YASI 2ND DEFENDANT

MOLA OLE YASI 3RD DEFENDANT

OLE KETONO OLE YASI 4TH DEFENDANT

BENARD YASI 5TH DEFENDANT

WILSON YASI 6TH DEFENDANT

RULING

1. On 04.02.2025, when this matter was called up during the cause list call over, Mr. Tawo learned counsel for the plaintiff pointed to the court that there were two pending applications in this matter.
 - i. The Application dated 09.10.2024 filed the Defendants/Applicants and
 - ii. A subsequent application dated 04.11.2024 filed by the Plaintiff/Applicant.
2. The court only issued directions in respect of the 1st Application but did not issue directions on the 2nd Application and this ruling now details the reasons as to why only the 1st Application was reserved for ruling and no directions were issued in respect of the 2nd Application.
3. The record does not indicate that the Application dated 04.11.2024 was withdrawn but actually the same has been overtaken by events hence needs no determination. The Application dated 04.11.2024



sought for the recusal of the Presiding Judge in the matter the Hon. Mr. Justice E. Washe and the learned Judge having proceeded on transfer to another station, the Application dated 04.11.2024 is thus deemed to have been overtaken by events and the same is formally marked as overtaken by events for record purposes.

4. The Ruling therefore relates to the application dated 9th October 2024.
5. Before dwelling into the said application, it is important to note that this matter was concluded vide the Judgment delivered by Hon. Justice E. Washe on 16th January 2023, where he rendered himself in the following orders
 - a. The plaint dated 18th November 2020 be and is hereby dismissed forthwith.
 - b. The sub-county Land Registrar, Transmara West, East and South be and is hereby directed to register and resolve the boundary dispute been the properties known as LR No. Transmara/Ololchani/124 and LR No. Transmara/Ololchani/96 within Ninety (90) days from the pronouncement of this Judgment.
 - c. The sub-county Land Registrar Transmara West, East and South is further directed upon resolving the boundary dispute been the properties known as LR No. Transmara/Ololchani/124 and Transmara/Ololchani/96 to proceed and point out and affix the necessary boundaries separately the two parcels of land thereof.
 - d. Each party shall bear their own costs.
6. No Notice of Appeal was filed against the said Judgment.
7. Turning to the application dated 09.11.2024, the same seeks
 - i. Joinder of David Murunka Koncholla, Julius Sirampe Olteita, Joyce Nailantei Kindi, Joseph Abuya and Joshua Kitungatole Mula as interested parties in the matter for purposes of this application,
 - ii. Grant of conservatory orders to restrain, the Director of Criminal Investigations, the second interested party, any police officer, investigative officer and/or any security officer working under the directions of the 1st interested party within the Republic of Kenya, from harassing, intimidating, summoning for interrogation or questioning and/or arresting the defendants/applicants herein on matter connected and/or related to the instant matter.
8. The grounds in support of the application are that; -
 - i. The court ordered the Land Registrar and Surveyor Kilgoris to visit LR.No. Transmara/Ololchani/96 and LR.NO. Transmara/Ololchani/124 and prepare reports.
 - ii. Reports were filed by the Registrar and hearing was conducted and Judgment delivered; and no appeal was filed.
 - iii. The interested parties are now interfering with the Judgment by carrying out investigations, and have summoned to Defendants without any legal foundations, and the Defendant/Applicants rights are likely to be violated if orders are not granted.
9. A supporting affidavit of Mr. Kosika Morongi Ole Yiasi reiterating the grounds in support of the application was filed.



The affidavit has annexed an authority to swear, copy of the Judgment, copy of this boundary dispute summons dated 17.10.2023 and 17th September 2024, 4th October 2024, a copy of Petition number E007/2024

10. The Plaintiff/Respondent filed a Response by way of a Replying Affidavit dated 18th October 2024, while the 1st and 2nd interested parties filed a Replying affidavit deponed by Detective Inspector Kennedy Mulei Ndeto on 17th October 2024.
11. In the Replying affidavit by the Plaintiff/Respondent he deposes that; -
 - i. He is the beneficial and registered owner of Transmara/Ololchani/124, while the 1st to 3rd Defendants are the beneficial and registered owner of Transmara/Ololchani/96.
12. That he had challenged the orders dated 4th October 2023 in which the Land Registrar had carried out a boundary dispute in accordance with the Judgment by filing a Constitutional Petition for the Land Registrar to re-establish the boundaries.
13. That he had discovered that the survey report dated 12th May 2023 confirmed boundaries that had been made in 2021 resulting into the subdivisions of Transmara/Ololchani/96 into 1643 ad 1644 and thereafter into 1657 – 1660 and 1669 – 1667 and transferring the same to other parties including the Applicants for the joinder Application; some of whom were related to staff working at Kilgoris Land Registry hence the made report to the DCI who had summoned the beneficiaries to record statements.
14. That the suit having been heard and determined, the file was closed and court cannot re-open the same, admit a new parties and issues orders sought and that the issues related are criminal in nature outside the jurisdiction of the court.
15. That the subdivisions were done illegally and hence the application ought to be dismissed.

The affidavit annexed searches as well as the survey report dated 12th May 2023 and a reply to a request to review boundary dispute dated 24.04.2024.
16. On their part the 1st and 2nd interested parties in the Replying affidavit deponed interalia: -
 - i. That they had received complaints of illegal subdivision and transfers and was instructed to investigate the same whereafter he served summons to persons of interest s and only one of the summoned persons attended.
 - ii. That the investigations are aimed at revealing the truth; and that the court is functus officio and cannot admit new parties and the court cannot interfere with criminal investigations undertaken by the interested parties in compliance with their mandate under Sectio 35 of the [National Police service Act](#).
17. Parties were directed to file written submissions on the application.

Applicants Submissions

18. In their submissions the Applicants urged the court to allow the application as there was no basis for the summons issued as there was a judgment in the matter and that in so far as the subdivisions were made on the Applicants Land and that the Respondent ought to concentrate on his property.
19. On their part the interested parties/Respondents placed reliance wholly on their Replying affidavit and di not file any submissions, while the Plaintiff/Respondent submitted that the court lacked jurisdiction to hear the instance Application and placed reliance in the decision in the case of R Vs Karisa Chengo and 2 Others as well as the Owners of Motor Vessel ‘Lilian S’ Vs Caltex Oil Kenya 1989 (KLR)



20. They further submitted that the court is functus officio and could not issue the orders sought. They urged the court to dismiss the application.

Issues for Determination

21. The issues arising from the application the Responses annexures as well as submissions are as follows; -
- i. Whether or not this post-judgment application can be heard and determined by the court?
 - ii. Whether the court has jurisdiction to hear and determine the matter?
 - iii. Whether or not the application is merited?

Analysis and Determination

22. Ordinarily the issue of jurisdiction would be the first to be handled by the courts, but in this application the court has to determine whether it is properly seized of the matter noting that this is a post judgment application before determining its jurisdiction.

It is the normal practice for courts to entertain 3 kinds of post judgment application

- i. An application for review of a judgment under 46 of the Civil Procedure Rules.
 - ii. An application for execution of the decree under 22 of the Civil Procedure Rules.
 - iii. Or an application for stay of execution under 22 of the Civil Procedure Rules.
23. For superior courts, applications for execution of decrees are normally dealt with by the Deputy Registrars.
24. The application before court falls in neither of the categories as it seeks joinder of parties and conservatory orders post judgment.
25. Once a court delivers its judgment, it becomes functus officio, meaning it cannot handle any other issues in the matter save for the 3 types of applications that I have outlined above.
26. The court herein delivered its judgment on 16th January, 2023, no appeal was filed against that judgment; renders the court functus officio.
27. The court having found that it is functus officio it shall not deal with the other issues it had framed, as the application is dismissed and the orders which had been issued are hereby vacated.
28. Costs to the Respondents.

DATED AT KILGORIS THIS 27TH DAY OF MARCH, 2025.

HON. M.N MWANYALE

JUDGE

In the presence of

CA – Emmanuel/Sylvia

Mr. Tawo for the Plaintiff/Respondent

Ms. Kijana h/b for Mr.Onchwangi for the Applicants/Applicant

Ms. Osebe for the Interested Party/Resondents

