



**Kangu v County Land Registrar, Kajiado; County Government of Kajiado & another  
(Interested Parties) ((As the Representatives of Oloomunyi Community)) (Civil  
Appeal 13 of 2019) [2023] KEELC 735 (KLR) (14 February 2023) (Judgment)**

Neutral citation: [2023] KEELC 735 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
CIVIL APPEAL 13 OF 2019  
MN GICHERU, J  
FEBRUARY 14, 2023**

**BETWEEN**

**LAILA OLE NAILOLE KANGU ..... APPELLANT**

**AND**

**THE COUNTY LAND REGISTRAR, KAJIADO ..... RESPONDENT**

**AND**

**THE COUNTY GOVERNMENT OF KAJIADO ..... INTERESTED PARTY**

**JONATHAN RIKANA, TOM KILEKON, DANIEL- LETINANA,  
PATRICK MAINKA, DAVID SANKAIRE, BENSON KADIDI AND  
FRANCIS MAINKA (AS THE REPRESENTATIVES OF OLOOMUNYI  
COMMUNITY) ..... INTERESTED PARTY  
(AS THE REPRESENTATIVES OF OLOOMUNYI COMMUNITY)**

*(being an appeal from the decision of the County Land  
Registrar, Kajiado delivered on 17th April, 2019)*

**JUDGMENT**

1. This judgment is in respect of the appeal filed by Laila Ole Nailole Kangu on May 6, 2019. The appeal is against the decision of County Land Registrar Kajiado dated April 17, 2009.

The decision of the County Land Registrar was as follows.

“Having taken all the above considerations, I now direct that the trading centre that is Kajiado/Dalalekutuk/102 and the neighboring parcels be established on the ground as per the original adjudication map and the Registry Index Map (RIM). Further the boundary



line separating Olumunyi Group Ranch and the trading centre (102) and parcel number 63 passing through D9, D7 and D5 should be established on the ground as per the original adjudication map and the Registry Index Map.

Any party who is not satisfied with the Land Registrar's Report has a right to appeal to the ELC within 21 days from the date of the ruling. Attached herein is the surveyor's report".

2. Dissatisfied with the decision of the Land Registrar, the appellant through counsel on record filed a memorandum of appeal seeking four orders as follows.
  - a. This appeal against the decision of the Land Registrar delivered on September 17, 2019 be allowed.
  - b. In the alternative, the court to order a retrial of the matter by another Land Registrar or independent body.
  - c. That the court do issue any other order that it may deem fit to secure the ends of justice.
  - d. The cost of this appeal.
3. There are eleven (11) grounds of appeal in total. They are as follows. The Land Registrar erred in law or fact by the following.
  - i. Determining the boundary in dispute in respect of a nonexistent complaint as there was no complaint by the interested party which is the registered owner of the LR No 102.
  - ii. In purporting to determine an issue that had been settled by the surveyors of the interested party.
  - iii. In failing to determine the position of the disputed boundary as stipulated in the *Survey Act*, cap 299 Laws of Kenya.
  - iv. By not causing a survey to be conducted on the entire parcels of land affected by the dispute.
  - v. By not including the input of the private surveyor Mr Mugo for LR 63 and county surveyor for LR 102 yet they were present.
  - vi. Not taking the statements of Olumunyi Group Ranch officials and the parcels in purported dispute came from the group ranch
  - vii. By failing to take into consideration the fact that the owners of parcels number Kajiado/ Dalalekutuk/102, 2069, 2070, 2072, 2073, 2075, 2084, 2085, 2214, 2226 and 64 showed existing beacons on the ground though the complaint is between parcel 102 and several other parcels and further that he never called any witness or record statement from the owners of the parcels.
  - viii. By not taking into account the existing developments i.e Olumunyi Primary School and Olumunyi borehole which if resurveying is done, then they will be placed on a different parcel of land.
  - ix. By allowing overrepresentation of the government in the meeting which was in essence a way of intimidating the appellant.
  - x. By stating that boundary line separating Olumunyi Group Ranch, trading centre and parcel No 63 passing through D9, D7 and D5 should be established on the ground as per the original adjudication map and the Registry Index Map.



- xi. In failing to appreciate that LR 63 and 102 were excised and boundaries demarcated before Olomunyi Group Ranch.
4. In addition to the above the appellant filed a record of appeal running into 129 pages and written submissions dated May 25, 2022. The issues raised in the submissions are as follows.
  - a. Whether the registrar erred in law and facts by determining a nonexistent complaint.
  - b. Whether the matter is *res-judicata*.
  - c. Whether the registrar erred in law and fact by deliberately failing to take into account relevant consideration.
  - d. Whether it is in the interest of justice and fairness to grant the reliefs sought.

5. Counsel for the interested parties filed written submissions on November 22, 2022 responding to the issues raised by the appellant. They support the appellant in the third issue only and state that since the county surveyor was not present when the Land Registrar determined the boundaries, then the whole exercise ought to be repeated in the presence of the county surveyor.

The interested party is not in agreement with the appellant regarding the other issues.

6. I have carefully considered the appeal in its entirety including the grounds in the memorandum of appeal, the record of appeal and the submissions by counsel for the appellant and that of the interested party and I make the following findings.

Firstly, apart from the record by the Land Registrar, the only other material by a person present at the boundary determination is the affidavit by the appellant dated May 6, 2019. Unfortunately, this affidavit does not say anything about what happened at the locus in quo on April 12, 2019. All the other material on record is submissions and the history of the dispute.

Secondly, the appellant in particular and the other parties in general were expected to file evidence as to what happened at the locus in quo that they are not happy with. Evidence especially of an expert was required. The surveyors present at the locus should have filed some material in this appeal to make the court see exactly what was wrong with the boundary determination.

7. Coming now to the issues, I find that there was a dispute between the owners of LR Kajiado/Dalalekutuk/102 and other parties namely Kajiado/Dalalekutuk/63, 2070, 2072, 2069, 2073, 2075, 2085, 2084, 2226, 2214 and 64. The disputants were Olomunyi trading centre and the neighboring parcels.

8. On the second issue, I find that the matter is not *res judicata*. It could have been *res judicata* if it had been determined by another Land Registrar who had made a decision thereon. It is alleged that the dispute had been determined by a private surveyor.

Under sections 18 and 19 of the *Land Registration Act*, it is only the Land Registrar who has power to determine boundaries of registered land. A private surveyor or any other surveyor has no such authority.

9. On the third issue, I find no evidence to prove that the Land Registrar failed to take into consideration any relevant material. Like I said earlier, it was incumbent upon the appellant to file evidence of what transpired at the scene that was wrong. He failed to do so. The Land Registrar was not alone in the boundary determination exercise. He was in the company of other officers including the District Surveyor D. Kebaso.



The report by the Land Registrar is very comprehensive and deals with all aspects of the exercise. It has not been faulted at all by any expert in surveying and land registration.

There is no allegation or evidence that the representatives of the interested party were not invited for the exercise. It is also not explained how their surveyor's presence would have changed the outcome of the exercise. Their role in the exercise under the law is not shown by the appellant or themselves.

10. On the final issue, I find that it is neither fair nor just to interfere with a legitimate exercise carried out by a legitimate authority and which has not been shown to be faulty in any way.

For the above stated reasons, I dismiss the entire appeal with costs to the respondents. It is so ordered.

**DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 14<sup>TH</sup> DAY OF FEBRUARY, 2023.**

**M.N. GICHERU**

**JUDGE**

