



Kaipei & another (Suing as the Administrators of the Estate of Gideon Ntauti – Kaipei Karei) v Kisoso & 3 others (Environment and Land Case E049 of 2021) [2025] KEELC 7726 (KLR) (6 November 2025) (Ruling)

Neutral citation: [2025] KEELC 7726 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND CASE E049 OF 2021
MD MWANGI, J
NOVEMBER 6, 2025

BETWEEN

SAYA ENE DAUDI KAIPEI 1ST PLAINTIFF
WILLIAM KAIPEI NTAUTI 2ND PLAINTIFF
SUING AS THE ADMINISTRATORS OF THE ESTATE OF GIDEON NTAUTI –
KAIPEI KAREI

AND

MUKAAMPA LELETA KISOSO 1ST DEFENDANT
THE PRINCIPAL LAND REGISTRATION OFFICER, KAJIADO LAND
REGISTRY 2ND DEFENDANT
MINISTRY OF LANDS, HOUSING AND PHYSICAL PLANNING 3RD
DEFENDANT
THE ATTORNEY GENERAL 4TH DEFENDANT

(On re-opening of the case and application of the provisions of section 22(b) of the Civil Procedure Act at the instance of the Court suo moto)

RULING

Introduction

1. This matter was heard and the parties duly closed their respective cases. The Court thereafter reserved it for judgment. However, upon a careful and anxious consideration of the pleadings, documentary exhibits, and testimonies adduced by the respective parties, this Court finds itself unable to render a conclusive determination in favour of either side.



2. The principal dispute between the Plaintiffs and the Defendant concerns the alleged fraudulent subdivision and transfer of land originally known as KJD/Kaputei-Central/555, measuring approximately 93.71 hectares (231.46 acres), allegedly giving rise to Land Parcel No. KAJIADO/Kaputei-Central/892, now registered in the name of the 1st Defendant and a 2nd portion in the name of the deceased, Gideon Ntauti Kaipei.
3. The Plaintiffs, as administrators of the estate of the late Gideon Ntauti Kaipei, assert that the subdivision of KJD/Kaputei-Central/555 and subsequent transfer of the resultant portion KAJIADO/Kaputei-Central/892 were fraudulent, while the Defendant maintains that he lawfully purchased the property from the deceased and holds a good title thereto.

Court's decision

4. While the parties have each presented documentary and oral evidence in support of their respective positions, the Court notes that there remains a critical evidentiary gap touching on the mother title, being KJD/Kaputei-Central/555, and the process that led to its alleged subdivision into the resultant parcels.
5. The production of the original parcel file for KJD/Kaputei-Central/555 and the subdivision records held by the Kajiado Land Registry is necessary to the proper and conclusive determination of this matter.
6. This Court is alive to the guiding principles that underpin the exercise of its judicial discretion, particularly where the Court acts suo moto in furtherance of justice. As this court stated in the case of *Jeremy Mark Block vs The Kenya Forest Service & Others* (ELC Pet. 1396 of 2014), the law allows the court to, on its own motion, and at any stage of the proceedings to call any person whose attendance is required to produce documents or give evidence.
7. The discretion is grounded on the provisions of section 22(b) of the *Civil Procedure Act* (Cap 21) which provides that:

“Subject to such conditions and limitations as may be prescribed, the Court may, at any time, either of its own motion or on the application of any party, summon and examine any person whose evidence appears to it to be essential to the just decision of the case.”
8. This provision vests in the Court a discretionary power to call for additional evidence or witness(s) where such evidence appears necessary to enable the Court to arrive at a just determination of the dispute before it.
9. In the present case, the Court has noted material uncertainty surrounding the tenure as well as the mode of ownership of the mother title, KJD/Kaputei-Central/555, the information of which can only be verified by reference to the official parcel file and registry records maintained by the Land Registrar, Kajiado Central.
10. Accordingly, this Court is convicted that it is in the interest of justice to re-open the case suo moto to allow the calling of the Land Registrar, Kajiado Central, as a witness of the Court for purposes of producing and authenticating the relevant records.
11. I consider this case an exceptional case that calls for the exercise of the court's discretion for purposes of the just and conclusive determination of the dispute between the parties. The court's intervention is not meant to fill gaps in either party's case, but rather to ensure that complete evidence touching on the root of title is placed before the Court for a fair, just, and lawful determination.



12. In view of the foregoing, and in exercise of the powers conferred upon this Court under Section 22(b) and Section 3A of the Civil Procedure Act, as read together with Article 159(2)(d) of the Constitution, the Court hereby re-opens this matter suo moto and makes the following orders:
- a. The proceedings herein are hereby re-opened suo moto by the Court for the limited purpose of receiving further evidence relating to the history of the title and subdivision of Land Title No. KJD/Kaputei-Central/555 and the creation of Land Title No. KJD/Kaputei-Central/892.
 - b. The Land Registrar, Kajiado Central, is hereby summoned as a witness of the Court to attend and testify before this Court on a date to be fixed by the court, and to produce the following documents to wit; the parcel file for Land Title No. KJD/Kaputei-Central/555 (prior to subdivision); the parcel file(s) for Land Title No. KJD/Kaputei-Central/892 and any resultant subdivisions thereof; and any records, maps, mutation forms, or correspondence evidencing the subdivision, transfer, and registration process in respect of the above parcels.
 - c. The Deputy Registrar shall issue appropriate witness summons to the Land Registrar, Kajiado Central, and ensure service thereof upon the said office.
 - d. For the avoidance of doubt, the re-opening of the case is limited to the reception of the above evidence and any related clarification, after which the Court shall proceed to deliver judgment.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 6TH DAY OF NOVEMBER 2025.

M.D. MWANGI

JUDGE

In the virtual presence of:

Mr. Anyona for the Plaintiffs

Mr. Karwanda h/b for Mr. Wachira Maina for the 1st Defendant

N/A by the 2nd – 4th Defendants

Court Assistant: Mpoye

