



**Mburu v Sapur & 3 others (Environment & Land Petition  
5 of 2017) [2023] KEELC 17060 (KLR) (27 April 2023) (Judgment)**

Neutral citation: [2023] KEELC 17060 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAROK  
ENVIRONMENT & LAND PETITION 5 OF 2017  
CG MBOGO, J  
APRIL 27, 2023  
FORMERLY NAKURU ELC PET.47 OF 2013  
IN THE MATTER OF ALLEGED VIOLATIONS OR INFRINGEMENT  
OF CONSTITUTIONAL RIGHTS OF THE PERSON TO WIT  
ARTICLE 40 AND ARTICLE 50 OF THE CONSTITUTION OF KENYA**

**BETWEEN**

**PETER MWAURA MBURU ..... PETITIONER**

**AND**

**KARINO OLE SAPUR ..... 1<sup>ST</sup> RESPONDENT**

**THE DISTRICT LAND ADJUDICATION & SETTLEMENT OFFICER, NAROK  
DISTRICT ..... 2<sup>ND</sup> RESPONDENT**

**DISTRICT REGISTRAR OF LANDS NAROK DISTRICT .... 3<sup>RD</sup> RESPONDENT**

**THE ATTORNEY GENERAL ..... 4<sup>TH</sup> RESPONDENT**

**JUDGMENT**

1. The petitioner filed a petition dated November 14, 2013 seeking the following orders:-
  - a. It be declared that the revocation of the petitioner's registration as the owner of that parcel of land known as plot No 378 Kojonga Adjudication Section by the second respondent violates the petitioner's constitutional rights to protection of private property under Article 40 of the *Constitution of Kenya*.
  - b. It be declared that the revocation of the petitioner's registration as the owner of that parcel of land known as plot No 378 Kojonga Adjudication Section by the second respondent violates the petitioner's right to a fair hearing under Article 50 (1) of the *Constitution of Kenya*.



- c. It be declared that the revocation of the petitioner's revocation as the owner of that parcel of land known as plot No 378 Kojonga Adjudication Section was and is without legal basis.
  - d. It be declared that the third respondent action in purporting to open a register in respect of the parcel of land known as plot No 378 Kojonga Adjudication Section or Narok Cis Mara/ Kojonga/378 or in whatever other manner described and registration of the first respondent as the owner thereof and intention to issue title deed to him was and is without legal basis.
  - e. A permanent injunction be granted to restrain the respondents by themselves, their servants and/or agents from violating the petitioner's constitutional rights guaranteed under the [Constitution of Kenya](#) by depriving the petitioner of his property known as plot No 378 Kojonga Adjudication Section and or entering in to remaining upon, committing acts of waste, equitable or otherwise, laying claim over or trespassing thereon without the petitioner's consent.
  - f. A permanent injunction be granted to restrain the respondents by themselves, their agents, servants from violating the petitioner's constitutional rights guaranteed under the [Constitution of Kenya](#) by making any claim to ownership of the petitioner's property plot No 378 Kojonga Adjudication Section or seeking to limit or restrict the petitioner's enjoyment of the said property.
  - g. A mandatory injunction compelling the second respondent to cancel the purported revocation of the petitioner's registration as the owner of that parcel of land known as plot No 378 Kojonga Adjudication Section and to compel the second respondent to retain the petitioner's registration as owner of the said property.
  - h. A mandatory injunction compelling the second respondent to cancel the purported revocation of the petitioner's registration as the owner of that parcel of land known as plot No 378 Kojonga Adjudication Section and to compel the second respondent to retain the petitioner's registration as owner of the said property.
  - i. A mandatory injunction to compel the third respondent to cancel the purported registration of the first respondent as the owner of the parcel of land known as plot No 378 Kojonga Adjudication Section or Narok Cis Mara/ Kojonga/378 or in whatever other manner described and the intended issuance of title to him.
  - j. A mandatory injunction to compel the third respondent to register the petitioner as the owner of the parcel of land known as plot No 378 Kojonga Adjudication Section or Narok Cis Mara/ Kojonga/378 or in whatever other manner described and issue of title to him.
  - k. The respondents do pay the costs of this petition.
2. In the petition, the petitioner stated that he was the owner and entitled to the parcel of land known as parcel No 378 Kojonga Adjudication Section which he has lived on and utilized from the year 1971 to date. The petitioner further stated that the 1<sup>st</sup> respondent has purported to lay claim over the suit property and caused it to be transferred to him. Further, that the 2<sup>nd</sup> respondent has purported to revoke his right, interest and entitlement to the suit property contrary to the provisions of Article 40 of the [Constitution](#).
  3. The petitioner further stated that the respondents have purported to hold a hearing, listen to and determine cases without informing the petitioner of the same or even affording the petitioner the opportunity to be heard contrary to Article 50 (1) of the [Constitution](#). In addition, that the respondents



- have purported to implement awards made in cases which were heard and determined without informing him or affording him the opportunity to be heard.
4. The petitioner further stated that the 3<sup>rd</sup> respondent has purported to open a register in respect of the suit property and registered the 1<sup>st</sup> respondent as the owner and intends to issue a title deed to him.
  5. The petition was supported by the affidavit of the petitioner sworn on even date. The petitioner deposed that the suit property was allocated to him and taken from him by way of a case that was secretly filed, heard and determined on November 18, 2009 without his involvement as per exhibit marked as “PMM-A”. Further, that the 1<sup>st</sup> respondent has never been in occupation as he (the petitioner) has lived on the said property and utilized the same for over 30 years.
  6. The petitioner further deposed that the actions of the respondents are in violation of Article 40, 40 (3), 40 (6) and 50 (1) of the Constitution. Further, that he was never informed by the 2<sup>nd</sup> respondent or any of them of the activities until he went to confirm his registration as owner of the land awaiting issuance of the title deed and noticed that the 1<sup>st</sup> respondent was registered as the owner. This he realized when he visited the office of the 2<sup>nd</sup> respondent.
  7. The 1<sup>st</sup> respondent filed a replying affidavit in opposition to the petition which was sworn on October 29, 2015. The 1<sup>st</sup> respondent deposed that he is the registered proprietor of Cis Mara/Kojonga/378-the suit property having been issued with a title deed on November 8, 2013. That the petitioner has never occupied or settled on his portion of land.
  8. The 1<sup>st</sup> respondent deposed that in the year 1991, his half- brother, Kipes Ole Punyua applied on his behalf for allocation of land within Kojonga area and that before allocation of the suit property, his family had been residing and cultivating within Kojonga area as it was their ancestral land. That early in the year 1993, some people businessmen including the petitioner went to lease land for cultivation and in May 1994, it was discovered that some people who had leased land had irregularly registered themselves as beneficiaries including the petitioner who fraudulently registered his name with Kojonga Land Adjudication Committee as the owner of the suit property.
  9. That on June 17, 1994, his half-brother raised the first objection which was heard on November 8, 1994 in the absence of the petitioner and a decision was made on November 11, 1994. Further, that despite the decision of the adjudication committee stating that the suit property belonged to Kipes Ole Punyua, his half-brother, the changes were not effected on the adjudication register and he paid further fees for another objection.
  10. The 1<sup>st</sup> respondent further deposed that on September 18, 2009, his objection was heard for the 2<sup>nd</sup> time in the absence of the petitioner who had been summoned but failed to appear. The committee made a finding that the suit property belonged to him and that in the year 2010, his name was entered in the adjudication register.
  11. The 1<sup>st</sup> respondent deposed that the petitioner has not pleaded any particulars of fraud on his part which could warrant cancellation of his title deed that was issued genuinely.
  12. In addition, that the petitioner is guilty of fraudulent misrepresentation of facts and is obviously misguided.
  13. The 2<sup>nd</sup> 3<sup>rd</sup> and 4<sup>th</sup> respondents filed a replying affidavit sworn on May 28, 2018 by Patrick M. Munyalo. The 2<sup>nd</sup> respondent deposed that the suit property was originally demarcated and recorded in the name of the petitioner but which was later awarded to Kipas Ole Punyua on 8<sup>th</sup> November, 1994. Further, that the publication of the register took place on August 26, 1998 and during this time, the decision of the adjudication committee had not been effected on the register.



14. The 2<sup>nd</sup> respondent further deposed that the rectification of the register could only be done by filing another objection. The same was done by the 1<sup>st</sup> respondent and Kipas Ole Punyua through objection No 451. Further, that the said objection was filed on October 22, 1998 which was within the 60 days period from the date of publication dated August 26, 1998. Further, that the suit property was not affected by an appeal and the Land Adjudication Officer in his findings noted that he heard and decided the objection in the absence of the petitioner who had been summoned but failed to enter appearance without any explanation. That in the absence of the appeal to the Minister, the register in respect of the suit property became final as per Section 27, 28 and 29 of the *Land Adjudication Act*.
15. The petitioner's case proceeded by way of viva voce evidence on March 16, 2022. The petitioner while adopting his witness statement dated March 12, 2018 and filed in court on April 5, 2018 testified that the suit property belonged to his father and he inherited it in the year 1984. He went on to say that he was shown the land and has used it ever since. The petitioner further testified that he has been residing on the same since the year 2013. That in the year 1984, his father was sued by one James Naikuni vide case number 9/83/84 before the Adjudication Board which determined that the suit property be subdivided. That his father remained with the property and James Naikuni did not file an appeal against the decision of the board.
16. The petitioner testified that in the year 2013, he learnt that there was a suit of the same parcel which was brought by the 1<sup>st</sup> respondent but that he was not served with summons. Further, that he does not know on what basis the 1<sup>st</sup> respondent was awarded ownership of the suit property. Further, that the suit property did not have a title deed when he inherited the same in the year 1984 and that by the year 2013, his father was deceased. The petitioner produced the supplementary list of documents as exhibits marked as PEX Nos. 1 to 4 respectively.
17. The petitioner further testified that the proceedings which he has produced are for the case involving James Naikuni and Peter Mwaura which is case number 9/83/84. The petitioner further informed the court that he did not participate in the case that was filed in the year 1994 as he was in Maai Mahiu at the time due to clashes. Further, that it is not true that the 1<sup>st</sup> respondent had leased the suit property as he only came to know him in the year 2013 when he went to evict him. Further, that he did not get the letter dated September 22, 2007 which allocated the 1<sup>st</sup> respondent the suit land.
18. On cross examination, the petitioner testified that he did not participate in the hearing of case number 9/83 of 1984 during which time he was 18 years old. He admitted that he did not also produce the register showing his name as a member of Kojonga Adjudication Section. The petitioner testified that in the year 1984, his father owned the suit property and that the defendant is Peter Mwaura Mburu who was represented by his father. Further, that it is not him who was the defendant in the proceedings as shown. The petitioner admitted that in his witness statement dated March 12, 2018, he indicated that the property was gifted to him by his father but does not have documents to show how the said property was gifted to him. That as per the adjudication record, it shows that the suit property was registered in the name of Kipas Ole Punyua which allocation was cancelled and re-allocated to the 1<sup>st</sup> respondent.
19. The petitioner testified that he has never met the said Kipas Ole Punyua and that he became aware that the suit property was allocated to someone else in the year 2013. He further admitted that he did not appeal the decision of the Adjudication Officer and the receipt which he has is dated July 6, 1984 which was made by James Naikuni who he had sued his father. Further, that if his statement shows that his father gave him the land in the year 1983, then it would be an error since his father gave him the land on July 6, 1984.



20. The petitioner informed the court that he has never appeared before the Adjudication Committee over the suit property but he is aware that the Adjudication Committee subdivided the suit property into two parcels i.e. number 378 and 610. With regard to the said James Naikuni, the petitioner testified that he is in Nairegie Enkare but has not included him as a witness. Further, that he is not aware how many parcels of land one could own in an adjudication section. The petitioner further informed the court that he has never filed any other claim in court concerning any other parcel of land but admits that he was a petitioner in petition Number 4 of 2017 where he has sued one Mworora. The petitioner insisted that Kipas Ole Punyua has never been the owner of the suit property and that he has never received any summons to attend to any case but admits that he was not a member of Kojonga Adjudication Section.
21. On further cross examination, the petitioner testified that he has been in occupation of the suit property since the year 1964. That he was born in the year 1960 and has grown up in the suit property and that in the year 1984 he was 24 years old. With respect to the proceedings before the Adjudication Committee, the petitioner testified that his father represented him and he could not act since his father was still alive. He also admitted to being aware of petition Number 4 of 2017 as he is the petitioner and the same is with respect to parcel number 267 which his father also owned.
22. The petitioner further testified that he came to know the 1<sup>st</sup> respondent in the year 2013, but that the 1<sup>st</sup> respondent has never been in occupation of the suit property. Further, that he is not aware of any objection proceedings, or determination. The petitioner informed the court that as an aggrieved party, he ought to have appealed to the Minister but he never appealed to the Minister as directed in PMM-5. That in PMM-2, the name that appear to have been cancelled is that of Peter Mwaura Mburu. The second name to be cancelled is that of Kipas Ole Punyua and the name of the 1<sup>st</sup> respondent entered.
23. On re-examination, the petitioner testified that he has lived on the suit property since 1978. That the receipt paid by James Naikuni was for a suit between him and his father. That in petition number 4 of 2017, the suit property involved his father's land and that he was not a party to the suit. Further, that he did not receive the letter directing him to appeal before the Minister within 60 days.
24. Ologolimot Ole Shambesha (PW1), while adopting his witness statement dated March 12, 2018, testified that he was a member of the Adjudication Committee in 1963 and that his name is in the proceedings of 1984 where he participated as Peter Ole Shonko. That the case involved James Naikuni and one Mburu. It was his evidence that the committee resolved that the suit property be subdivided into two portions. As for the 1<sup>st</sup> respondent, PW1 testified that has never been on the suit property as it is the petitioner who resides on the same.
25. On cross examination, PW1 testified that his name is Ologolimot Ole Shambesha and produced his national Identity card. He also informed court that he is also known as Peter Ole Shonko but does not have any document to show that both names refer to him. PW1 further testified that he was a member of the Adjudication Committee and that Kojonga was declared an adjudication section in the year 1964 and is aware that in 1979, the adjudication officers moved into the ground. PW1 later admitted that there was no Kojonga Adjudication Section in 1964 but that he became a member from 1963 to 1973. Further, that he was not a member in 1994 but that they closed the section in 1993. Also, that he has never ceased to become a member of the committee. He informed the court that he has a document to show that he was appointed as an official but is not sure whether it is part of the documents produced.
26. PW1 admitted to know Ole Punyua. He testified that there was no case over the suit property and that he did not participate in the proceedings that were held in the year 1994. That according to his



- statement, it shows that on August 27, 2014 (sic) the Adjudication Committee sat to hear a dispute that was between Peter Mwaura Mburu and James Naikuni. That the petitioner was represented by his father in 2014 and whom he knew as Mwaura Mburu but does not know when he died but is sure that he was alive in the year 2014.
27. PW1 further testified that he is not aware of any dispute between the petitioner, Kipas Ole Punyua and the 1<sup>st</sup> respondent. Further, that he knows that Kipas Ole Punyua was not allocated the suit property. That he (Kipas Ole Punyua) had three parcels of land, the petitioner's father had two parcels of land and many members had more than one parcel of land. PW1 agreed that they had a list of members and that the petitioner's father was a member of the adjudication section but he has not seen any document by the petitioner's father authorizing that the suit land be allocated to the petitioner.
  28. On further cross examination, PW1 testified that he was appointed a member of the adjudication committee in the year 1979 and that prior to this, he was a member of another committee in the year 1964. Also, that he does not know when the area was declared an adjudication section but that the allocation of land in the year 1964 was temporary. That whereas he has a document to show that he was appointed as a committee member, he has not produced the same in court but that he ceased being a member in the year 1993.
  29. On re-examination, PW1 testified that he does not recall the year in which the case between the petitioner's father and James Naikuni took place but it could have been in the 1990s'. Further, that the date of 2014 indicated in his witness statement is incorrect. Also, that he did not participate in any proceedings in the year 2014. PW1 further testified that Peter Shonko also refers to him and that he was not issued with any letter to appoint him as a committee member. However, he worked as a member of the Adjudication Committee from the year 1979 to 1993 and 1963 to 1979.
  30. The respondents' case proceeded for hearing on October 13, 2022.
  31. The 1<sup>st</sup> respondent while adopting his witness statement dated September 13, 2018, testified that he is the registered owner of the suit property as per the title deed produced as DEX No 1. That the suit property was the subject of objection proceedings on 8<sup>th</sup> November, 1994 where the parcel of land was allocated to Ole Punyua. The 1<sup>st</sup> respondent produced the minutes, the receipt of payment of the proceedings, summons that were served upon him on August 17, 2009 and which he attended the meeting on September 18, 2009.
  32. The 1<sup>st</sup> respondent further testified that the adjudication officer declared the suit property belonged to him and there was no appeal filed against the said decision. That as per the list of the committee members of the adjudication section, DEX No 6, PW1 was not a member of the committee.
  33. On cross examination, the 1<sup>st</sup> respondent testified that he left the country for Tanzania for some time, but has never leased the same to the petitioner but that other people leased the land to the petitioner for cultivation of potatoes and ground nuts. Further, that he acquired possession of the suit property in the year 1991 and Ole Kipas raised an objection as he was away. Further, that he could not tell whether the petitioner attended the objection proceedings as he was not present. Further, that he has no document to show that the petitioner was summoned but did not appear. Further, that the committee resolved that the suit property is his and he resides on the same. That his immediate neighbours are Kimelok and Parsapio Punyua.
  34. On further cross examination, the 1<sup>st</sup> respondent testified that he was a member of Kojonga Adjudication Section and a member of the Punyua family which has resided in the area even before the adjudication process.



35. On re-examination, the 1<sup>st</sup> respondent testified that together with the petitioner, they were summoned to appear before the Adjudication Committee and it was not his responsibility to summon the petitioner. Further, that the petitioner had leased the land while he was out of the country and that he also recorded the proceedings of the meeting where he was summoned. In conclusion, the 1<sup>st</sup> respondent testified that there was no appeal against the decision of the Adjudication Officer.
36. Further hearing of the respondents' case took place on November 15, 2022. Ben Ngahu, on behalf of the 2<sup>nd</sup> respondent, and, while adopting his witness statement dated November 6, 2021, first and foremost sought to have paragraph 9 of his witness statement deleted for the reason that he came across some documents concerning the suit property which he produced as DEX No 7 to 15 respectively.
37. That the proceedings he produced relates to case number 9/83/84 produced by the petitioner which he came to know about after he was ordered by the court to produce them. The 2<sup>nd</sup> respondent testified that there was a committee case number 9/83/84 in which a decision was arrived at to the effect that the disputed land be divided equally between James Naikuni and Peter Mburu Mwaura and that any dissatisfied party was given 14 days to appeal. Further, that a rough sketch was drawn showing the parcel of land and subsequent subdivision. That according to his records, the 1<sup>st</sup> respondent was registered later when there was a second committee. The said report is dated September 12, 2003 and which was addressed to the Director of Land Adjudication and Settlement (DLASO) in Nairobi.
38. The 2<sup>nd</sup> respondent testified that he is aware of the objection proceedings filed by the 1<sup>st</sup> respondent and that there was no appeal against the said decision.
39. On cross examination, the 2<sup>nd</sup> respondent testified that Kipas Ole Punyua had no interest in the suit property as per the report. Further, that he has disowned paragraph 9 of his statement as it is not borne out of his records. He agreed that there was objection proceedings number 451 filed by the 1<sup>st</sup> respondent and which the petitioner was not present in the proceedings. The 2<sup>nd</sup> respondent testified that objection proceedings can be heard ex-parte and that he has no evidence to show that the petitioner was informed of the objection proceedings or summons to appear. He agreed that one must be aware of the objection proceedings before he files an appeal to the Minister and that according to paragraph 24 of his statement, the 1<sup>st</sup> respondent was awarded the title because there was no appeal.
40. On re-examination, the 2<sup>nd</sup> respondent testified that the objection proceedings was heard in the absence of the petitioner.
41. Further respondents' case proceeded for hearing on February 2, 2023. Parsapio Ole Sironka (DW1) while adopting his witness statement dated September 13, 2018 testified that he was a member of the committee for Kojonga Adjudication Section as member number 22. He testified that it is not true that James Naikuni and Mburu were allocated the suit property in the year 1964 as it had not been adjudicated then.
42. On cross examination, DW1 testified that the committee was established in the year 1992 and there were 25 members of the committee and that before the committee was established, they had subdivided the land 4 years prior. Further, that he was present during the subdivision exercise. Also, that he was a resident of Kojonga before the adjudication process began. That the adjudication committee was formed in the year 1991 and there were more than 1000 residents in the adjudication section and they allocated more than 1000 parcels of land. Further, that the 1<sup>st</sup> respondent was the one in possession of the suit property which is about 7 acres.



43. He testified that he was not aware that the suit property had been subdivided into two portions in the year 1984 and neither does he know Naikuni. According to him, the area list was released after the year 1991.
44. On further cross examination, DW1 testified that he does not know the petitioner as he has never been a member of the adjudication section. He informed the court that the 1<sup>st</sup> respondent is in occupation of the suit property and he has never seen anyone claiming the same parcel of land and neither has he heard anyone complaining regarding the same.
45. On re-examination, DW1 testified that before the adjudication process began, the members had already elected them to deal with the land and they commenced subdivision and allocation to the members after they were appointed by the Minister. Further, that he does not know one James Naikuni and neither has ever come across the petitioner during his tenure as a committee member.
46. Kipas Ole Punyua (DW2) adopted his witness statement dated September 13, 2018 as his evidence in chief.
47. On cross examination, DW2 testified that he is the 1<sup>st</sup> respondent's brother and that his parcel of land is number 611 situated in Kojonga. Further, that land in the adjudication section was allocated to families and that there are 5 ridges in the area. In addition, that a family would occupy a ridge even though they could accommodate outsiders.
48. DW2 further testified that his father had about 40 acres from which the suit property came from. Further, that his father's land was subdivided amongst five persons albeit unequally but that the 1<sup>st</sup> respondent's land could be about 7 acres. Further, that the 1<sup>st</sup> respondent does not own any other parcel of land and that he has never heard of anyone complaining against the 1<sup>st</sup> respondent.
49. DW2 further testified that he does not recall whether the suit property was allocated to anyone else as there were no other communities residing in Kojonga before the adjudication process began and that there were no tribal clashes in Kojonga in the years 1991-1992. Further that no one was evicted from Kojonga in 1991-1992. DW2 further testified that he came to know about the petitioner when this petition was filed in court.
50. On further cross-examination, DW2 testified that he filed an objection before the committee that was heard and determined but has never heard of the petitioner having filed an objection.
51. On re-examination, DW2 testified that he has never had any objection proceedings with the petitioner as the suit property belongs to the 1<sup>st</sup> respondent.
52. The 2<sup>nd</sup> respondent was cross examined further on February 23, 2023. The 2<sup>nd</sup> respondent testified that in the year 1994, there were committee proceedings and that the objection filed by the 1<sup>st</sup> respondent was proper and there was no appeal to the Minister and that the register became final as per paragraph 23 of his witness statement. Further, that the petitioner ought to have appealed against the objection proceedings of 2009.
53. The 2<sup>nd</sup> respondent further testified that the area was declared an adjudication section on June 16, 1979 during which period, proper mechanisms of identifying the interest in land crystallised. Further, that with regard to the letter dated September 12, 2003, he informed the court that he was not privy to the contents of the same.
54. On further cross examination, the 2<sup>nd</sup> respondent testified that the Adjudication Committee was announced at the time of the declaration of the adjudication section. He testified that he was also aware of the Adjudication Committee of 1991 and he informed the court that due to the situation on



- the ground, another committee was reconstituted but adjudication had already been done. Further, that parcels of land had been demarcated and adjudication records had been prepared. That the committee of 1991 was trying to review the work of the previous committee. Further, that as at 1979, the beneficiary of the suit property was registered in the name of Peter Mwangi Mburu and that in adjudication, they do indicate acreage as they wait for survey of Kenya to do so.
55. The 2<sup>nd</sup> respondent further testified that there was a committee case in the year 1984 which involved Peter Mwangi Mburu and James Naikuni which resolved that the parcel of land be subdivided into two portions and, therefore, this petition is not an abuse of the court process. Further, that in the year 1991, the registered beneficiaries of the suit property were Kipas Ole Punyua and the 1<sup>st</sup> respondent. Also, that in the committee proceedings of objection case number 45 of 2009, the same was heard ex-parte and the suit property was awarded to the 1<sup>st</sup> respondent.
  56. On re-examination, the 2<sup>nd</sup> respondent testified that the adjudication process was properly done.
  57. On the 26<sup>th</sup> of April the 1<sup>st</sup> respondent filed written submissions dated April 17, 2023. The 1<sup>st</sup> respondent raised two issues for determination as listed below:-
    1. Whether the Land Adjudication and Settlement Officer had jurisdiction to make a decision concerning the suit land.
    2. Whether the decision of the Land Adjudication and Settlement Officer contravened the provisions of Articles 22, 40 and 50 of the Constitution.
  58. On the first issue, the 1<sup>st</sup> respondent submitted that the Land Adjudication Act confers the adjudication process the same status as a judicial process and that any proceeding conducted under the Act by the Adjudication Officer for that purpose is a judicial proceeding. The 1<sup>st</sup> respondent relied on the case of Timotheo Makenge v Manunga Ngochi [1979] eKLR.
  59. On the second issue, the 1<sup>st</sup> respondent submitted that the constitutional rights of the petitioner as occupant of trust land at the time of the adjudication process were protected and provided for under the repealed Constitution of Kenya. The 1<sup>st</sup> respondent further submitted that Section 115 (1) and 116 of the repealed Constitution, shows that the provisions of the Land Adjudication Act have constitutional underpinnings as the manner in which individual rights to trust land are ascertained was provided for by the said constitutional provisions.
  60. The 1<sup>st</sup> respondent further submitted that the petitioner being dissatisfied by the decision of the Land Adjudication Officer, failed to lodge an appeal to the Minister as was provided. Further, that it was incumbent on the petitioner to demonstrate how his constitutional rights have been infringed. That Articles 22, 40 and 50 of the Constitution were not breached since the 2<sup>nd</sup> respondent performed and discharged his duties under the Act and that the petitioner has not shown how damage was suffered as a result of the 2<sup>nd</sup> and 3<sup>rd</sup> respondent's action.
  61. The 1<sup>st</sup> respondent further submitted that the petitioner had a right to appeal to the Minister which he failed to do. The 1<sup>st</sup> respondent relied on the cases of Mohamed Ahmed Khalid (Chairman) & 10 Others v Director of Land Adjudication & 2 others [2013] eKLR, and ELC (Meru) Petition 7B of 2013 Justus Mugaa M'Impwi v District Land Adjudication & Settlement Officer, Tigania West/East District & Another [2018] eKLR.
  62. The 1<sup>st</sup> respondent further submitted that the petitioner has not challenged the validity of the title and has not raised the issue of fraud or misrepresentation by the 1<sup>st</sup> respondent. On the other hand, that the 1<sup>st</sup> respondent submitted that he has produced authentic copies of the certificate of title as proof



- of ownership of the land. The 1<sup>st</sup> respondent relied on the case of [\*Cleophas Wafula Omoka v Daniel Otuomo\*](#) ELC No 148 of 2013.
63. The 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents filed written submissions dated April 26, 2023. The 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents raised three issues for determination as listed below:-
- i. Whether the 1<sup>st</sup> respondent acquired the certificate of title legally.
  - ii. Whether the petitioner's rights were infringed.
  - iii. Whether the petitioner is entitled to the reliefs sought.
64. On the first issue, the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondent submitted that in the absence of the appeal to the Minister, the register in respect of the suit property became final as per sections 27, 28 and 29 of the [\*Land Adjudication Act\*](#). The 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents relied on the case of [\*Robert Kulinga Nyamu v Musembi Mutunga & another\*](#) [2022] eKLR. The 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents further submitted that the role of the court is supervisory only of the adjudication process which the petitioner ought to have done in this case. They relied on the case of [\*Julia Kaburia v Kabeera & 5 others\*](#), Nyeri Civil Appeal No 340 of 2002.
65. On the second issue, the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents demonstrate that the land belonged to him and that his right has been infringed. The 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents relied on the case of [\*Anarita Karimi Njeru v Republic\*](#) [1976-1980] KLR 1272 and submitted that the requirements of a successful constitutional petition are simple and that it is not enough to just list the constitutional provisions without demonstrating how they were infringed upon.
66. On the third issue, the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents submitted that the petitioner has not met the threshold required for a constitutional petition and as such they are entitled to the reliefs sought.
67. The petitioner did not file written submissions. Be that as it may, I have considered the pleadings, evidence on record and the written submissions filed by the respondents and the issue for determination is whether the petitioner is entitled to the reliefs sought.
68. In this case, the petitioner filed a petition on grounds of violation of his constitutional rights over land known as parcel number 378 Kojonga Adjudication Section which he claims the 1<sup>st</sup> respondent purported to lay claim of ownership and that the 2<sup>nd</sup> respondent has purported to revoke the petitioner's right, interest and entitlement to the suit property, contrary to Article 40 and 50 (1) of the [\*Constitution\*](#). There was evidence that the petitioner's father and one James Naikuni had objection proceedings in the year 1984 vide 9/83/84 which determined that the suit property be divided into two portions.
69. Thereafter, two objection proceedings followed one filed by Kipas Ole Punyua on behalf of the 1<sup>st</sup> respondent and the other objection filed by the 1<sup>st</sup> respondent himself. In all of these proceedings, the petitioner contended that they were conducted in his absence and which he was not afforded an opportunity to be heard in contravention of Article 50 (1) of the [\*Constitution\*](#).
70. The adjudication process is well provided in the Land Adjudication Cap 284. The Act outlines procedure to be followed up until issuing of title deeds. In the event that a person is aggrieved by the decision or is challenging the process thereof, he or she may file an objection with the adjudication officer in writing as is provided under Section 26 of the [\*Land Adjudication Act\*](#).



71. Section 26 of the Act provides for objection to the adjudication register as follows: -

“(1) Any person named in or affected by the adjudication register who considers it to be incorrect or incomplete in any respect may, within sixty days of the date upon which the notice of completion of the adjudication register is published, object to the adjudication officer in writing, saying in what respect he considers the adjudication register to be incorrect or incomplete. (2) The adjudication officer shall consider any objection made to him under subsection (1) of this section, and after such further consultation and inquiries as he thinks fit he shall determine the objection.”

72. Further, Section 29 (1) on Appeal provides that: -

“Any person who is aggrieved by the determination of an objection under section 26 of this Act may, within sixty days after the date of the determination, appeal against the determination to the Minister by— (a) delivering to the Minister an appeal in writing specifying the grounds of appeal; and (b) sending a copy of the appeal to the Director of Land Adjudication, and the Minister shall determine the appeal and make such order thereon as he thinks just and the order shall be final.”

73. Where a statute expressly provides for a dispute resolution mechanism as is with the Land Adjudication Act, any party aggrieved by the adjudication process ought to exhaust all avenues for redress as per the provisions of the Act. In the event that the petitioner was not granted an opportunity to use the available avenues to express his grievances, a further readily available mechanism to utilise would be judicial review proceedings. I need not reproduce what the courts have stated overtime concerning this.

74. I do also note the observation of my brother Munyao Sila, J, in his ruling delivered elsewhere in this matter on 20<sup>th</sup> July, 2016. The learned Judge doubted whether this matter could competently be heard by way of petition. I share similar sentiments. Since the petitioner opted for this procedure, the court allowed him to proceed on that basis.

75. Unfortunately, this court cannot grant the orders as sought for the reason that there exists a division within the court's structure, established by law to determine such disputes. Judicial review proceedings would be ideal to hear and determine the claims of the petitioner.

76. As such, the petition dated November 14, 2013 is dismissed. Each party to bear its own costs. It is so ordered.

**DATED, SIGNED & DELIVERED VIA EMAIL ON THIS 27<sup>TH</sup> DAY OF APRIL, 2023.**

**HON. MBOGO C.G.**

**JUDGE**

**APRIL 27, 2023.**

**In the presence of:**

CA: Chuma

