



Wangay Farmers Self Group (Through Mohamed Hillow Adan - Chairperson Ibrahim Hussein - Secretary Tura Roba - Treasurer) & 71 others v Adano & 8 others (Constitutional Petition E001 of 2023) [2025] KEELC 3284 (KLR) (20 March 2025) (Ruling)

Neutral citation: [2025] KEELC 3284 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ISIOLO
CONSTITUTIONAL PETITION E001 OF 2023**

JO MBOYA, J

MARCH 20, 2025

IN THE MATTER OF ENFORCEMENT OF FUNDAMENTAL RIGHTS AND FREEDOMS OF INDIVIDUALS UNDER THE BILL OF RIGHTS OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS UNDER ARTICLES 19, 20, 21, 22(1), (2), (4), 23, 24, 28,29(C), 40,43(B) AND 63 OF THE CONSTITUTION

AND

IN THE MATTER OF ARTICLES 2(5), (6) OF THE CONSTITUTION AND IN THE MATTER OF ARTICLES 1, 8(2) (B), 9, 10, 18, 26, 28, 33, 37, 42, 43 AND 46 OF THE UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLE (UNDRIP)

AND

IN THE MATTER OF HISTORICAL AND CURRENT INFRINGEMENT OF THE CULTURAL AND ECONOMIC RIGHTS OF KAMBI/GABRA-TURKANA & SOMALI PASTORALISTS COMMUNITY AS INDIGENOUS PEOPLE WITHIN THE MEANING OF THE UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLE [UNDRIP].

AND

IN THE MATTER OF: THE COMMUNITY LAND ACT NO. 27 OF 2016 AND IN THE MATTER OF: LAND ADJUDICATION ACT. CAP 284 LAWS OF KENYA

AND

IN THE MATTER OF: PROTECTION FROM DEPRIVATION OF PROPERTY AND THE ANCESTRAL LAND

BETWEEN



WANGAY FARMERS SELF GROUP (THROUGH MOHAMED HILLOW ADAN - CHAIRPERSON IBRAHIM HUSSEIN - SECRETARY TURA ROBA - TREASURER)	1 ST PETITIONER
LEGEYO EGAR	2 ND PETITIONER
ALI IBRAHIM KOISE	3 RD PETITIONER
IDRIS ABDINOOR MOHAMUD	4 TH PETITIONER
ADOW OSMAN JEHOW	5 TH PETITIONER
HASSAN BAGAJO	6 TH PETITIONER
NOOR ABDIRAHMAN	7 TH PETITIONER
DIMA KOTOBO	8 TH PETITIONER
GUYO HALAKE	9 TH PETITIONER
MUKHATAR HUSSEIN	10 TH PETITIONER
ABUDO HASSAN	11 TH PETITIONER
DIMA KOTOBO	12 TH PETITIONER
ZEINAB ABDIRAHMAN	13 TH PETITIONER
ABDI ABDILLAHI	14 TH PETITIONER
MARIAM MOHAMED	15 TH PETITIONER
HUSSEIN HALKANO	16 TH PETITIONER
JAMAL NOOR MADEY	17 TH PETITIONER
MOHAMED ABDIRAHAMAN	18 TH PETITIONER
HASSAN ADAN	19 TH PETITIONER
DAHABO GOLICHA	20 TH PETITIONER
HUSSEIN ADAN	21 ST PETITIONER
HUSSEIN IBARAHIM	22 ND PETITIONER
ABDUBA GABABA	23 RD PETITIONER
JIBRIL MOHAMED	24 TH PETITIONER
BISHAR OSMAN	25 TH PETITIONER
HADIIA DIBA	26 TH PETITIONER
HUKA DIBA	27 TH PETITIONER
ADAN SANEI	28 TH PETITIONER
SHOBA ABDUBA	29 TH PETITIONER
DAUD MOHAMED	30 TH PETITIONER
FRANCIS AYANGAN SUPADO	31 ST PETITIONER



MZEE WILTENGA OLETINGA	32 ND PETITIONER
ABDI EDIN	33 RD PETITIONER
SAHARA ABDI SAID	34 TH PETITIONER
MAHID ADAN SAID	35 TH PETITIONER
ZEINAB GURA ROQA	36 TH PETITIONER
LAHURES KAMARO	37 TH PETITIONER
ADAN MAMO	38 TH PETITIONER
JARSO GUYATO	39 TH PETITIONER
ADAN MAHALIM HASSAN	40 TH PETITIONER
GABO HUSSEIN	41 ST PETITIONER
TURA ROBA	42 ND PETITIONER
NOOR ABURO	43 RD PETITIONER
YEROW HASSAN	44 TH PETITIONER
ALI ABDURO	45 TH PETITIONER
ABDULAH BIKA	46 TH PETITIONER
IBRAHIM JIROW	47 TH PETITIONER
ABDI ALI ISACK	48 TH PETITIONER
MOHAMED HILLOW	49 TH PETITIONER
JABE IBRAHIM	50 TH PETITIONER
GUYO GONOSA	51 ST PETITIONER
SAID MOHAMED HASSAN	52 ND PETITIONER
HABIBA HASSAN	53 RD PETITIONER
TUME DUBA	54 TH PETITIONER
NURIA HASSAN JATTANI	55 TH PETITIONER
MOHAMED JILLO ROBA	56 TH PETITIONER
HUSSEIN HASSAN	57 TH PETITIONER
SAID GUFU	58 TH PETITIONER
ABDI MAOW	59 TH PETITIONER
ABDULLAHI RAGOW	60 TH PETITIONER
ABDINASIR MOHAMED	61 ST PETITIONER
HASSAN KAMPURE	62 ND PETITIONER
MAALIM ISSACK	63 RD PETITIONER



MOHAMED JIRMO	64 TH PETITIONER
ABDULLAHI GALGALO	65 TH PETITIONER
FATUMA MOHAMED KERR	66 TH PETITIONER
KADRA DADACHA BORISO	67 TH PETITIONER
ABDI ADAN	68 TH PETITIONER
WATO ADHI	69 TH PETITIONER
ANWAR ABDI TUNO	70 TH PETITIONER
ABDUBA DIBA NAGELE	71 ST PETITIONER
RAPHAEL K KAUMBUTHU & OTHERS	72 ND PETITIONER

AND

SALESO ADANO	1 ST RESPONDENT
DOKO EL FMA UMORO	2 ND RESPONDENT
CHIEF LAND REGISTRAR	3 RD RESPONDENT
NATIONAL LAND COMMISSION	4 TH RESPONDENT
THE CABINET SECRETARY MINISTRY OF LANDS, HOUSING AND URBAN DEVELOPMENT	5 TH RESPONDENT
ISIOLO COUNTY PHYSICAL PLANNER	6 TH RESPONDENT
COUNTY SURVEYOR-ISIOLO COUNTY	7 TH RESPONDENT
COUNTY GOVERNMENT OF ISIOLO	8 TH RESPONDENT
HON ATTORNEY GENERAL	9 TH RESPONDENT

RULING

1. Vide Notice of Motion Application dated the 12th September 2023; the Petitioners/Applicants [hereinafter referred to as the Applicants] have sought for the following reliefs;
 - i. That the Application be certified as urgent and service thereof be dispensed with and the same be heard Ex-parte in the first instance as the object of this Application will be defeated
 - ii. That the Honourable Court be pleased to issue an Interim Conservatory Order staying further proceeding in Isiolo E.L.C suit No. 001 of 2022 pending hearing and determination of this Application.
 - iii. That the Honourable Court be pleased to Consolidate Isiolo E.L.C suit No.001of 2022 and Petition No. E001 of 2023 for purposes of hearing and determination.
 - iv. That the Petition herein be held to be the lead file.
 - v. That the Honourable Court be pleased to make such further or other orders or relief as it may deem just and expedient in the circumstances of this case.



- vi. The Costs of this Application be costs in the cause.
2. The instant application is premised on the various grounds which have been highlighted in the body thereof. In addition, the application is supported by the affidavit of Addo Ausman Jehow [the 5th Applicant] herein sworn on the 12th September 2023 and to which the deponent has annexed a copy of the Plaint in respect of Isiolo ELC No. 001 of 2022.
 3. Upon being served with the subject application, the 1st Respondent filed a Replying affidavit and wherein same [1st Respondent] has contested the application. In particular, the 1st Respondent has averred that Isiolo ELC No. 001 of 2022 and which is sought to be consolidated with the instant Petition has substantially proceeded for hearing. Furthermore, it has been averred that the said suit, namely; Isiolo ELC No. 001 of 2022 is pending defence hearing.
 4. Moreover, the 1st Respondent has averred that the intended consolidation of the Petition and civil suit number 001 of 2022 is calculated to delay and/or defeat the expeditious hearing and determination of the said suit, albeit to the prejudice of the 1st Respondent.
 5. The 3rd to the 9th Respondent did not file any response to the application. In any event, the 3rd to the 9th Respondents had hitherto conceded the application for consolidation.
 6. The application under reference came up for hearing/directions on the 27th February 2025 wherein the advocates for the parties covenanted to file and exchange written submissions. In this regard, the court circumscribed the timelines for the filing and exchange of the written submissions.
 7. Additionally, it is imperative to state that the Petitioners/Applicants and the 1st Respondent proceeded to file their respective written submissions. For coherence, the written submissions filed by the Petitioners/Applicants and the 1st Respondent are on record.
 8. Having reviewed the application, the supporting affidavit thereto and the response by the 1st Respondent and upon consideration of the written submissions filed by the respective parties, I come to the conclusion that the determination of the instant application turns on two [2] pertinent issues, namely;
 - i. Whether the petition and the civil suit [Isiolo Civil Suit No. 001 of 2022] raise similar issues of law and fact or otherwise; and
 - ii. The intended consolidation would serve the interest of justice.
 9. Regarding the 1st issue, it is important to underscore that the Petitioners at the foot of the Petition have contended that the original parcel of land which was sub-divided and thereafter registered as L.R No's 7918/722, 7918/723, 7918/724, 7918/725, 7918/726 and 7918/730, respectively belonged to the Petitioners. Furthermore, it has also been contended that the said parcels of land ought not to have been sub-divided without the knowledge of and participation of the Petitioners who hold communal rights and interests thereto.
 10. Additionally, the Petitioners herein have contended that the 3rd to 9th Respondents undertook the impugned sub-division and subsequent registration in the names of the 1st and 2nd Respondents in contravention of the fundamental rights and freedoms of the petitioners.
 11. Flowing from the arguments/averments of the Petitioners, what becomes apparent is that the Petitioners are laying a claim to the entirety of the properties that have been captured at the foot of the Petition inclusive of L.R No. 7918/726, which forms the basis of ELC No. 001 of 2022.



12. On the other hand, it is worthy to state that the 1st Respondent herein [who is the Plaintiff vide Isiolo ELC No. 001 of 2022], is contending that L.R No. 7918/726 [suit property] lawfully belongs to same and hence same [1st Respondent] is entitled to have exclusive and absolute rights thereto.
13. Moreover, the 1st Respondent has also contended that despite being the lawful owner and proprietor of L.R No. 7918/726, the 5th Petitioner herein [who is the 1st Defendant in the civil suit] has trespassed onto and encroached upon the suit property.
14. From the rival positions, ventilated vide the Petition and the civil suit [Isiolo ELC No. 001 of 2022] it is evident that the legitimacy of the process leading to the sub-division, allocation and ultimate registration of the titles is in question.
15. Furthermore, it is not lost on this court that the determination of the legitimacy and or validity of the process leading to the sub-division, allocation and ultimate registration of the suit properties, will no doubt impact on the certificates of titles [if any] held by the 1st and 2nd Respondents.
16. Additionally, it is apposite to state that the 1st Respondent herein who has a claim against the 5th petitioner can very well [subject to advise] mount/lodge a cross claim/cross petition as pertains to the validity of the certificate of title in respect of L.R No. 7918/726.
17. To my mind, the evidence and the legal issues that underpin the Petition and the civil suit [Isiolo ELC No. 001 of 2022] are inter-twined and inter-woven. Simply put, the factual and legal issues are inseparable and thus deserves to be brought under one roof and thereafter to be addressed simultaneously.
18. In a nutshell, I come to the conclusion that the facts and the law underpinning the instant petition are closely related to the facts and the legal issues underpinning the suit property at the foot of the Isiolo ELC No. 001 of 2022. In any event, it is not lost on this court that the certificate of title being canvassed vide Isiolo ELC No. 001 of 2022, is also one of the titles being impugned and/or challenged vide the Petition.
19. In short, the two suits, namely Petition No. E001 of 2023 and Isiolo ELC NO 001 of 2022, merit consolidation.
20. Next is the issue as to whether the 1st Respondent [who is the Plaintiff in respect of Isiolo ELC 001 of 2022] will be disposed to suffer any prejudice or otherwise, if the consolidation is decreed.
21. To start with, there is no dispute that the property which underpins the civil suit is one of the titles being impugned vide the petition.
22. Additionally, it is important to recall that even though the 1st Respondent contends to be the lawful and legitimate proprietor in respect of L.R No. 7918/726 [which is the suit property in the civil suit], if the claim [and I say if the claim] in the petition is successful then the proceedings and the orders [if any] made in the civil suit will be impacted upon and/or negated.
23. Moreover, there is no gainsaying that it would be an exercise in futility, if not vanity to allow the 1st Respondent to proceed with the proceedings in Isiolo ELC No. 001 of 2022 and yet the title therein is equally under challenge vide the petition.
24. Other than the foregoing, there is also the economic connotation. If the suits are not consolidated, the 1st Respondent would be at liberty to prosecute the civil suit whilst at the same time defending the petition. No doubt, there would be duplicity of efforts, time and expenses.



25. Other than the duplicity in terms of time efforts and financial expenses, the court will also be subjected to double work over what can easily be addressed and disposed of vide a single judgment. In this regard, there is no gainsaying that the precious judicial time would not be deployed in a manner that befits the statutory prescription vide Sections 1A and 1B of the *Civil Procedure Act*, Chapter 21 Laws of Kenya.
26. In my humble view, the benefits of consolidating the petition and the civil suit, namely Isiolo ELC No. 001 of 2022, far out-way the demerits. In this regard, the pendulum tilts in favour of consolidation.
27. Further and at any rate, there is no gainsaying that the 1st Respondent has neither canvassed nor highlighted any plausible or cogent prejudice that same [1st Respondent] shall be disposed to suffer. In the absence of evidence of prejudice, I discern no loss or injustice that would be visited upon the 1st Respondent or at all.
28. Before departing from this issue, it is appropriate to take cognizance of the dicta in the case of *Muchanga Investments Ltd V Safaris Unlimited (africa) LTD & 2 others [2009] KECA 453 (KLR)*, where the court stated thus;

Judicial time is the only resource the courts have at their disposal and its management does positively or adversely affect the entire system of the administration of justice.
29. Simply put, the 1st Respondent has failed to establish and/or demonstrate the prejudice and/or injustice [if any] that same is likely to suffer. On the contrary, the consolidation would enable the court to utilize the precious judicial time in a just, expedient and proportionate manner.

Final Disposition:

30. Flowing from the foregoing analysis, it is inevitably clear that the application beforehand is meritorious and thus ought to be allowed in the interests of expediency and justice.
31. In the premises, the final orders that commend themselves to the court are as hereunder;
 - i. The Application dated 12th September 2023 be and is hereby allowed.
 - ii. The petition herein, namely ELC Petition No. E001 of 2023 be and is hereby consolidated with Isiolo ELC No. 001 of 2023.
 - iii. Isiolo ELC Petition No. E001 of 2023 be and is hereby constituted as the Lead file.
 - iv. The 1st Respondent herein is granted liberty [if deemed apposite] to file a cross Petition, if need be.
 - v. Costs of the Application herein shall abide the determination of the petition.
 - vi. Either party shall be at liberty to apply
32. It is so ordered.

DATED SIGNED AND DELIVERED ON THE 20TH DAY OF MARCH, 2025.

OGUTTU MBOYA

JUDGE.

In the presence of

Mr. Mutuma – Court Assistant

Mr, Elius Mutuma & Caleb Mwiti for the Petitioners/Applicants.



Mr. Kaumbi for the 1st Respondent.

Mr. Benjamin Kimathi [principal litigation counsel] for the 3rd to 9th Respondents.

N/A for the 2nd Respondent.

