



**Awidhi & 5 others v Principal Magistrate, Rongo Magistrates’ Court  
& 2 others; Owala (Interested Party) (Environment & Land Petition  
E010 of 2022) [2025] KEELC 1451 (KLR) (19 March 2025) (Judgment)**

Neutral citation: [2025] KEELC 1451 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MIGORI  
ENVIRONMENT & LAND PETITION E010 OF 2022**

**M SILA, J  
MARCH 19, 2025**

**BETWEEN**

**SIMON KWANGA AWIDHI ..... 1<sup>ST</sup> PETITIONER  
COLLINS OTIENO KWANGA ..... 2<sup>ND</sup> PETITIONER  
BENARD ONYANGO KWANGA ..... 3<sup>RD</sup> PETITIONER  
MARTIN OWUOR KWANGA ..... 4<sup>TH</sup> PETITIONER  
EDWING KWANGA ..... 5<sup>TH</sup> PETITIONER  
MARK OUMA KWANGA ..... 6<sup>TH</sup> PETITIONER**

**AND**

**PRINCIPAL MAGISTRATE, RONGO MAGISTRATES’ COURT .... 1<sup>ST</sup>  
RESPONDENT  
KOMONDI FREDRICK OLUOCH ..... 2<sup>ND</sup> RESPONDENT  
ANNA ADHIAMBO OWALA ..... 3<sup>RD</sup> RESPONDENT**

**AND**

**MARTHA ODIPO OWALA ..... INTERESTED PARTY**

**JUDGMENT**

(Petition claiming violation of various constitutional rights by the 1<sup>st</sup> respondent in the manner in which it has conducted an ongoing civil case between the petitioners and the 2<sup>nd</sup> & 3<sup>rd</sup> respondents; no service upon the 1<sup>st</sup> respondent and for that reason petition must fail; petition must also fail inter alia as the avenue for filing appeal was available to the petitioners; court would not commonly



entertain a constitutional petition where there exists alternative remedies; petition dismissed with costs)

1. In this petition, commenced on 4 November 2022, the petitioners seek the following orders :
  - i. A finding be made that the administration of justice in Rongo Magistrates' Court ELC Case No. 79 of 2018 is in contravention of Article 159 (2) (a) and (b) of the Constitution. Consequently the said file be removed from the said court and be brought to this Court for hearing and determination taking into consideration the Legal Review by Isaac Aluochier dated 23 May 2022.
  - ii. In the alternative, a finding be made that the administration of justice in Rongo Magistrates' Court ELC Case No. 79 of 2018 is in contravention of Article 159 (2) (b) of the Constitution. Consequently the said file be transferred to the Chief Magistrates' Court at Migori for hearing and determination of the case within the next 90 days, taking into consideration the Legal Review by Isaac Aluochier dated 23 May 2022.
  - iii. The orders restraining the petitioners from trespassing into the land parcel Kamagambo/Kanyawanga/1359 until the final determination of the case, and for contempt of court, be vacated. In their place, it be ordered that neither the petitioners nor the 2<sup>nd</sup> and 3<sup>rd</sup> respondents are to enter upon or undertake any activities on the said parcel for the next 90 days, when the final determination of the case should have been made.
  - iv. Costs be paid to the petitioners by the 2<sup>nd</sup> & 3<sup>rd</sup> respondents.
  - v. Such other orders as the court shall deem just.
2. The petitioners act in person. I have not seen a supporting affidavit to the petition and there are no annexures to the petition, save for what is titled as a "Legal Review" of the case Rongo PMCCCLC No. 79 of 2018 by one Isaac Aluochier who does not mention his qualifications or standing in law. My reading of the petition reveals that the petitioners are defendants in the said case Rongo PMCCCLC No. 79 of 2018 and the plaintiff in that case is the 2<sup>nd</sup> respondent, one Komondi Fredrick Oluoch. He sued as the registered proprietor of the land parcel Kamagambo/Kanyawanga/1359 and the petition mentions that he sued for trespass. In the petition it is urged that the 2<sup>nd</sup> respondent did not legally obtain title to the suit land which was sold to him by 3<sup>rd</sup> respondent (Anna Adhiambo Owala). It is urged that the 3<sup>rd</sup> respondent did not have good title to the suit land as she acquired it by disinheriting her mother, Martha Odipo Owala, who is joined to the petition as interested party.
3. The petitioners complain that the case before the Rongo Magistrates' Court is not being handled properly and contend that the administration of justice therein "leaves a lot to be desired." They lament that they have served multiple jail terms on account of being found guilty of contempt of court without the allegations of contempt being seriously interrogated. They urge that the intention of the plaintiff in that case is to brow-beat the petitioners with repeated jail terms so that they can abandon their rightful ownership to the suit land, which they assert is an abuse of the court process. They also bemoan that the case has taken too long. They allege that they have been discriminated by not being allowed to be represented by a person of their choice, in the person of one Isaac Aluochier. He is the same person who the petitioners say has done for them the "Legal Review" of the case which they have attached to the petition.
4. The petitioners thus allege a contravention of the following provisions of the Constitution, being : Article 50 (1) on the right to a fair hearing; Article 50 (2) right of an accused to a fair trial; Article 27 (1) of the right of equality before the law; Article 29 on the right to freedom and security of the person;



Article 159 (2) that justice be done to all irrespective of status and justice shall not be delayed. They have also pointed to Article 22 (1) and 258 regarding the right to institute court proceedings where there is infringement of the Bill of Rights or contravention of the Constitution. They point at Article 162 (2) (b) and urge that it is this court with supervisory jurisdiction over the matter before the Rongo court, it being a land matter. It is professed that when the petitioners are arrested and arraigned in court they are not given adequate time and facilities to prepare their defences thus a contravention of Article 50 (c) of the Constitution. They aver that when they are charged with contempt, they are not informed in advance of the evidence their accusers intend to rely on, nor are they given access to that evidence, yet the court proceeds to pronounce them guilty and sentences them to jail time. They thus claim that their right to a fair hearing under Article 50 is infringed and similarly their right to freedom under Article 29. They have also cited the right to property under Article 40.

5. They believe that because of the foregoing, the file should be taken away from the Rongo Magistrates' Court (the 1<sup>st</sup> respondent) and be placed before any other court for determination.
6. No appearance was entered for the 1<sup>st</sup> respondent, but I have not seen any affidavit of service affirming that the summons and Petition were served upon the Rongo Principal Magistrate Court, cited as the 1<sup>st</sup> respondent. I had indeed caused to be issued a notice for the petitioners to show cause why the petition should not be dismissed for failure to serve. Despite the notice, no affidavit of service was ever availed.
7. The 2<sup>nd</sup> and 3<sup>rd</sup> respondents are represented by M/s G.S Okoth & Company Advocates. They filed Grounds of Opposition and a replying affidavit sworn by the 2<sup>nd</sup> respondent. In the Grounds of Opposition, it is raised that the petition has been filed by one Isaac Aluochier who lacks locus standi. It is also argued that the petition is incompetent as it does not bear the signatures of the persons named as petitioners. It is averred that the petition raises issues that are sub judice the suit Rongo Land Case No. 79 of 2018 and hearing the petition will flout Section 6 of the Civil Procedure Act, Cap 21, Laws of Kenya. It is urged that there is a laid down procedure for challenging the decisions of the Magistrate.
8. In the replying affidavit, the 2<sup>nd</sup> respondent has deposed that he purchased the land parcel Kamagambo/Kanyawanga/517 from the 3<sup>rd</sup> respondent. He averred that on 14 December 2018, the petitioners unlawfully entered the land and cut his sugarcane. As a result he filed the suit Rongo PMCC No. 79 of 2019 seeking damages for trespass, and also applied for an order of injunction pending hearing of the suit. The defendants engaged M/s Agure Odero & Company Advocates to represent them. The application was compromised with an order that the defendants should stop their activities on the land until the case is finalized. He claims that the defendants however went against the order and yet again cut some sugarcane and an application for contempt was filed. He deposed that some of the defendants were arrested and pleaded guilty, and that they were accordingly convicted and sentenced. He avers that no appeal have been filed. He claims that one Mr. Isaac Aluochier convinced the defendants to withhold instructions to their advocate and inter alia instructed them that the seller, being a woman, had no right to inherit the estate of her late father. It is alleged that he also instructed them to continue their acts of contempt. He contends that this petition has been filed by the said Isaac Aluochier. He points out that the person signing the petition is not named and there is no affidavit. He adds that the act of purporting to teach the law to the court and the bar is itself an affront to the legal jurisprudence in this country and such behaviour should not be encouraged.
9. I directed the petition to be argued through written submissions and I have seen the submissions of the petitioners and of counsel for the 2<sup>nd</sup> & 3<sup>rd</sup> respondents.
10. I observe that in their submissions, the petitioners say that there has been a change in circumstances since the petition was filed. They have submitted that the file was initially being handled by Hon. Langat who has since been transferred and that it is now being handled by a different Magistrate. They



therefore do not wish to pursue the issue of transfer of the file from Rongo Court. They however submit that they wish to have the matter determined within 90 days.

11. On the part of counsel for the 2<sup>nd</sup> & 3<sup>rd</sup> respondents, it is pointed out that there is no proof of service of the petition upon the 1<sup>st</sup> respondent in contravention of Rule 14 of the *Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013, which provides that the petition needs to be served within 15 days or such time as the court may direct. It is submitted that in absence of service upon the 1<sup>st</sup> respondent, the whole case will be a mistrial. It is also raised that Mr. Isaac Aluochier is illegally impersonating himself to be an advocate which contravenes Sections 31, 33 and 34 of the *Advocates Act*. It is urged that his conduct of filing the “Legal Review” should be discouraged. It is urged that the petition is only signed by the 3<sup>rd</sup> petitioner and there is no authority annexed to show that he is duly authorized by the other petitioners. It is also pointed out that in their submissions, the petitioners admit change in circumstances since the petition was filed. The other part of the submissions are really substantive on the issues in the case before the Rongo Magistrate, which I opt not to go into, as that matter is pending before that court.
12. I have assessed the petition. It is one doomed to fail for many reasons.
13. First, the petition cannot succeed as against the 1<sup>st</sup> respondent for the simple reason that it has not been served upon the said 1<sup>st</sup> respondent. The core complaint is against the conduct of the 1<sup>st</sup> respondent in the manner in which the case, Rongo PMCCEL No. 79 of 2018, has been conducted. You would therefore expect that the 1<sup>st</sup> respondent be served in order to address the said complaints but there was no service. If I proceed to hear the merits of the complaint without there being service, then in essence I will be condemning the 1<sup>st</sup> respondent without giving her an opportunity of being heard. For that reason alone, i.e failure to serve the 1<sup>st</sup> respondent, this petition is for dismissal.
14. Secondly, even assuming that the petition had been served and there was no response filed by the 1<sup>st</sup> respondent, the petition would still fail. It would fail because no proceedings of the said case Rongo PMCCEL No. 79 of 2018 were ever annexed so that this court can have an opportunity to review the legality or otherwise of the said proceedings. For example, the petitioners allege that they were found guilty of contempt without first being heard, but without the proceedings, I cannot tell that the petitioners were actually condemned unheard. I cannot also assess the complaint of delay without the proceedings being availed. In essence, without providing the proceedings, the allegations of the petitioners remain unsubstantiated, and for that reason the petition would be dismissed.
15. Thirdly, there is the issue of authority of the other petitioners. I see that the petition is drawn and filed by the 3<sup>rd</sup> petitioner. There is actually no authority annexed to show that the 3<sup>rd</sup> respondent was authorised by the other petitioners to file the petition. Again, without any authority, it cannot be said that the petitioners named in the petition have any complaint that they have presented through this petition.
16. Fourthly, it is apparent to me that the petitioners had alternative remedies. If they thought that the orders being made by the trial Magistrate were erroneous and unfair, they had the avenue to appeal the said orders. It was not necessary to file a constitutional petition. Their grievance could as well be addressed through the filing of an appeal. A court would not commonly accept a Constitutional petition where the alternative remedy of appeal exists. Mwita J, in the case of Dewdrop Interprises Limited v William Muthee Muthami & another [2019] eKLR, which petition had been filed against the Chief Magistrate at Milimani, observed as follows

“.....the law is now plain that it is only after exhausting alternative statutory mechanism provided for redress, or where the remedy provided for is ineffective, that a party should



approach this court by way of a constitutional petition under Articles 22 and 23 as read with Article 165 (3) (b) of the *Constitution*. In the present petition, the petitioner had first to exhaust the process of appeal provided for under the *Civil Procedure Act* and Rules, or demonstrate that the alternative remedy provided for was not sufficient. Only then could it file the present petition...”.

17. I am in full agreement with the above dictum. The petitioners do not say why they did not proceed to appeal the decisions of the Magistrate if indeed they thought that the decisions were wrong and unfair to them. They have also not shown that the avenue of appeal was not available to them so that they had to file this petition. For reason that the alternative of filing appeal was available, this petition would fail.
18. Fifthly, the petitioners themselves concede to a change of circumstances. If that is the case, then the petitioners ought to have been gracious enough to withdraw the petition. There was no purpose in keeping the petition alive if the same has been overtaken by events.
19. Finally, there was a so called “Legal Review” attached to the petition. I see that it is intended to be a review of the substance of the case before the Rongo Court. It has of course been raised that it is a document prepared by an unqualified person. I need not delve into the qualifications of the author, as it is a document that I will disregard in totality. Delving into the matters raised in that document would be delving into the merits or demerits of the case before the trial court at Rongo. On that, parties will have their day in court at the trial in Rongo, and they can raise whatever they wish to raise before that court. I leave it at that.
20. For the above reasons, it is clear that I find no merit in this petition. It is hereby dismissed with costs to the 2<sup>nd</sup> & 3<sup>rd</sup> respondents. The 3<sup>rd</sup> petitioner will bear the said costs of the petition to the 2<sup>nd</sup> & 3<sup>rd</sup> respondents for reason that I have not seen any authority from the other petitioners giving him liberty to appear and represent them in this case.
21. Judgment accordingly.

**DATED AND DELIVERED THIS 19 DAY OF MARCH 2025.**

**JUSTICE MUNYAO SILA**

**JUDGE, ENVIRONMENT AND LAND COURT**

**MIGORI**

Delivered in the presence of :

Mr. G.S Okoth for the 2<sup>nd</sup> & 3<sup>rd</sup> respondents

Petitioners – Absent

No appearance entered for 1<sup>st</sup> respondent

Court Assistant – Michael Oyuko

