



**Kaitany & 18 others v Head Teacher/Secretary School Management Committee
Ng'olong Pry School & 10 others (Environment and Land Constitutional
Petition 17 of 2022) [2023] KEELC 18241 (KLR) (12 June 2023) (Judgment)**

Neutral citation: [2023] KEELC 18241 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ITEN
ENVIRONMENT AND LAND CONSTITUTIONAL PETITION 17 OF 2022**

L WAITHAKA, J

JUNE 12, 2023

BETWEEN

DAVID K KAITANY & 18 OTHERS PETITIONER

AND

**THE HEAD TEACHER/SECRETARY SCHOOL MANAGEMENT COMMITTEE
NG'OLONG PRY SCHOOL & 10 OTHERS RESPONDENT**

JUDGMENT

Introduction

1. The petitioners herein who have described themselves as the representatives of the community of Kabomoti area, Ewalel location, Baringo County, instituted this suit on behalf of the residents of Kabomoti area and on their own behalf.
2. As can be discerned from the averments on the face of the petition, the suit is premised on the grounds that the petitioners are the beneficial owners of the parcel of land known as Ewalel/Seretunin/632 (hereinafter referred to as the suit property). The petitioners complain that the residents of a neighbouring location, Orokwo, trespassed into the suit property, and without their permission/consultation, constructed a public school, Ng'olong primary school (hereinafter referred to as the school) therein.
3. Pointing out that there have been disputes between them and the management of the school over ownership of the suit property, the petitioners complain that in 2001, the County Council of Baringo, purported to adjudicate the suit property and register it as Baringo/Kapchomuswo 'A'2100 reserved for the school.
4. Claiming that Baringo/Kapchomuswo 'A'2100 overlaps with the suit property and that it is none existent on the ground, the petitioners seek judgment against the respondents for:-



- i. A permanent injunction to restrain the 1st, 4th and 5th respondents, their servants, agents and/or any of the residents of Orokwo location from interfering with, trespassing onto, alienating, fencing, placing building materials on site, selling, claiming interest, subdividing or in any way whatsoever affecting all that parcel of land demarcated as LR No. Ewalel/Seretunin/632 reserved for them;
 - ii. A permanent injunction to restrain the 1st, 4th and 5th respondents, their servants, agents and/or any of the residents of orokwo location from interfering with, trespassing onto, alienating, fencing, placing building materials on site, selling, claiming interest, subdividing or in any way whatsoever affecting all that parcel of land demarcated as reserved for them;
 - iii. A declaration that the parcel of land demarcated as LR. No. Ewalel/Seretunin/632 is reserved for the residents of Kabomoti area to the exclusion of the Orokwo location residents and that the residents of Orokwo are but trespassers onto it;
 - iv. An order directing the County Land Registrar, to issue a title deed to them in respect of the parcel of land known as Ewalel/Seretunin/632;
 - v. A declaration that Ng'olong primary school is built on land reserved for them hence they should determine how much land will be set aside for the school in order to allow the school to continue operating as opposed to being demolished;
 - vi. A declaration that the demarcation of the parcel of land known as Baringo/Kapchomuswo 'A'/2100 in 2001 by Baringo County Council is null and void as it overlaps with Ewalel/Serutunin/632 which was registered earlier on, in 1968;
 - vii. Costs of the petition;
 - viii. Any other relief the court may deem fit and appropriate to grant.
5. The respondents adopted the replying affidavit of Solomon Limo sworn on October 18, 2018, as their response to the petition.
 6. Pursuant to directions given on September 27, 2022 to the effect that the petition be disposed off by way of written submissions, parties filed submissions which I have read and considered.
 7. The issues arising from the pleadings, the documentary evidence adduced in respect thereof and the submissions are:-
 - i. Whether the court has jurisdiction to entertain the issues as pleaded;
 - ii. Whether Baringo/Kapchomuswo A/2100 overlaps on Ewale/Seretunin/632;
 - iii. Whether the petitioners are entitled to the reliefs sought or any of them.

SUBMISSIONS

8. On whether the court has jurisdiction to entertain the issues as pleaded, the respondents have given an overview of the cases urged by the parties to this suit and submitted that the petitioners neither pleaded with precision the constitutional issues or violations or provisions allegedly breached nor provided any evidence of constitutional violations.
9. It is submitted that the petitioners' pleadings disclose a case of alleged encroachment and/or trespass to land by residents of Orokwo location who are not parties to the petition and submitted that the court lacks jurisdiction to entertain the suit on the grounds that there are no constitutional matters or



constitutional violations disclosed in the petition. The instant petition is said to be devoid of precision so that it is not easy to determine the real issues in contention. The petitioners are said to have failed to provide adequate particulars of the constitutional rights violated or threatened with violations by the respondents and to provide any evidence of violation of their constitutional rights.

10. The petition is also challenged on the ground that there are other available mechanisms which the petitioners could have used to address the grievances they have raised before resorting to filing a constitutional petition.
11. Terming the petitioners' grievances a pure civil dispute, not falling in the ambit of a constitutional court, the respondents submit that this court lacks jurisdiction to entertain the allegations. In that regard, reliance is placed on section 18 and 19 of the *Land Registration Act* which ousts the court's jurisdiction to determine disputes touching on boundaries to land unless the boundaries have been fixed in accordance with the provisions of that Act. Further, reliance is placed on the decision in the cases of *Stephen Muthami Mbau & 10 others vs. Kenya Railway Corporation & another* (2020) eKLR and *Sanghani Investment Ltd v. Officer in Charge of Nairobi Remand & Allocation Prison* (2007) 1 EA 354.
12. On whether Baringo/Kapchomuswo 'A'/2100 overlaps on Ewale/Seretunin/632, based on a report filed by the County Land Surveyor Uasin Gishu, pursuant to an order issued on 16th November 2018 directing him to visit the suit properties and establish their existence, the petitioner submits that their claim that Baringo/Kapchomuswo 'A'/2100 overlaps on Ewalel/Seretunin hence none existent on the ground is vindicated.
13. On their part, the petitioners have submitted that the totality of the documentary evidence adduced in this case shows that the properties are distinct and exist separately on the ground.
14. As to whether the petitioners are entitled to the reliefs sought, based on the report of the County Land Surveyor Uasin Gishu, referred to herein above, it is submitted that the petitioners have demonstrated that Baringo/Kapchomuswo 'A'/2100 overlaps on the petitioners land hence the petitioners are entitled to the reliefs sought.
15. In reply, the respondents submit that the petitioners have neither proved that they have locus standi to urge the case they brought before court nor established a case for being granted the reliefs sought. In that regard, it is pointed out that the evidence adduced shows that the suit properties were set aside for public utilities and are not private land. The petitioners are said to have failed to demonstrate the nature of interest they have in the suit land or that the properties are being used in a manner contrary to public interest to warrant grant of the reliefs sought.
16. Terming the petition lacking in merits, the respondents urge the court to dismiss it with costs to them.

Analysis and Determination

17. The issues arising from the pleadings, the documentary evidence and the submissions are:-
 - i. Whether the petition meets the legal threshold of pleading a constitutional petition?
 - ii. Whether this court sitting as a constitutional court, is the appropriate forum for addressing the issues raised in the petition?
 - iii. Whether the petitioners have made up a case for being granted the reliefs sought or any of them?
 - iv. What orders should the court make?



18. On whether the petition meets the legal threshold of pleading a constitutional petition, having reviewed the petitioner's pleaded case, I agree with the respondents that the petitioners have neither pleaded with precision the constitutional violations they accuse the respondents of having violated or threatened to violate. I agree with the respondents that the averments in the petition merely disclose a case of alleged encroachment into land claimed by the petitioners to be theirs by residents of Orokwo location. Apart from claiming that the residents of Orokwo location are the ones administering Ng'olong primary school, which they claim to have been built in the land they claim, the petitioners have not demonstrated any nexus between the said residents of Orokwo location and the respondents. Clearly, the bone of contention between the petitioners and the respondents is a civil dispute touching on entitlement to the suit property and/or whether or not the parcel of land known as Baringo/Kapchomuswo 'A'/2100 overlaps or encroaches on the suit property. There is nothing constitutional about such issues. Disputes touching on entitlement to land, encroachment to land and whether a certain parcel overlaps on another are issues to be determined in accordance with the applicable statutes, upon production of oral evidence to prove the claims made. In view of the foregoing, I find and hold that the instant petition does not meet the legal threshold for pleading a constitutional petition.
19. Flowing from the above determination, I also find and hold that this court, sitting as a constitutional court, is not the right forum for determination of the issues raised in the petition.
20. Turning to the merits of the petition, the totality of the evidence adduced does not support the petitioners' claim that Baringo/Kapchomuswo 'A'/2100 and Ewalel/Seretunin/632 are one and the same property on the ground.
21. Although the report filed by the County Land Surveyor Uasin Gishu, filed pursuant to the order of the court issued on 16th November 2018 suggests that there is an overlap of 3.841 ha (9.5 acres) between the two parcels of land, the report does not conclude that Baringo/Kapchomuswo 'A'/2100 and Ewalel/Seretunin/632 are one and the same parcel of land on the ground as claimed by the petitioners. It merely discloses a case of encroachment of one parcel into the other, which case this court lacks jurisdiction to entertain as the boundaries between the two parcels of land had not been fixed in accordance with the provisions of section 18 and 19 of the [Land Registration Act](#), 2012 when the instant dispute was brought before this court.
22. The evidence on record also shows that the suit properties were reserved as public utilities and registered in the name of the County Council of Central Rift (Ewalel/Seretunin/632) and the County Council of Baringo (Baringo/Kapchomuswo 'A'/2100). That status of the suit lands brings into issue, the legal propriety or otherwise of the petitioners' claim that the parcel of land known as Ewalel/Seretunin/632 belongs to them. The totality of evidence adduced in this case shows that the property claimed by the petitioners' is public land vested in the County Council of Central Rift. No evidence was produced capable of proving that the County Council held the land in trust for the petitioners. The petitioners' claim that the land belongs to them and that they are entitled to be registered as the proprietors of that parcel of land equally fails for lack of evidence of their entitlement to it.
23. The upshot of the foregoing is that the petition is found to be lacking in merits and is dismissed with costs to the respondents.
24. Orders accordingly.

JUDGMENT DATED, SIGNED, AND DELIVERED AT ITEN THIS 12TH DAY OF JUNE 2023.

L. N. WAITHAKA



JUDGE

Judgment delivered virtually in the presence of:-

Mr. Miyenda for the Petitioners

N/A for the Respondents

Court Asst.: Christine

