



**Luka v Chairman, Land Adjudication Committee, Leshuta Adjudication Section
& 3 others; Olopirikany & 7 others (Interested Parties) (Environment & Land
Petition 8 of 2018) [2023] KEELC 18900 (KLR) (25 July 2023) (Judgment)**

Neutral citation: [2023] KEELC 18900 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT & LAND PETITION 8 OF 2018
CG MBOGO, J
JULY 25, 2023
IN THE MATTER OF ARTICLES
2,3,10,19,20,21,22,23,35,40,43, 47 (1),50,60,63,165 (3)
(B), 258 AND 259 (1) (B) OF THE CONSTITUTION OF
KENYA
AND
IN THE MATTER OF THE CONSTITUTION OF KENYA
(SUPERVISORY JURISDICTION AND PROTECTION OF
FUNDAMENTAL RIGHTS AND FREEDOMS OF THE
INDIVIDUAL)
AND
IN THE MATTER OF ALLEGED CONTRAVENTION OF
FUNDAMENTAL RIGHTS AND FREEDOMS UNDER ARTICLE
20,27,28,40,43,53,56 AND 57 OF THE CONSTITUTION OF
KENYA

BETWEEN

JIMMY P. LUKA PETITIONER

AND

THE CHAIRMAN, LAND ADJUDICATION COMMITTEE, LESHUTA
ADJUDICATION SECTION 1ST RESPONDENT
DISTRICT LAND ADJUDICATION OFFICER, NAROK WEST
DISTRICT 2ND RESPONDENT



**DIRECTOR, LAND ADJUDICATION & SETTLEMENT, NAIROBI 3RD
RESPONDENT**

THE ATTORNEY GENERAL 4TH RESPONDENT

AND

KASALE OLOPIRIKANY INTERESTED PARTY

PARMARI OLE KASHU INTERESTED PARTY

DANIEL SANGONYO INTERESTED PARTY

ANTAS OLE NTIYANI INTERESTED PARTY

KULUMA MUNTERE INTERESTED PARTY

PETER NAISHO INTERESTED PARTY

WILLIAM LUKA INTERESTED PARTY

MOGIYA OLE MUALA INTERESTED PARTY

JUDGMENT

1. On the 13th day of April, 2018 the petitioner filed a petition of even date praying for judgment against the respondents for the following orders: -
 1. Spent.
 2. Spent.
 3. Spent.
 4. Spent.
 5. That pending the hearing and determination of this petition, the 1st respondent be ordered to avail to this honourable court its adjudication record for scrutiny of the same to determine compliance with the Nakuru High Court Order in Constitution Petition No. 2 of 2013.
 6. That an interlocutory order of conservatory nature do issue in the terms that the aggrieved members of Leshuta Land Adjudication Section are entitled to their fundamental rights as enshrined in the Constitution of Kenya and in particular their rightful entitlement of the adjudicated land without discrimination on gender or disability.
2. The petition is accompanied by the verifying affidavit of the petitioner sworn on 11th April, 2018. The gist of the petition is that the petitioner is a member of Leshuta Adjudication Section and that the 1st respondent illegally and unconstitutionally purported to exclude some deserving female community members of the adjudication section merely because of gender.
3. The petitioner further contended that the 1st respondent declined to include any persons with disability, orphans and widows without any justification. Further, that the petitioner has tried resolving this issue amicably with the 1st respondent who has remained adamant and ignored all approach on this matter.



4. The petitioner contended that the exclusion of women though tolerable under the Maasai culture, is discriminatory and violates the Constitution. That he has also pursued this matter with the Director of Land Adjudication vide letters dated 24th January, 2018 and 3rd April, 2018 without success.
5. The petitioner contended that under Article 27, the Constitution enshrines the right to equal treatment from the law without discrimination on gender or social status or disability and noted with concern that a Constitutional Petition No. 3 of 2013 was filed by other petitioners but the 1st respondent did not comply and as a result, the people whom the petitioner represents have been unfairly discriminated and their constitutional rights infringed.
6. The 2nd respondent filed a replying affidavit in response thereto sworn on 31st May, 2018 by Josephine Njeri Njoroge-the Sub County Land Adjudication and Settlement Officer. The 2nd respondent deposed that they complied with the Consent Order in Narok ELC Constitutional Petition no. 2 of 2017 and in doing so, an implementation committee was constituted.
7. The 2nd respondent further deposed that on 16th December, 2017, the implementation committee held a meeting whose agenda was to remove all foreigners and other non-group members from the register. That the implementation committee realized that most of the names listed in Narok Constitutional Petition No. 2 of 2017 were qualified to be members of Leshuta Adjudication Section and persons with disabilities, widows and orphans were also allocated plots as well.
8. That on allocation of land to women, the 2nd respondent deposed that as a matter of practice and tradition, only sons of members and widows of deceased members were registered but that daughters are not included in the register.
9. As such, the petitioner has misled this court that the Consent Order was not complied which makes the allegation untrue. Also, that the petitioner has not demonstrated that he has authority of persons living with disabilities and women within the adjudication section.
10. The interested parties filed their answer to petition dated 16th August 2020. In response thereto, the interested parties contended that the petitioner has neither particularized nor identified the purported exclusion of the female members of the community and neither has the petitioner demonstrated that the said female members hail from the adjudication section.
11. The interested parties further contended that the petition has not admitted that the interested parties contend that the 1st respondent is only obligated to include members of the adjudication section only in the adjudication process. That the 1st respondent being their chairman is only obligated to adhere to the requirements set out in the adjudication section particularly the provision that only legitimate members within the section are guaranteed land allocation.
12. The interested parties further contended that the petitioner has not demonstrated how the 1st respondent has infringed the purported constitutional rights.
13. The petitioner filed a further affidavit in response thereto sworn on 21st October, 2022. The petitioner deposed that the adjudication process began in the year 2011 and that the process of ascertainment of claims and identification of beneficiaries has always been shrouded with lack of participation, accountability, transparency, discrimination and procedural impropriety leading to several beneficiaries and especially persons with disability omitted in the final register. The petitioner maintained that the petition addresses the plight of genuine and legitimate members of the adjudication section more so persons with disability, orphans and other people who are legitimate and bonafide members of the adjudication section.



14. The petitioner deposed that in excluding the listed members in paragraph 11 herein, the respondent violated the terms of the consent filed on 31st May, 2017 and in particular, the interested parties who have benefitted from double allocation. The petitioner insisted that the adjudication officer do provide the final adjudication register to prove the assertion that the interested parties did not benefit from double allocation.
15. The petitioner further deposed that the interested parties have allocated themselves plots which were set aside as town centres for the benefit of the public and to their children to the detriment of persons who were omitted and proceeded to process title deeds. That in a meeting held on 20th February 2019 attended by all members at Leshuta Trading Centre, it was realized that after all parcels numbers were issued, some members did not get plots which prompted the committee to look for alternative spaces.
16. Also, that objection number 41 and 44 were filed and the County Commissioner allowed the objection and directed that both plot numbers 2685 and 2687 be subdivided and new parcel numbers be issued to the beneficiaries.
17. The petitioner further deposed that in disregard to the consents recorded in the two cases, the committee has failed to allocate any land to several members of adjudication section.
18. This petition was canvassed by way of written submissions. The petitioner filed written submissions dated 5th May, 2023. The petitioner raised one issue for determination which is whether the constitutional rights of the petitioners have been violated by the actions of the respondents and whether the petitioners are entitled to the orders sought in the petition.
19. On this issue, the petitioner submitted that the respondent violated the terms of the consent filed on 31st May 2017 filed in Narok ELC Constitutional Petition No. 2 of 2017 and that they have also failed to comply with the ruling in objection number 41 and 44 which was filed with respect to plot nos. 2685 and 2687. The petitioner relied on the case of *Gitson Energy Limited versus Francis Chachu Ganya & 6 Others* [2017] eKLR.
20. The petitioner further submitted that the respondents violated their constitutional right to fair administrative action under Article 47 of the *Constitution* and relied on the cases of *PZ Cussons East Africa Limited versus Kenya Revenue Authority* [2013] eKLR and *Barua Gituma & 6 Others versus National Land Commission & 3 Others; Mugao Njagi* (Interested Parties) & 132 Others [2019] eKLR.
21. The petitioner further submitted that the negative effect of the adjudication register as presently constituted following the flawed process led by a few selfish individuals is an affront and infringement to the petitioners right to own property and acquire property as protected by Article 40 of the *Constitution*. As such, the petitioner seeks the intervention of this court to issue declarations, orders, directions or any other effective remedy it may consider appropriate to protect the petitioner's members against continued violations of their fundamental rights.
22. The petitioner went ahead to submit on prayers that he now seeks in his written submissions which are not in the petition and include general damages and costs of the petition.
23. On the 17th July, 2023 the 2nd, 3rd and 4th respondents filed their written submissions dated 12th July, 2023. The 2nd, 3rd and 4th respondent submitted that a consent order was entered into on 30th August, 2018 which was adopted as an order of the court on 26th September, 2018 and to their knowledge, this consent order is still subsisting as they have not been served with any order setting aside the same.
24. On whether the petition is rightly before this court, the 2nd, 3rd and 4th respondents submitted that the *Land Adjudication Act* provides an elaborate procedure for dispute resolution to be followed from



the time an area is declared an adjudication section until the adjudication register is closed and as such, the petitioner has prematurely invoked the jurisdiction of this court. Reliance was placed in the cases of *Joseph Mudamba Ojwang versus John Opondo Onyango & 4 Others* [2022] eKLR, *Mohamed Ahmed Khalid (Chairman) & 10 Others versus Director of Land Adjudication & 2 Others* [2013] eKLR, *Jimmy Parnyumbi Luka & 3 Others versus Chairman Land Adjudication Committee Leshuta Land Adjudication Section & 6 Others* [2021] eKLR, *Speaker of National Assembly versus James Njenga Karume* (1992) KLR 21 and *Gabriel Mutava & 2 Others versus Managing Director Kenya Ports Authority & Another* [2016] eKLR.

25. On whether the petitioner has locus standi to institute the petition, the 2nd, 3rd and 4th respondents submitted that the petitioner stated that he brings this petition on behalf of his daughter and for the benefit of all widows, women, orphans and persons living with disabilities which has not complied with Order 1 Rule 8 and 13 of the Civil Procedure Rules and in the absence of the signed written authority to act, the petitioner has no locus standi to institute this petition.
26. In conclusion, the 2nd, 3rd and 4th respondents submitted that the petitioner has not observed the elaborate dispute resolution mechanism set out in the *Land Adjudication Act*, has no locus standi to institute this petition and the petitioner's recourse would be to seek orders compelling the respondents to comply with the court orders.
27. On the 3rd July, 2023 the interested parties filed their written submissions dated 2nd July 2023. The interested parties raised the following issues for determination: -
 1. Whether the petition discloses substantive cause of action and was brought in good faith.
 2. Whether there are any orphans, widows and other persons of female gender who were left out in the adjudication process.
 3. Whether persons with physical disability were left out in the adjudication process.
 4. Who should bear the costs of the suit.
28. On the first issue, the interested parties submitted that the petitioner and the 1st respondent entered into a consent which was adopted as an order of the court on 26th September, 2018 and the petitioner went ahead to amend the consent and included a list of 120 members who are alleged to be persons living with disabilities. That the same was done without proof whether these persons were original members of Leshuta Adjudication Section. Further, that the said consent was set aside by this court on 16th December, 2019 which raises doubt as to whether this petition was brought in good faith.
29. Also, that the petitioner has not provided evidence that the proposed members are indeed members of the adjudication section and that the petitioner has not convincingly set out the steps he took on his behalf and that of the other left out members to appeal from the land adjudication officer's decision. The interested parties relied on the case of *Daniel Musili Nyeki & 49 Others versus Cabinet Secretary of Lands & Settlement & Another; Benard Malonza Musya & 30 Others (Interested Parties)* [2021] eKLR
30. On the second issue, the interested parties submitted that the petitioner has failed to establish the existence of facts as required under Section 107 of the *Evidence Act* to authenticate claims by providing documentation of those women whose husbands are deceased, list of orphans and the deserving female community members.
31. On the third issue, the interested parties submitted that the petitioners claim that he is a registered member of the National Council for persons with disabilities and a member of the adjudication



section, he ought to know the persons living with disabilities within that section and provide a list of persons with disabilities who were not given any parcel of land.

32. Finally, and on the last issue, the interested party submitted that the petition be struck off as it lacks merit and was brought in bad faith.
33. I have considered the petition, replying affidavit, answer to petition, further affidavit and the written submissions filed by all the parties herein and the following issues are for determination: -
 - i. Whether the petitioner has locus standi to file the petition.
 - ii. Whether the petitioner is entitled to the orders sought in the petition.
 - iii. Who is to bear costs.
34. On the first issue, the 2nd, 3rd and 4th respondents contended that the petitioner has no locus standi to file the instant petition on behalf of the widows, orphans and persons living with disabilities as there was no document evidencing such authority. On this issue, the petitioner remained mute which I may assume that it was an own admission on his part.
35. The question of locus standi of the petitioner may be resolved by reference to Article 22 of the Constitution which entitles a person to file proceedings for enforcement or protection of rights and fundamental freedoms in the interests of a group or class of persons and in public interest. The Article provides as follows: -

“ 22.

- (1) Every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened.
 - (2) In addition to a person acting in their own interest, court proceedings under clause (1) may be instituted by--
 - (a) a person acting on behalf of another person who cannot act in their own name;
 - (b) a person acting as a member of, or in the interest of, a group or class of persons;
 - (c) a person acting in the public interest; or
 - (d) an association acting in the interest of one or more of its members.”
36. A look at the verifying affidavit accompanying the petition indicates that the petitioner has brought the petition on behalf of his daughters and for the benefit of all women, widows, orphans and persons with disabilities within Leshuta Adjudication Section. The said petition is categorical to be on behalf of his own daughter which this court has no doubt as to their existence owing to proof of birth certificates attached to the petition. However, this court is unable to tell who the widows, orphans and persons living with disabilities within the section are. There is no list of the category of persons said to be represented by the petitioner. I find that the said persons are not in an ascertainable class of persons who are directly affected by the adjudication process within the adjudication section to enable the petitioner litigate the alleged breach of their constitutional rights.



37. On the second issue, which is whether the petitioner is entitled to the orders sought, I note that there was a consent that was entered into by the parties in Narok ELC Constitutional Petition 2 of 2017. The 2nd, 3rd and 4th respondents contended that they complied with the said consent and termed the petitioners' allegations as untrue. Again, my analysis of this is that the petitioner is required to prove that indeed there was non-compliance of these orders. A closer look at the averments of the petitioner in his further affidavit are largely speculative and not backed by evidence at all. The petitioner and the 1st respondent herein entered into a consent on 30th August, 2018 but the same was set aside by the orders of Kullow, J in his ruling delivered on 16th December, 2019. Also, there exists an avenue where a party may be compelled to perform a function or duty which he ought to do but fails to do so. In this case, the petitioner has not done so.
38. More, importantly, is the contention by the petitioner that the respondents have not complied with the decision of the Deputy County Commissioner with respect to parcels nos. 2685 and 2687 in objections number 41 and 44. On this, let me say that there exists avenues within the [Land Adjudication Act](#) where a party if dissatisfied with the inactions of another can present his grievances. The petitioner should exhaust all the available remedies provided under the [Land Adjudication Act](#) and if dissatisfied with the determination of the Minister pursuant to Section 29 of the Act, then the recourse available would be for the petitioner to approach this court by way of a judicial review.
39. Arising from the above, I find that the petition dated 13th April, 2018 lacks merit and the same is hereby dismissed. Each party to bear their own costs. It is so ordered.

DATED, SIGNED & DELIVERED VIA EMAIL THIS 25TH DAY OF JULY, 2023.

HON. MBOGO C.G.

JUDGE

