



**Ragen (Suing on his own Capacity and in the Public Interest) v Dorina Omolo (Dorine Otieno, Dorine "Doddington" Atieno) (Environment & Land Petition E037 of 2022) [2023] KEELC 18982 (KLR) (25 July 2023) (Judgment)**

Neutral citation: [2023] KEELC 18982 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT & LAND PETITION E037 OF 2022**

**NA MATHEKA, J  
JULY 25, 2023**

**BETWEEN**

**AINEA RAGEN (SUING ON HIS OWN CAPACITY AND IN THE PUBLIC INTEREST) ..... PETITIONER**

**AND**

**DORINA OMOLO (DORINE OTIENO, DORINE "DODDINGTON" ATIENO) ..... RESPONDENT**

**JUDGMENT**

1. Ainea Ragen herein the Petitioner is a citizen of the Republic of Kenya empowered by the 2010 Constitution to defend the Constitution and to institute legal proceedings in a court of Law pursuant to Article 3(1) on defense of the Constitution, Article 22 on enforcement of the bill of rights, Article 70 on enforcement of environmental rights and Article 258 on enforcement of the Constitution. The Respondent is Dorina Omolo also known as Dorine Otieno, Dorine "Doddington" Atieno She is the private developer who claims ownership of the Public Utility Land No 1588 Mwembelegeza scheme in Mombasa County marked open space and has gone ahead to fence the suit land and erect a gate barrier.
2. That around the year 1998, Mwembelegeza Scheme in the County of Mombasa in the Republic of Kenya was surveyed, planned and subdivided into different plots mostly 50 feet by 100 feet. Most of these plots are owned by private individuals, though some were reserved as public utility land for specific uses. That one such plot reserved for public utility is Plot/Land No 1588 marked open space.
3. That around early 2022, a private developer by name Dorina Omolo, also known as Dorine Atieno, Dorine "Doddington" Atieno herein the Respondent, began going round telling residents of Mwembelegeza especially residents who live around the suit land that she owned the suit land. That around October, the Respondent engaged the services of one Richard a resident of Mwembelegeza together with other individuals only known to the Respondent to fence the suit land. That their action



was stopped by Kadzandani area Chief Mr Baya with the help of Kadzandani — Mwatamba Officer Commanding Police Station. That after being stopped and warned not to engage on illegal activities touching on the suit land, the Respondent continued to fence the suit land invoking names of senior Kenya police personnel and even the name of the Deputy Governor of Mombasa County. That the arrogance of the Respondent was shown in her verbal abuse on residents who were only trying to talk to her not to waste her time and resources developing land reserved for public use. That around mid-October 2022, the Respondent dumped soil on the suit land in disregard for area Chief's advice, Assistant County Commissioner's advice and other residents' advice.

4. That the Respondent Violated Article 35 of the Constitution on Access to information by denying the Petitioner and Mwembelegeza residents a purported copy of ownership document of the suit land in her name as she claims. That the Respondent breached Article 62 ( 2) and ( 4). The Respondent acted as a law unto herself by forcefully fencing public utility land and erecting a gate denying access to the public and residents since the suit land is marked open space. That the Respondent forcefully acted as the manager and administrator of the suit land hence violating Article 67 of the Constitution and the *National Land Commission Act*. Management of public land is vested on the National Land Commission.
5. That the Respondent did not bother to do a search at the Land Registry at Mombasa pursuant to Section 7(2) and Section 34 of the *Land Registration Act* to authenticate if the suit land is truly registered in her name. The Respondent was hell-bent on illegally alienating the suit land because to her, she knew who is who in Mombasa and that mattered to her more than authenticated ownership document from the Registrar of Land at Mombasa. This is what informed her acts by defying concerned Mwembelegeza residents, National Government administrators and the Petitioner by going ahead with fencing the entire suit land, dumping soil and erecting a gate barrier within the suit land
6. The Petitioner prays for the following reliefs:
  1. A declaration that the suit land No 1588 Mwembelegeza scheme in Mombasa County is public utility land marked open space.
  2. A declaration that the Respondent violated the Constitution and all relevant laws and regulations governing alienation and usage of public land.
  3. A declaration that the Respondent committed a criminal offence and should be prosecuted separately in a criminal court of Law.
  4. A permanent injunction restraining the Respondent or any private organization or any person not mentioned in this suit working either individually or by their staff or their agents or their representative from trespassing, constructing, sub-dividing, transferring, developing, selling or occupying the suit land number 1588 Mwembelegeza scheme in Mombasa County.
  5. An order to the directorate of criminal investigations to initiate immediate prosecution of the Respondent in respect to this suit.
  6. The Honourable Court be pleased to issue and Order that this Petition is in the public interest, each party should bear their own costs.
  7. This Honourable Court to issue such further orders and give such directions as it may deem fit to meet the end of justice and Protection of the 2010 Constitution of the Republic of Kenya.
7. The Respondent submitted that the instant Petition as drawn does not meet the threshold of a Constitutional Petition and the Petitioner has wrongly invoked the Constitutional Jurisdiction of this Honorable Court to determine ownership of land falls within the ambit of the subordinate courts.



That the Petition is misconceived, incompetent and an abuse of the court process, falls flat, is built on a quick sand, cannot stand and the same is a ripe candidate for dismissal/striking out and the same ought to be struck out with costs.

8. That Article 35 of the [Constitution of Kenya 2010](#) provides the right of Access to information. In the instant case, this right cannot be possibly be pleaded against the Respondent. if the Respondent denied a copy of the title, this information is readily available to the public under the custody of the Registrar of Lands and the Petitioner actually was furnished with the same thus cannot claim that this right was violated. Article 62 (2) and (4) ostensibly elaborates how public shall vest, held, administered and how the same shall be disposed. it is not explained how this as a right has been violated. imperatively, it is not sufficient to list Articles of the Constitution without specifically pleading with precision what right has been violated.
9. The Petitioner does not plead what human right or fundamental freedoms nor furnish evidence of the violation. He does demonstrate that land was previously used by public (no particulars) other than photo evidence of men standing on the barbed wire fence. Article 67 basically lays down the establishment of the National Land Commission and its roles. Again, the Petitioner cites this Article but does not state with precision what right or fundamental freedom is violated, how he has suffered nor furnish particulars. Further the Petitioner cited violation of Articles 42 and 70 of the [Constitution](#) but does not precisely elaborate how the violation occurred. The Respondent submits that the instant Petition is not in public interest at all, the Petitioner is masquerading that the same was brought in public interest, when it is quite clear that he had a personal interest in the matter.
10. This court has considered the Petition and submissions therein. The Petitioner alleges that the Respondent has grabbed Plot No 1588 within Mwembelegeza Settlement Scheme, which was reserved for public utility. It is the Petitioner's case that the actions of the Respondent are violating the rights of the residents of Mwembelegeza to a clean and healthy environment as well as encroachment to public land against the spirit of Article 60 of the Constitution. The Petitioner is empowered by Article 22 (2)(c) of the [Constitution](#) to institute court proceedings claiming violation, denial, infringement or threat to any right or fundamental freedom, in the interest of public interest. Coupled with Article 258, Article 22 (2) (c) is a testament that the [Constitution](#) scrapped the need for one to demonstrate locus standi when enforcing the bill of rights enshrined in the Constitution.
11. The threshold for a Constitutional Petition was set out in *Anarita Karimi Njeru v The Republic* (1979) eKLR, where it was held that a Constitutional Petition should set out with a degree of precision the Petitioner's complaint, the provisions infringed and the manner in which they are alleged to be infringed. The Petition herein makes reference to Articles 2(1), 3(1), 10(1)(a)(b), 22, 23, 40(3)(b)(6), 62 70 and 258 of the [Constitution of Kenya](#). The Petitioner alleged that the Respondent has infringed on the rights of the residents of Mwembelegeza by grabbing the suit land and depriving them of the use of public land. The Petitioner further alleged that the Respondent violated his right to access information when she declined to reveal her title documents to the land and has also infringed on the residents' right to a clean and healthy environment.
12. The Petitioner made reference to several Articles of the Constitution, however, the Petitioner has provided little or no particulars as to the allegations and the manner of the alleged infringements. The Petition has generalised the alleged infringements and none has been spelt out in precision as was laid down by the Court of Appeal in [Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others](#) (2013) eKLR, where it was held that,

“However, our analysis cannot end at that level of generality. It was the High Court's observation that the Petition before it was not the “epitome of precise, comprehensive,



or elegant drafting.” Yet the principle in Anarita Karimi Njeru (supra) underscores the importance of defining the dispute to be decided by the court. In our view, it is a misconception to claim as it has been in recent times with increased frequency that compliance with rules of procedure is antithetical to Article 159 of the Constitution and the overriding objective principle under section 1A and 1B of the *Civil Procedure Act* (Cap 21) and section 3A and 3B of the *Appellate Jurisdiction Act* (Cap 9). Procedure is also a handmaiden of just determination of cases. Cases cannot be dealt with justly unless the parties and the court know the issues in controversy. Pleadings assist in that regard and are a tenet of substantive justice, as they give fair notice to the other party. The principle in Anarita Karimi Njeru (supra) that established the rule that requires reasonable precision in framing of issues in Constitutional Petitions is an extension of this principle.”

13. In Part C of the Petitioner, the Petition averred that he has the right to access information held by the Respondent in his quest to protect the rights and fundamental freedoms of the public and residents of Mwembelegeza. However, he failed to give further particulars as to the manner in which this right was violated or infringed. The Petitioner simply identified the right to access information but failed to relate it to the facts in question. Furthermore, the information that the Petitioner sought from the Respondent, was issued from a search at the Land Registrar upon conducting a search at the Lands office. The right to a clean and healthy environment provided by Article 42, the Petitioner has stated that the public and residents of Mwembelegeza, however, no particulars have been availed as to how this right was been infringed or violated or threatened by the Respondent. It was not enough for the Petitioner to cite Constitutional provisions, he ought to have given some particulars of the alleged infringements to enable the Respondent to answer them. In addition, the prayers sought in the Petition do not conform with Article 23 (3) of the *Constitution*, which states that the relief that may be granted in a Petition includes, a declaration of rights, an injunction, a conservatory order, a declaration of invalidity of any law, an order of compensation of an order of judicial review. The Petitioner has framed the prayers in such a manner that cannot be granted by this court under a Constitutional Petition.
14. The Petition revolves around the allegation that the Respondent has grabbed the suit land, which the Petitioner claims has been reserved for public use. He has annexed a copy of the Certificate of Official Search for Plot No Mombasa/Mwembelegeza/1588 dated November 9, 2022 which was registered in the name of Mose Kalama Bokoro on December 2, 2005. However, Entry No 6 therein showed that on 3<sup>rd</sup> December 2007, a restriction was registered against the title vide a letter Ref No Olaso/Msa/2000 Vol III/154 dated February 28, 2007, on the ground that the suit land is a public utility land. The Petitioner also attached a green card, however the same was for Plot No Mombasa/Mwembelegeza/1581 which is not subject to this suit. The Respondent, on the other hand, maintained that she is the bonafide purchaser of the suit land, having purchased it from William Onsare Oseko, on May 23, 2013. She maintained that the suit land was allocated to William Oseko by the Principal Land Adjudication and Settlement Officer on November 17, 2000 and issued with a title deed on May 6, 2014.
15. The Petitioner has produced a certificate of official search that shows the there is a restriction on the suit land following a letter dated February 28, 2007, while the Respondent has produced a certificate of title, in the name of William Oseko dated May 6, 2014. It is clear to the court that there exist two different titles to the suit land, which bear different registered proprietors. One is registered in the name of William Onsare Oseko dated May 6, 2014 and the other in the name of Mose Kalama Bokoro dated December 2, 2005. From the facts before this court, it is the view of this court that there may be questions of fraud and illegality in the issuance of title documents to two different persons who are not parties to this Petition. The court finds that these questions of law and facts can only be heard and determined in a civil suit where parties can be called to produce viva voce evidence that can be examined



through cross-examination and not through affidavit evidence as is the case herein. In conclusion, I find that the Petition dated November 15, 2022 is not merit and is dismissed with no order as to costs as it is a public interest matter.

16. It is so ordered.

**DELIVERED, DATED AND SIGNED AT MOMBASA THIS 25<sup>TH</sup> DAY OF JULY 2023.**

**N.A. MATHEKA**

**JUDGE**

