



**Mwangi v Attorney General & 6 others (Environment & Land Petition
10 of 2019) [2023] KEELC 18744 (KLR) (13 July 2023) (Judgment)**

Neutral citation: [2023] KEELC 18744 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND PETITION 10 OF 2019**

JG KEMEI, J

JULY 13, 2023

BETWEEN

PETER KAIRU MWANGI PLAINTIFF

AND

HON. ATTORNEY GENERAL 1ST DEFENDANT

THE LAND REGISTRAR, THIKA 2ND DEFENDANT

THE CHIEF MAGISTRATE'S COURT 3RD DEFENDANT

SAMUEL MUTURA KURIA 4TH DEFENDANT

KEZIA WANGECHI NDUNGU 5TH DEFENDANT

PATMOS INVESTMENT LTD 6TH DEFENDANT

NYAKINYUA INVESTMENT LTD 7TH DEFENDANT

JUDGMENT

1. The Petitioner filed this Petition on the 5/8/2019 against the Respondents seeking the following orders;
 - a. A declaration that the Petitioners Constitutional rights under Articles 40, 47 and 50 of *the Constitution* have been infringed.
 - b. A declaration that the all the dispositions on the suit land Title No. Ruiru/Ruiru East Block 2/1513 disposing the land from the Petitioner to Gathoni Kuria and the subsequent dispositions are illegal, null and void and the same should be cancelled.
 - c. An order for compensation.
 - d. Costs of the Petition.



2. The Petitioner averred that he is the registered owner of the suit land having purchased it from one Teresia Njahira Mukui and a title registered in his name. That unknown to him a title was issued to Gathoni Kuria based on voidable and illegally procured orders in DO Case No 3 of 2008. That the suit land was further illegally transferred to the 4th -6th Respondents.
3. The particulars of illegality and breach of Petitioners Constitutional rights were cited under para 11 of the Act.
4. In addition, that the Petitioner has never received any compensation for the loss of the suit land from the 7th Respondent.
5. In support of the Petition the Petitioner swore an Affidavit on the 30/7/2019 wherein he stated that he is the owner of the suit land having acquired it from Teresia Njahira Mukui vide a sale agreement dated the 16/1/2003. That he received information in 2013 that there were third parties erecting beacons on the land. He visited the land and confirmed the information. On carrying out a search he discovered that the land had been registered in the name of Gathoni Kuria and later transmitted to the 4th and 5th Respondents following the death of Gathoni Kuria. He lodged a caution which caution was never registered by the 2nd Respondent and no reasons were given to him for the inaction. His request for a copy of the green card also met the same fate. He filed a Petition No 674 of 2017 seeking interalia orders to compel the 2nd Respondent to issue him with a copy of the green card.
6. That while the suit was pending he was informed that some people were erecting beacons and on inquiry he learnt that the land had been transferred from Gathoni to 4th and 5th Respondents and title closed on subdivision. That the dispositions were allegedly made pursuant to an award by the Tribunal and adopted by the 3rd Respondent, which proceedings he was never served nor notified. Inter alia that the Land Dispute Tribunal (LDT) had no jurisdiction to make the award and the dispositions having been based on the said illegal null and void award, the said Gathoni Kuria did not acquire a good title. That his land was illegally unprocedurally and unConstitutionally registered in the name of Gathoni Kuria hence his right to property and information was violated without any hearing. He sought the cancellation of the title in the name of Gathoni Kuria and revert the land to his name. Alternatively, the Petitioner urged the Court to order that he be compensated based on market value of the suit land.
7. The 1st – 3rd Respondents filed grounds of opposition on the 5/11/19 on the following grounds;
 - a. That the Petition does not meet the test of a Constitutional Petition as laid down in the case of Anarita Karimi Njeru Vs Republic of Kenya (1979) eKLR and further buttressed in the case of Mumo Matemu Vs Trusted Society of Human rights Alliance (2014) eKLR.
 - b. That this Petition offends the principle of Constitutional avoidance; not each and every violation of the law must be raised before the High Court as a Constitutional issue. There exist alternative remedies through statutory law that the Petitioner first ought to pursue.
 - c. That the Petition is ill conceived unmeritorious and an abuse of the process and ought to be dismissed.
8. In further opposition to the Petition, the 1st – 3rd Respondents filed a statement by Robert Mbuba, the Land Registrar, Ruiru giving the history of the suit land as per the register opened on the 10/5/1988 in the name of the Government of Kenya until the entry in the name of the 6th Respondent registered on the 24/5/2013. On the 4/9/2013 the title was closed on subdivision of the land into 16 titles (parcel numbers 12208-12223) which are now registered in third parties. That the land was registered in the name of Gathoni Kuria pursuant to the orders of the Court in CMCC No 3 of 2008 delivered on



12/5/2008 and the decree of the Court of the 7/7/2008. Thereafter following the death of Gathoni the land was transmitted to the 4 - 5th Defendants on 26/4/2013.

9. The 6th Respondent in answer to the Petition filed a Replying Affidavit sworn on its behalf by Julius Njuguna Mwangi, a Director of Patmos Investment Limited. The suit land was acquired from the administrators of Gathoni Kuria, being the 4th and 5th Respondents. That the suit land has been subdivided into 16 plots (Ruiru Ruiru East Block 2/12208-12223- the resultant subplots) and have been sold to third parties who have not been enjoined to the suit.
10. Further, the 6th Respondent contended that the Petitioner participated in the LDT case where the land was adjudged to belong to Gathoni Kuria. The Petitioner was also present during the adoption of the award of the panel of elders. In both instances that the Petitioner did not challenge the decision of the Tribunal by way of review nor appealed against the Judgement of the Court.
11. Further the deponent contended that the Petitioner has not raised grounds that warrant the invocation of Constitutional jurisdiction of the Court and that the case does not raise any Constitutional issues as the issues raised can be heard through an ordinary civil suit. That despite being awarded compensation in the LDT case, the Petitioner has not enforced the same.
12. In answer to the Petition, the 7th Respondent averred that it was not privy to the matters alluded to in the Petition. That the Petition does not lie against it as no civil liability or administrative breach has been pleaded against it and no orders have been sought against it and urged that it be struck out of the Petition. To buttress its position the 7th Respondent enclosed the extract of the members register showing Gathoni Kuria owned parcels Nos 1512 and 1513.

The submissions

13. Relying on the case of Alice Chemutai Too Vs Nickson Kipkurui Korir & 2 Others (2015) eKLR the Petitioner submitted that Gathoni Kuria did not obtain a good title and neither did her personal representatives pass a good title to the subsequent parties who purported to acquire interest in the title. That the Petitioner was not involved in the proceedings in the Land Dispute Tribunal and his right to be heard was infringed. That his title was annulled without due process of the law and in contravention of Article 47 and 50 of [the Constitution](#). Further that the Petitioner has never been compensated despite the orders of the Court.
14. On jurisdiction of the Court to entertain the matter, it was submitted that the provisions of Article 162 (2) (b) of [the Constitution](#) read together with Section 13(2) of the [Environment and Land Court Act](#) gives the Court the power to entertain the Petition.
15. On the power of the Land Dispute Tribunal to adjudicate the dispute the Petitioner submitted that pursuant to the provisions of Section 3(1) of the Land Dispute Tribunal Act, 1990 the jurisdiction of the said Tribunal is limited to boundary disputes, claim to work or occupy the land and finally trespass to land. That the said powers do not include a dispute on ownership or cancellation of title to land. See the case of Gibson Sengete Matolo Vs Eastern Provincial Lands Dispute Committee & 3 others HC Misc Application No 33 of 2003 where the Court held that district Tribunals or even Land Dispute Appeals Committees have no powers to entertain matters touching on ownership and title to land. The Court was urged to find the decision of the Tribunal in LDT No 3 of 2008 null void and ultra vires and quash the same, cancel the subsequent title and revert the land to the Petitioner and award costs in favour of the Petitioner.
16. The 1st - 3rd Respondents submitted that the Petitioner has not demonstrated the Constitutional violations alleged against the Respondents. The Petitioner has not shown how the alleged violations



were committed. Relying on the case of Mumo Matemu, the Respondents stated that the party alleging violations of rights need to particularize the violations with relevant facts with a measure of detail and clarity to enable the other party answer the same. That it is not sufficient to list the articles of *the Constitution* allegedly violated and not give specific facts making up the violations. The Court was urged to find that the Petition fails the threshold of a Constitutional question.

17. As to whether the 2nd and 3rd Respondents violated the Petitioners rights the Respondents stated that the Land Registrar complied with the orders of the Court and registered the suit land in the name of Gathoni and therefore the Land Registrar acted within the law and in compliance with a valid decree of the Court and hence did not violate the rights of the Petitioner. Further that the Court cannot be faulted for adopting the award of the Tribunal. That the Petitioner failed to challenge the decision at all. The Court was urged to hold that the Petitioner has failed to demonstrate any violation of his rights by the 1st - 3rd Respondents.
18. The 7th Respondent submitted that the suit land has been subdivided and transferred to third parties who are not enjoined to the suit. That the prayer seeking cancellation of the titles is untenable given that the said third parties will not have been heard in their claims. That contrary to the claims of the Petitioner that he was not notified of the LDT proceedings, the proceedings reveal that he participated fully in the LDT as well as the adoption of the award by the Court. That the Petitioner has not challenged the award and nor the Judgment of the Court in any manner. That the 7th Respondent was neither involved in the LDT proceedings nor the Court proceedings and therefore cannot be held liable for either the acts of the 1st -6th Respondents or the LDT.
19. The 7th Respondent accused the Petitioner of peddling falsehoods in his Petition while the documents he has enclosed in support of the Petition depict otherwise.
20. On jurisdiction of the Court to entertain the matter, the 7th Respondent submitted that the case cited by the Petitioner in Chimweli Jangaa Mangale & 3 Others Vs. Hamisi Mohamed Mwawasaa & 15 Others (2016) eKLR is inapplicable to the circumstances of this case. The Petitioner was faulted for failing to challenge the decision of the LDT as per the provisions of the law. That a Petition is not the right forum for challenging the said decision. Further the Petitioner was faulted for failing to enjoin the person who sold him the land and queried whether the Petitioner is shielding the seller. That if any compensation was to be considered it can only be done if the party was a shareholder of the 7th Respondent. That he can only seek compensation from the person who sold him the land as he had no privity of contract with the 7th Respondent. The Court was urged to dismiss the Petition with costs.
21. The 4th and 5th Respondents failed to file any response and or submissions in answer to the Petition.

Analysis and determination.

22. Before I delve into the determination of the issues in the Petition, I wish to set the background of the facts leading to the Petition. The Petitioner filed a Petition vide Pet. No 4 of 2014 in Muranga. On 25/5/2015 the Petition was transferred to Kerugoya High Court for hearing and determination and given a number Pet 3 of 2015. Upon the establishment of an ELC Court in Kerugoya the matter was transferred to ELC Court. Later it was transferred to ELC Thika and renamed Pet. No 674 of 2017. With leave of the Court this Petition was consolidated with Pet. No 674 of 2017 on the 21/4/2021. The lead file was deemed to be Pet 10 of 2019.
23. The Petitioner claims ownership of the suit land Ruiru /Ruiru East Block 2/1513. He alleges to have purchased it from Teresia Njahira Mukui who obtained it from the 7th Respondent.



24. According to the certified copy of the green card the land was registered in the name of Teresia Njahira Mukui on the 26/8/88 and the same changed hands to the Petitioner on the 18/3/2003 vide an agreement of sale. On 25/3/2008 Gathoni Kuria registered a caution claiming beneficial interest in the land.
25. The Court has been referred to the LDT proceedings in TKA/LDT/10/2007 in which Gathoni Kuria sued the Petitioner inter alia claiming ownership of the land. The Petitioner was named as Objector No 2. Upon hearing the parties the LDT issued as award as follows;
- “The disputed land parcels 1512 and 1513 belong to Gathoni Kuria (claimant). The Tribunal request the Honourable Court at Thika to order Nyakinyua investment company Limited to compensate the objector Peter Kairu and Paul Njaramba with equal parcels of land.”
26. The Petitioner has disputed that he was not present at the hearing of the LDT proceedings. The proceedings show otherwise. The only person stated to have been absent despite service was Paul Njaramba Objector No 2. The record shows that the said award was adopted by the Court in D.O Case No. 3 of 2008 on 12/5/2007. Though the record states the Petitioner was absent, he was present on the 7/7/2007 when another application brought by Gathoni Kuria was present.
27. It has been argued by the Petitioner that the Tribunal acted in excess of its powers in entertaining the matter so much so that his right of proprietorship was taken away from him using illegal null and void orders. The Respondents have argued that the Land Registrar in registering the land under the name of Gathoni Kuria proceeded in compliance with the decree of the Court and therefore acted within the law by complying with the Court orders. The provisions of Section 3(1) of the Land Disputes Tribunal Act, 1990 granted power to the Tribunal to determine boundary disputes, trespass and claim to occupy or work on land. To the extent that the Tribunal determined the question ownership and title to land, the Court agrees with the Petitioner that the Tribunal acted ultra vires its mandate.
28. That said the said Act provided procedures in which an aggrieved party would challenge the decision of the Tribunal by way of appeal under Section 8(1) of the LDT Act which provided as follows;
- “Any party to a dispute under section 3 who is aggrieved by the decision of the Tribunal may, within thirty days of the decision, appeal to the Appeals Committee constituted for the Province in which the land which is the subject matter of the dispute is situated.”
29. Further appeals would be to the High Court on a point of law only. The Petitioner has not demonstrated any evidence that it appealed the said award of the LDT at all. The Court finds that the role of the Magistrate Court in adopting the award was lawful and in compliance with the law. It is noted that despite participating in the said adoption proceedings the Petitioner has not demonstrated that he challenged the said Judgement of the Court by way of judicial review or appeal.
30. It is clear that the law has provided mechanism through which an aggrieved party may mount a challenge on the decisions of the Tribunal as it then existed and Judgements of the Court generally. As alluded to above none of the methods provided in law include a Constitutional Petition. I need not say more.
31. I will now move to the objection raised by the 1st -3rd Respondents which is whether the Petition meets the test required in Constitutional Petitions. *The Constitution* through the Mutunga Rules provided ways in which parties whose fundamental rights under the bill of rights have been or threatened to be violated seek remedies in the Court.



32. in the case of Anarita Karimi Njeru Vs Republic (1976-1980) KLR where it was held that;
- “We would however again stress that if a person is seeking redress from the High Court on a matter which involves a reference to *the Constitution*, it is important (if only to ensure that justice is done to his case) that he should set out with reasonable degree of precision that of which he complains, the provision said to be infringed and the manner in which they are alleged to be infringed.”
33. That principle was affirmed by the Court of Appeal in the case of Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others [2013] eKLR where the Learned Judges emphasized that;
- “(41) We cannot but emphasize the importance of precise claims in due process, substantive justice, and the exercise of jurisdiction by a Court. In essence, due process, substantive justice and the exercise of jurisdiction are a function of precise legal and factual claims. However, we also note that precision is not coterminous with exactitude. Restated, although precision must remain a requirement as it is important, it demands neither formulaic prescription of the factual claims nor formalistic utterance of the Constitutional provisions alleged to have been violated’
34. The Court of Appeal further added:-
- “(43) The Petition before the High Court referred to Articles 1, 2, 3, 4, 10, 19, 20 and 73 of *the Constitution* in its title. However, the Petition provided little or no particulars as to the allegations and the manner of the alleged infringements. For example, in paragraph 2 of the Petition, the 1st Respondent averred that the appointing organs ignored concerns touching on the integrity of the appellant. No particulars were enumerated. Further, paragraph 4 of the Petition alleged that the Government of Kenya had overthrown *the Constitution*, again, without any particulars. At paragraph 5 of the amended Petition, it was alleged that the Respondents have no respect for the spirit of *the Constitution* and the rule of law, without any particulars.
- (44) We wish to reaffirm the principle holding on this question in Anarita Karimi Njeru (supra). In view of this, we find that the Petition before the High Court did not meet the threshold established in that case. At the very least, the 1st Respondent should have seen the need to amend the Petition so as to provide sufficient particulars to which the Respondents could reply. Viewed thus, the Petition fell short of the very substantive test to which the High Court made reference to.”
35. In this case the Petitioner has urged the Court to declare that his rights under Article 40, 47 and 50 of *the Constitution* were breached. Under para 11 the particulars of illegality and breach of Constitutional rights have been cited as; the LDT lacked jurisdiction to handle the dispute; the Court had no power to adopt the award; the Petitioner was not heard at the Tribunal; divesting the land from the Petitioner without compensation; making illegal dispositions of the land to the Respondents in breach of his right to own land;



36. The 1st – 3rd Respondents have argued that the particulars of breaches alluded to in respect to the provisions of Articles 40, 47 and 50 were not demonstrated with clarity and specificity to allow them answer to the same.
37. The 7th Respondent in answer to the Petition has argued that Teresia Njirahi Mukui was not its member and has annexed an extract of the register in support of the ownership of Gathoni Kuira of the suit land. The issue therefore remains who was the owner of the suit land between Gathoni Kuria and Teresia Mukui. These are issues that can only be determined in an ELC Court under the framework of statute law.
38. There is another fundamental issue which has been acknowledged by the Petitioner which is that the suit land has been subdivided into 16 plots and disposed to third parties who have not been made parties to the suit. It is imperative that being holders of titles they should be enjoined so that the matter is heard and determined in finality.
39. Other claims that have been alluded to for determination are that of bonafide purchaser of title raised by the 6th Respondent.

Conclusion

40. Having considered the Petition, the Affidavit evidence in answer to the Petition, the written submissions and all the material presented before the Court this Court finds that the Petition does not meet the test of Constitutionality and that the Constitutional jurisdiction of the Court has been invoked improperly. The Court has found that the ownership rights of the parties cannot be determined by way of Affidavit evidence without the veracity of the evidence being subjected to cross examination in an ordinary civil process; there exists a legal framework in an ordinary civil Court to determine the issues of ownership of the title. The Petition is therefore unmerited and is struck out.

Who meets the costs of the Petition?

41. Although costs of an action or proceeding are at the discretion of the Court, the general principle is that costs shall follow the event in accordance with the proviso to Section 27 of the *Civil Procedure Act* (Cap.21). As such, the successful litigant should ordinarily be awarded costs unless, for good reason, the Court directs otherwise. The Court has found that the Petitioner has invoked the jurisdiction of the Court improperly. It shall be condemned to pay costs of the Petition.
42. Final orders:-
 - a. The Petition is unmerited. It is struck out.
 - b. The costs shall be in favour of the 1st - 3rd; 6th – 7th Respondents and payable by the Petitioner.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 13TH DAY OF JULY, 2023
VIA MICROSOFT TEAMS.**

J G KEMEI

JUDGE

Delivered online in the presence of;

Wanjiru for Petitioner

Ms. Kerubo for 1st, 2nd and 3rd Respondents

4th, 5th and 6th Respondents – Absent



Kimani for 7th Respondent
Court Assistants – Kevin & Lilian

