



REPUBLIC OF KENYA



KENYA LAW
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**Kitirap & 4 others v Director of Land Adjudication & 3 others; Kilerai
& 16 others (Interested Parties) (Environment and Land Petition
9 of 2018) [2025] KEELC 5301 (KLR) (17 March 2025) (Judgment)**

Neutral citation: [2025] KEELC 5301 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT AND LAND PETITION 9 OF 2018
MN KULLOW, J
MARCH 17, 2025**

BETWEEN

**WILSON WAU KITIRAP 1ST PETITIONER
LEMAYIA OLLE KETERE 2ND PETITIONER
JOSEPH MERRIAYU KAYUKOYI 3RD PETITIONER
KIPEN NAWAUPA 4TH PETITIONER
THOMAS LEMAYIAN OLE MAESIA 5TH PETITIONER**

AND

**DIRECTOR OF LAND ADJUDICATION 1ST RESPONDENT
CHIEF LAND REGISTRAR 2ND RESPONDENT
NATIONAL LAND COMMISSION 3RD RESPONDENT
ATTORNEY GENERAL 4TH RESPONDENT**

AND

**LEMPINYO OLE KILERAI INTERESTED PARTY
JOSEPH OLE NAITIPA INTERESTED PARTY
SAMUEL OLE NTIERI INTERESTED PARTY
RANTAINNE OLE NTAPUKAI INTERESTED PARTY
TAISWA OLE NAKURRO INTERESTED PARTY
JOSEPH OLE KASAE INTERESTED PARTY
OLE SAIUA INTERESTED PARTY**



MEPUKORI OLE TIAREKAT	INTERESTED PARTY
ORINCHO OLE SAIYUA	INTERESTED PARTY
DAVID NKOTOI OLRKIPINTOI	INTERESTED PARTY
KISERIAN SAMWEL MOMBOSHI	INTERESTED PARTY
MARAMBE OLE CHAMUSI	INTERESTED PARTY
TEIYAI OLE NTUMURI	INTERESTED PARTY
KAIKAI OLE NTOME	INTERESTED PARTY
KIRERE OLE KISOKON	INTERESTED PARTY
OLOINYENYEI OLENKOLIAI	INTERESTED PARTY
LETEIPA CHERIKAT	INTERESTED PARTY

JUDGMENT

1. By a petition dated 2nd September 2016 and amended on 23rd October 2019, the Petitioner seek orders;
 - a. A declaration be issued to the effect that the Petitioners are entitled to benefit from the protection under the Constitution 2010.
 - b. A declaration that the omissions and/or actions by and/or on behalf of the 1st Respondent, of failing and/or refusing to implement and/or enforce the advisory legal opinion by the 4th Respondent pertaining to and/or concerning the completion and certification of the adjudication process at Masurura Adjudication Section amounts to insubordination and disregard of the Constitutional mandate of the 4th Respondent who is the ordained constitutional legal advisor of the Government of the Republic of Kenya and hence violates the provisions of Article 73 of the Constitution of Kenya 2010.
 - c. A declaration that the actions and/or omissions of the Respondents towards the execution of the statutory mandate, implementation and/or enforcement of statutory duties, more particularly in the completion and certification of the adjudication process at Masurura adjudication Section has been contrary and in violation of the national values in terms of Articles 10 and 47 of the Constitution,2010.
 - d. An order of judicial review in the nature of mandamus be issued to and/or against the 1st and 2nd Respondents to compel the same to complete and/or conclude the adjudication process and certification of the adjudication register, Masurura Adjudication section to facilitate the attendant registration and issuance of title deeds to the Petitioners and other occupants of the subject adjudication section, in line with the adjudication process carried out and concluded on the 16th November 1990 without further delay and in a transparent and accountable manner.
 - e. An order of permanent injunction restraining the 1st Respondent either by himself, agents, servants and/or anyone acting under the said 1st Respondent from declaring and/or re-declaring Masurura area, as an adjudication area, contrary to and in violation of the declaration carried out and/or made on the 28th May 1985.
 - f. Costs of the petition be borne by the Respondents jointly and/or severally.



- g. The Honourable court be pleased to issue such orders and /or writs as the court may deem fit and /or expedient.
2. The petition supported by the 1st Petitioner's supporting affidavit sworn on 22nd October 2019. It was opposed by the 1st, 2nd and 4th Respondents vide the replying affidavit sworn by Maurice Robert Otieno on 16th October 2019 and the Interested parties' replying affidavit sworn by the 1st Interested Party on 22nd November 2019.
3. The petition was heard by viva voce evidence of which each Party called 1 witness.

Petitioner's case

4. They claimed that they were members of Siria Siria clan while the Interested Parties belong to the Uasingishu and Moitanik clans but they were all predominantly residents of the Transmara area and before independence, there only existed imaginary boundaries separating the areas occupied by each of the 3 clans which often led to inter-clan conflicts.
5. That in order to bring an end to the said conflicts, in 1956 the then Provincial Commissioner together with the District Commissioner of Narok District resolved to create 3 locations being administrative boundaries separating the 3 clans of which location 1 was designated for members of the Moitanik clan comprised of the Olomismis, Oloiborsoito and Shartuka area while location 2 was occupied by members of the Uasingishu clan and comprised of the Sikawa, Oldonyari and Enoosaen areas and location 3 was occupied by members of the Siria clan and comprised of the Masurura, Nkararo and Moita areas..
6. That about 28th May 1985, the 1st Respondent declared Masurura area an adjudication area in readiness for the adjudication and demarcation process and by virtue of being residents/occupants of the Masurura area, the Petitioners together with other bonafide occupants of the area participated in the demarcation and adjudication process which commenced in 1985 and was completed in the year 1990 with the petitioner and other residents of the Masurura area being allottee and/or allocated plots and/or parcels of land within the adjudication process.
7. It was claimed that Land parcel Transmara/Masurura/554, Transmara/Masurura/298 was allotted to the 2nd petitioner while Transmara/Masurura/115 was allotted to the 3rd petitioner and Transmara/Masurura/104 to the 4th petitioner and Transmara/Masurura/162, 5th petitioner.
8. It was contended that in 1990, persons drawn from the Uasingishu and Moitanik clans (being the Interested Parties herein) filed Judicial Review Proceedings vide Nairobi HCC Misc Application No.404 of 1990 seeking orders quashing appointment of members of the Masurura adjudication Committee on alleged bias of which the court found in their favour and directed that the committee be quashed and membership be reconstituted in a manner that is acceptable to the residents of Masurura area.
9. Subsequently, the 1st respondent sought for and obtained an advisory opinion from the 4th Respondent pertaining to the interpretation and and/or implication of the court order issued vide Nairobi HCC Misc. Application No.404 of 1990 of which the 4th Respondent advised the it to proceed and conclude the adjudication and demarcation process and the registration of the adjudication register in line with the process carried out and concluded on the 16th day of November 1990.
10. Additionally, the 1st Respondent was advised to proceed with the certification of the adjudication process in so far as the court order did not prohibit the conclusion of the adjudication process in the



area but despite the advisory on 18th November 2005, it has neglected to conclude the adjudication register.

11. The Petitioner also claimed that even after being allowed by the court in Judicial Review Miscellaneous Application No.48 of 2012 to undertake correction /mistakes evident in the adjudication records and/or register with a view to facilitating the completion process , the 1st Respondent failed to do so and owing to that ,the demarcation process whose register had been certified as complete as at 16th November 1990 stalled and the Petitioners have not been issued with requisite title documents.

Case for the 1st,2nd and 4th Respondents

12. Their case was that a section of residents of Masurura were dissatisfied with the manner that the Masurura adjudication process was carried out thus they filed (Narok Misc. Appl. 1 of 2018 (formerly Nairobi Misc. Application No.404 of 1990) challenging the appointment of the adjudication committee that had carried out the adjudication process and vide an order dated 17th January 1991,the Hon Justice Tan quashed the appointment of the adjudication committee and ordered the Narok District land Adjudication and Settlement officer to appoint a new adjudication committee from among residents of Masurura adjudication section.
13. Subsequently, a new adjudication committee was appointed which commenced new adjudication process afresh but due to wrangles and complaints amongst the residents of Masurura, the process could not be completed.
14. Kisii ELC Misc. Application No.48 of 2012 was then filed seeking orders of prohibition to prohibit the Land Adjudication officer from purporting to revert to Masurura Adjudication Section with a view to carrying out a correction of mistakes/error in the records of Masurura or re-declaring adjudication section at Masurura and orders of mandamus to compel the Respondents to issue title documents in accordance with the completed adjudication process in 1990 and Okong'o J vide a riling dated 29th May 2014 dismissed the suit opining that the Office of the Director, Land Adjudication and Settlement should be given a free hand to do what they could within the powers conferred upon it and to bring the adjudication process to an end.
15. It was their case that the upshot was that there were 2 adjudication processes pending in respect to Masurura Adjudication Section. The one completed in 1990 but titles were not issued and the one which commenced in 1996 following the decision of Justice Tanks.
16. They claimed that though it took time for the 1st Respondent to appoint the Land Adjudication Committee for Masurura Adjudication section, the 1st Respondent selected 21 residents of Masurura Ndonyo locations to be members of Land Adjudication Committee for Masurura Adjudication section but the process was suspended by a court order emanating from Narok Misc. Case No.1 of 2018 filed by the Interested parties.
17. The Respondents stated contended that they have been desirous of concluding the adjudication process but the process has need affected by numerous clan feuds, tribal clashes and court cases. They alleged that they had prepared a work plan detailing their plan of actions and time lines in completing the adjudication process once and for all subject to availability of funds from the Ministry of lands and physical planning.

Case for the Interested party

18. Their case mirrored the case for the 1st,2nd and 4th Interested parties. In addition, they contended that the Petitioners are not residents of Masurura thus they have no locus standi to file the petition. They also



claimed that the issues raised in the petition are similar to the issues in Judicial Review Miscellaneous Application No.404 of 1990 and 48 of 2012.

Submissions

19. The appeal was canvassed by way of written submissions. The Petitioners in their submissions argued that they had proved that their right to property was and still is infringed by the refusal by the Respondents to issue title documents that culminated in their forcible eviction. They relied on the case of PZ Cussons East Africa Limited v Kenya Revenue Authority [2013] eKLR.
20. The 1st, 2nd and 4th Respondents submitted that the petition is res judicata Kisii Misc.48 of 2012 which sought for an order of mandamus to compel the 1st and 2nd Respondents to complete and/or conclude the adjudication process concluded on 16th November 1990. To this end, they relied on the case of Independent Electoral & Boundaries Commission v Miana Kiai & 5 others [2017] eKLR as well as the case of Uhuru Highway Development Ltd v Central Bank of Kenya [1999] eKLR.
21. They also contended that the effect of the order of certiorari issued in Judicial Review Misc.404 of 1990 is that the parties are taken back to the position they were in prior to the impugned decision thus any works that were done by the adjudication committee that was quashed by Justice Tank vide the order issued on 17th January 1991 were of no effect and were null and void. To this end, they cited the case of Republic v Kenya School of law & 2 others ex parte Juliet Wanjiru Njoroge & 5 Others [2015] eKLR as well as the case of Peter Kimandiu V Land Adjudication Officer Tigania West District & 4 others [2016] eKLR.
22. They also submitted that since an advisory opinion is not enforceable, the 1st Respondent's actions do not amount to insubordination as alleged adding that they have the statutory power to re-declare Masurura area as an adjudication area and contended that the petitioner did not dispense his burden of proof.
23. In their submissions, the Interested parties contended that the petition satisfies the elements of res judicata adding that the parties in Misc. Civil Application No.48 of 2012 and in the petition claim to be members of the Siria clan who were allegedly evicted from Masurura adjudication area and that both suits raise similar issues.
24. They also submitted that the Petitioners argument that the decision of Justice Tank of 1990 only quashed the committee but did not quash the process of adjudication is a misleading interpretation as the said orders in effect quashed the committee and in effect adjudication process to0 adding that the Petitioners did not prove a violation of their constitutional rights.

Determination

25. I have read the petition, the replying affidavit in opposition to the same and the submissions filed by the Petitioner and the Respondents. I find that the Petition herein is res-judicata as the issues in the petition herein were raised and canvassed in Misc. Civil Application No.48 of 2012 and JR No.44 of 1990 which decision has quashed the entire adjudication process whose register had been certified as complete as at 16th November 1990.
26. Having found that the petition is res-judicata, the Petitioners have not established how their right to property was infringed in the adjudication process. The petitioner during the trial has not produced any title or register to show that they were beneficiaries in the adjudication section.
27. The upshot of the above is that the petition is not merited and thus the same is dismissed. This being a petition involving a number of persons, I order each party shall bear their own costs.



DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 17TH DAY OF MARCH 2025

MOHAMMED N. KULLOW

JUDGE

In the presence of:-

..... For the Plaintiff

..... For the Respondent

Vincent M Court Assistant

