



**Meikoki & others v National Land Commission & 3 others; Lemorora
& 7 others (Interested Parties) (Environment & Land Petition
12 of 2017) [2023] KEELC 21793 (KLR) (28 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21793 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND PETITION 12 OF 2017
MN GICHERU, J
NOVEMBER 28, 2023**

BETWEEN

PARSALOI OLE MEIKOKI AND OTHERS PETITIONER

AND

NATIONAL LAND COMMISSION 1ST RESPONDENT

THE HONORABLE ATTORNEY GENERAL 2ND RESPONDENT

KAJIADO DISTRICT SURVEYOR 3RD RESPONDENT

KAJIADO DISTRICT LAND ADJUDICATION OFFICER 4TH RESPONDENT

AND

NKANUMA OLE LEMORORA INTERESTED PARTY

DANIEL NKYIA OLE MUSENYA INTERESTED PARTY

MATIPEI OLE NTEETU INTERESTED PARTY

MOSES MOOKE LOONTASATI INTERESTED PARTY

FRANCIS MANTA SIKINAN INTERESTED PARTY

NTUMUNA OLE KOLEI NKOYKO INTERESTED PARTY

ADAM WITNEY INTERESTED PARTY

LILIAN WAKIYA MWAURA INTERESTED PARTY

RULING

1. This ruling is on the notice of preliminary objection by the 4th Interested Party dated 27th March 2022. The objection is based on thirteen grounds as follows.



2. The land forming the subject matter of this petition was declared an adjudication section by the office of the 4th respondent on 15/10/1970 being Olkiramatian Registration Section.
3. The Land Adjudication Officer, Kajiado District, publicized that any individual or group claiming any right or interest in any land within the Olkiramatian Adjudication Section was to present his/her claim thereto, to the recording officer at Elangata Wuas according to Maasai Customary Law within 60 days from 15/11/1970.
4. Upon completion of the land adjudication process over the section, the preparation of the adjudication registers and registration of the 1st, 2nd, 3rd and 6th interested parties of parcels numbers Kajiado/Olkiramatian 6, 7 and 5 respectively pursuant to the Registered Land Act, any clan rights over the suit property were extinguished.
5. The adjudication process was undertaken and the petitioners did not raise any objection and consequently, the suit land was registered in the names of the interested parties and thus the process can only be challenged through the process under the Land Adjudication Act.
6. The Petitioners are required by law to have lodged the current petition before the office of the District Land Adjudication Officer Kajiado (4th respondent) and if dissatisfied appeal to the Minister through the office of the Director of land Adjudication.
7. The petitioners have failed to pursue the procedures set out in the Land Adjudication Act but opted to come to this court directly which is improper and hence the petition before the court is premature.
8. Where there is a clear procedure for redress of any particular grievance prescribed by the Constitution or an Act of Parliament, that procedure should be strictly followed.

Accordingly, the special procedure provided by law must be strictly adhered to since there are good reasons for such special procedures. It is the fourth interested party's contention that such procedure ought to be exhausted under the doctrine of exhaustion.
9. The Constitutional jurisdiction of this court cannot be invoked where a separate statute provides for Alternative Dispute Resolution Mechanism/redress mechanism.
10. The court lacks the requisite jurisdiction to hear and determine the petition and the application pursuant to the provision of Sections 5, 13, 26 and 29 of the Land Adjudication Act.
11. The issues raised in the petition arose 52 years ago and hence the petition is time barred under the Limitation of Actions Act and Public Authorities Limitation Act.
12. Consent under Section 30 of the Land Adjudication Act has not been granted to institute the current petition. The requirement for consent is mandatory.
13. Section 8 of the Land Registration Act also provides that no suit should be filed without the consent of the Adjudication Officer of the section.
14. The petition is legally flawed, incurable, defective and cannot be remedied even through an amendment and should therefore be struck out with costs.
15. The seventh (7th) interested party supports the preliminary objection and has filed written submissions dated 7/9/2023 and relies on his replying affidavit dated 25/3/2022. In the affidavit he states as follows.
16. Firstly, he owns LR Kajiado/Olkiramatian/13 which he bought from the Agricultural Finance Corporation in February 2007 through an auction. He complied with the law in the purchase and he acquired a good title.



17. Secondly, the petitioners have not discharged the burden of proof as provided under Section 107 of the Evidence Act because they have not provided any documentary evidence to prove any proprietary interest. The petition is based on speculative and unsubstantiated information without probative value or truth.
18. Thirdly, the petition is time barred under Section 7 of the Limitation of Actions Act for having been filed out of time the law allows for recovery of land.
19. Counsel for the petitioners, the 4th and the 7th interested parties filed written submissions dated 6/1/2023, 24/1/2023 and 7/9/2023 and identified the following issues for the determination.
 - i. Whether the petitioners have a legitimate claim and have competently lodged this petition before this court.
 - ii. Whether due process was followed by the respondents in allocating land to the interested parties.
 - iii. Whether the petitioners satisfied the required legal merit to file the case in court as provided under Section 30 of the Land Adjudication Act which requires that a party obtains the consent of the Land Adjudication Officer before filing a suit in court.
 - iv. Whether the petitioners have exhausted internal remedies provided under the Land Adjudication Act.
 - v. Whether the case is within the time frame provided for under the law of Limitations Act.
20. I have carefully considered the petition in its entirety including the affidavits, the grounds, the annexures, the submissions and the law cited therein. I make the following findings on the issues raised by learned counsel for the parties.
21. On the issue of the consent required under Section 30 of the land Adjudication Act, I find that such consent applies to land under adjudication but not registered land. My understanding of this case is that the suit land is no longer under adjudication. A look at paragraph 17 of the amended petition dated 25/9/2020 confirms this position. It reads,

“17. The Petitioners state that the process of adjudication, demarcation and registration of the suit land in the names of interested parties is fraudulent, illegal and irregular as it did not follow the legal procedures as envisaged in the Land Adjudication Act, the Land (Group Representation) Act and the Registered Land Act”.

Section 30(1) of the Land Adjudication Act reads as follows.

“except with the consent in writing of the adjudication officer, no person shall institute, and no court shall entertain, any civil proceedings concerning an interest in land in an adjudication section until the adjudication register for that adjudication section has become final in all respect under Section 29(3) of this Act”.

Since the suit land is not under adjudication, Section 30 of the Land Adjudication Act does not apply to this case. This finding also covers the issue raised as to whether the petitioners have exhausted the internal remedies provided under the Land Adjudication Act. The two issues would have been relevant if this petition had been filed while the adjudication process was on. However, these two issues are a reminder to the petitioners of the need to prove that they complied with the Land Adjudication Act



when the suit land was under adjudication. Failure to prove this means that the petition has a serious gap.

22. On the issue of whether the petition is time barred, I find that since the petitioners allege fraud at paragraph 17 of the petition, time does not begin to run until the alleged fraud of the respondents was discovered. Section 26 of the *Limitation of Actions Act* (Cap 22) provides as follows.

“Where, in the case of an action for which a period of limitation is prescribed, either

- a. The action is based upon the fraud of the defendant or his agent, or ...(b) and (c) the period of limitation does not begin to run until the plaintiff has discovered the fraud or mistake or could with reasonable diligence have discovered it”.

Unfortunately, the petition does not state when the alleged fraud of the respondents was discovered and this makes it difficult to compute exactly when time starts running.

23. As observed earlier in paragraph (21) above, the petitioners have not explained where they were when the area was declared as an adjudication section in the year 1969 and why they did not participate in the adjudication process. It is also deposed by Michael Tarayia Ole Kisioki vide paragraph 15 of his replying affidavit dated 14/8/2019 that the petitioners have previously filed similar suits like HCCC 145/2001 and 146/2001 all of which have been dismissed. There is no mention of the previous suits in this petition. There is also no response to the affidavit by Ole Kisioki.
24. On the crucial question of whether the petitioners have a legitimate claim and whether the same is competently lodged before the court, I find in the negative for the following reasons.

Firstly, at paragraph 7 of the affidavit dated 17/5/2011, Parsaloi Ole Meikoi has this to say.

- “7. That following the clashes, the (members of the Purko clan) and the members of the Loodokilani clan consented into living separately on the Olkiramatian Registration Section. Consequently, we moved to one part of the Olkiramatian Registration Section leaving the members of Loodokilani clan on the other part where they have been in peaceful occupation and co-existence ever since”.

This means that the petitioners moved out the land that they now claim voluntarily. They were not forced out of the land.

25. Secondly, the petitioners have not adduced any evidence to show the size of the group ranch, the number of members, the acreage of the land that each member got, the area list, the group ranch register and other evidence to prove that the interested parties got bigger land than they should have got.
26. Thirdly, there is evidence from Ole Kisioki at paragraph 5 of his affidavit dated 14/8/2019 that the third interested party died on 21/12/1994 and no explanation is forthcoming from the petitioners as to why they have filed this action against a dead party.
27. Fourthly, the petition offers scanty evidence on the origin of the dispute from 1970 to date, a period of fifty three (53) years. Such evidence is not sufficient to preponderate the petitioners’ case to the required standard. The most fundamental question is why they did not participate in the adjudication process and if they did what the results were.
28. Finally, it is not explained by the petitioners why they did not raise the issues that they raise in the petition within the group ranch at the appropriate time. From the above, it is clear that the petition



raises more questions than answers and it was up to the petitioners to file a petition with answers rather than questions.

29. For the above stated reasons, I find no merit at all in the petition and therefore uphold the preliminary objection dated 27/3/2022 and dismiss the petition with costs to the respondents and interested parties.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 28TH DAY OF NOVEMBER 2023.

M.N. GICHERU

JUDGE

