



**Koinger v Pirde & 5 others (Environment & Land Petition E001 of 2023)
[2023] KEELC 21702 (KLR) (14 November 2023) (Judgment)**

Neutral citation: [2023] KEELC 21702 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
ENVIRONMENT & LAND PETITION E001 OF 2023
EM WASHE, J
NOVEMBER 14, 2023
IN THE MATTER OF: ARTICLE 28, 40, 47 AND 50 OF THE
CONSTITUTION OF KENYA, 2010
AND
IN THE MATTER OF: THE FAIR ADMINISTRATIVE ACTION
ACT, 2015
AND
IN THE MATTER OF: THE ADJUDICATION ACT, CAP 284
LAWS OF KENYA
AND
IN THE MATTER OF: THE CONSTITUTION OF KENYA
(PROTECTION OF RIGHTS AND FUNDAMENTAL
FREEDOMS) PRACTICE RULES, 2013**

BETWEEN

OLONYORI LEMASHON KOINGER PETITIONER

AND

MICHAEL LEPORE PIRDE 1ST RESPONDENT

**CABINET SECRETARY FOR LANDS & PHYSICAL PLANNING 2ND
RESPONDENT**

**THE DEPUTY COUNTY COMMISSIONER T/MARA WEST 3RD
RESPONDENT**

THE DIRECTOR OF LAND ADJUDICATION 4TH RESPONDENT



THE CHIEF LAND REGISTRAR 5TH RESPONDENT

THE HON. ATTORNEY GENERAL 6TH RESPONDENT

JUDGMENT

1. The Petitioner filed a Petition dated 23rd March 2023 (hereinafter referred to as “the Present Petition”) against the Respondents jointly and/or severally seeking for the following Orders;-
 - a. A declaration that the 2nd and 3rd Respondents did not follow the mandatory provisions of Article 47 and 50 of the Constitution of Kenya, 2010 on the right to a fair administrative action and the right to a fair hearing.
 - b. That an order of *certiorari* to bring into the High Court and quash the decision made by and/or award by the 2nd Respondent (The Cabinet Secretary Ministry Of Lands & Physical Planning) in respect of Land Parcel Number Transmara/ntulele “A”/14 Adjudication Section in minister’s appeal case no. 295 of 2011 between michael lebere piride & olonyori lemashon koinger contained in the ruling dated 19/10/2021 awarding to michael lebere piride, the appellant half of the suit property.
 - c. A declaration that the action of admitting and registering the Appeal Case to the Minister 295 of 2011 outside the mandatory period stipulated under Section 29 of the Land Adjudication Act was illegal and unconstitutional and therefore null and void.
 - d. A declaration that the decision of the Respondents to deprive the Petitioner of half of his property and transfer and register the same in the name of the 1st Respondent was unconstitutional, illegal and void and should be set-aside.
 - e. An Order that the proceedings in the appeal to be instituted and commence afresh.
2. The Petitioner has outlined various grounds in the body of the Petition as well as the Supporting Affidavit sworn on 23rd of March 2023 in support of the prayers contained in the present Petition which can be summarised as follows;-
 - i. The Petitioner was allocated the parcel No.991 within Ntulele “A” Adjudication Section and currently registered as LR.NO.Transmara/ntulele “A”/14 (hereinafter referred to as “the suit property”).
 - ii. The 1st Respondent then filed an Objection Proceedings against the Petitioner before the Land Adjudication Officer which was dismissed in favour of the Petitioner on the 16/12/2010.
 - iii. The 1st Respondent being aggrieved by the decision of the Land Adjudication Officer in the objection proceedings filed an Appeal.
 - iv. The Petitioner states that the Appeal to the 2nd Respondent was filed out of time by the 1st Respondent.
 - v. Further to that, the Petitioner pleads that prior to the hearing of the Minister’s Appeal before the 2nd Respondent, he was not served with the Grounds of Appeal to be able to prepare for the trial.



- vi. The Petitioner also complained that the hearing notice of the Appeal before the 2nd Respondent was served just one day prior to the hearing and hence denied him the opportunity to prepare and present his case effectively on the hearing date.
 - vii. The Petitioner is of the view that the entire process of recording the Minister's Appeal before the 2nd Respondent as well as the proceedings and ruling dated 19/10/2021 was *ultra vires*, without legal jurisdiction and infringed the Petitioner's constitutional rights under Article 28, 40, 47 and 50 of the Kenyan Constitution, 2010 as well as the provisions of the *Fair Administrative Action Act*, 2015.
 - viii. In conclusions therefore, the Petitioner is seeking this Honourable Court to quash the registration of the Minister's Appeal, the proceedings and ruling pronounced on the 19/10/2021 as illegal and unconstitutional.
3. The present Petition was duly served on the Respondents who indeed filed their responses.
 4. The 1st Respondent through the Replying Affidavit dated 12th April 2023 opposed the Petition on the following grounds;-
 - i. The 1st Respondent claimed that prior to the adjudication process, he was in actual occupation of the suit property.
 - ii. However, the 1st Respondent committed a crime and escaped from the suit property living a young family behind.
 - iii. By the time the 1st Respondent returned back to the suit property, the adjudication exercise within Ntulele "A" Adjudication Section had been undertaken and the suit property identified as Parcel No. 991 had been allocated to the Petitioner.
 - iv. The 1st Respondent then filed an objection against the allocation of the suit property to the Petitioner and upon a full hearing, his objection was dismissed on the 16/12/2010.
 - v. The 1st Respondent being dissatisfied by the decision of the Land Adjudication Officer filed an Appeal to the 2nd Respondent on the 18th of January 2011.
 - vi. The Appeal to the 2nd Respondent was heard and the determination on the 19/10/2021 directed that the suit property be sub-divided into two portions thereof.
 - vii. The 1st Respondent is of the considered view that the Appeal to the 2nd Respondent was filed within the provided time frame of the *Land Adjudication Act*, Cap 284 and therefore the ruling issued on the 19/10/2021 was lawful and valid.
 5. The 2nd to 6th Respondents also opposed the Petition through the Grounds of Opposition dated 26th April 2023.
 6. The 2nd to 6th Respondents grounds for opposing the present Petition can be summarised as follows;-
 - i. The present Petition was incompetent, bad in law and offends the mandatory provisions of Section 29 (1) of the *Land Adjudication Act*, Cap 284 since the decision of the 2nd Respondent is final.
 - ii. The present Petition herein is seeking to challenge administrative decisions which ought to be challenged through judicial review proceedings as envisaged under Order 53 of the *Civil Procedure Rules*, 2010 as read together with Sections 7, 8, 9, 10, & 11 of the *Fair Administrative Action Act*, 2015.



- iii. The present Petition is full of falsehoods and gross misrepresentation since the Appeal to the 2nd Respondent was filed within the 60 days provided in law.
 - iv. The 2nd to 6th Respondent stated that the Petitioner did not have any rights after the decision of the 2nd Respondent and therefore no constitutional rights could be infringed as alleged.
 - v. In conclusion therefore, the 2nd to 6th Respondents sought for the present Petition to be dismissed.
7. The present Petition was then canvassed through written submissions by the parties herein.
 8. The Petitioner filed his submissions dated 7th July 2023, the 1st Respondent filed his on the 14th September 2023 while the 2nd to 6th Respondents filed theirs on 25th June 2023.
 9. The Honourable Court after perusing the pleadings and the submissions by the parties herein, the issues for determination can be outlined as follows;-
 1. Is the petitioner legal allowed to challenge the decision of the 2nd respondent through a constitutional petition?
 2. if affirmative, was the registration of the minister's appeal, the proceedings thereof and the subsequent ruling pronounced on the 19/10/2021 in compliance to the provisions of article 28,40,47 & 50 of the Kenyan constitution, 2010?
 3. Was the implementation of the decision of the 2nd respondent pronounced on the 19/10/2021 infringing on the petitioner's rights under section 28, 40, 47 & 50 of the Kenyan Constitution, 2010?
 4. Is the petitioner entitled to the prayers sought in the present petition?
 5. who bears the costs of the present petition?
 10. The Honourable Court having identified the above issues for determination, the same will now be discussed hereinbelow.

Issue No. 1- Can The Petitioner's Prayers Sought In The Present Petition Be Entertained Through A Constitutional Petition?

11. The first issue for determination is whether or not the prayers sought in the present Petition be entertained through a constitutional petition?
12. The 2nd to the 6th Respondents are of the view that the prayers sought in the present Petition does not raise any constitutional issues but rather should be addressed through Order 53 of the Civil Procedure Rules, 2010 dealing with Judicial Review remedies.
13. The 2nd to the 6th Respondents submit that the mere citation of various provisions of the Constitution is not enough to qualify the present Petition to be one of a constitutional nature.
14. The 2nd to the 6th Respondents state that the suit property never vested in the Petitioner as the issue of ownership was still under litigation and had not been concluded until the 19/10/2021.
15. In essence therefore, the 2nd to the 6th Respondents view was that the present Petition was an exercise to challenge the decision of the 2nd Respondent which was lawfully pronounced after the Petitioner was given an opportunity to be heard as envisaged by the Constitution of Kenya, 2010 as well as the provisions of the Fair Administrative Action Act, 2015.



16. The issue to be ascertained at this point is whether or not the Petitioner's remedies in the present Application can be entertained through a constitutional petition.
17. According to the Petitioner, the express provisions of Section 22 and 23 of the Constitution of Kenya as read with Article 47 and Fair Administration Action Act, 2015 resolved this issue.
18. The two cited authorities of Masai Mara (sopa) limited v Narok County Government (2016) eklr and mohammed sheria & 2 others v simon kipkorir sang & 5 others (2018) eklr which this honourable court fully associates itself confirms the legality of the prayers sought in the present petition.
19. This Honourable Court is of the view that where a Petitioner is able to establish a right under the Constitution which is either threatened and/or has been infringed in the course of a Statutory dispute resolution mechanism as that provided under the Land Adjudication Act, Cap 284, then such a Petitioner has a right to approach the Court for the relevant remedies to protect any right provided in our supreme law.
20. In essence therefore, the present Petition herein is legitimately and lawfully before this Honourable Court and can be entertained to its determination.

Issue No.2- If Affirmative, Was The Registration Of The Minister's Appeal, The Proceedings Thereof And The Subsequent Ruling Pronounced On The 19/10/2021 In Compliance To The Provisions Of Article 28,40,47 & 50 Of The Kenyan Constitution, 2010?

21. In this second issue, the Petitioner submits that the suit property was alienated to him by the Land Adjudication Officer.
22. The 1st Respondent being aggrieved by the decision of the Land Adjudication Officer to allocate the suit property to the Petitioner filed an objection No. 51 of which was heard on its merits and determined on the 16/12/2010.
23. Upon dismissal of the objection No. 51 on the 16/12/2010 by the Land Adjudication Officer, the 1st Respondent had a period of 60 days as provided under Section 30 of the Land Adjudication Act, Cap 284 to prefer an Appeal to the 2nd Respondent.
24. The Petitioner was of the position that the Appeal referred to the 2nd Respondent was filed out of time and any other proceedings therein were illegal, unconstitutional and/or interfered with his constitutional rights to own property under Article 40 of the Kenyan Constitution, 2010.
25. On the other hand, the 1st Respondent stated that the Appeal to the 2nd Respondent was filed on the 18th of January 2011.
26. Consequently therefore, the Appeal to the 2nd Respondent was filed within the 60 days allowed under the Land Adjudication Act, Cap 284 and the proceedings thereafter were legitimate and lawful.
27. However, the 1st Respondent failed to present receipt No. 202263 dated 18th January 2011 because thieves have broken into his home in the year 2015 and stole various items including the receipt No. 202263 dated 18th January 2011.
28. To confirm this incidence, the 1st Respondent filed a copy of an Abstract Report dated 25th of February 2015.
29. A perusal of the Appeal proceedings undertaken on the 19/10/2021 by the 2nd Respondent, there is no date which confirms when the Appeal was actually lodged by the 1st Respondent.



30. The 1st Respondent who lodged the said Appeal before the 2nd Respondent also did not provide the actual receipt dated 18th January 2011 but relied on the Abstract Report dated 25th of February 2015.
31. This Honourable Court is of the view that the date upon which the 1st Respondent filed the Appeal before the 2nd Respondent was very crucial to sustain the subsequent proceedings.
32. Even if the 1st Respondent had lost the original receipt dated 18th January 2011 in the alleged burglary of 25th February 2015, the 2nd Respondent within whose offices the 1st Respondent's Appeal was filed and received should have availed a certified copy or either the receipt dated 18th January, 2011 or a copy of the Memorandum of Appeal and/or Grounds of Appeal lodged on the 18th of January 2011.
33. The inaction by the 1st Respondent to prove this fact of filing the Appeal on the 18th January 2011 as provided by Section 107 of the [Evidence Act](#), Cap 80 clearly casts serious doubts on the filing of the Appeal on the 18th of January 2011.
34. This Honourable Court similarly has serious doubts as to the intent and veracity of the Abstract Report issued on the 25th of February 2015 with only the receipt dated 18th January 2011 being the only item lost in the entire burglary.
35. Be as it may, this Honourable Court is of the view that there is no evidence tabled by the 1st Respondent to pursue and/or confirm to this Honourable Court that indeed the Appeal to the 2nd Respondent was filed within the 60 days period provided in the [Land Adjudication Act](#), Cap 284.
36. This being the case therefore, the Adjudication Record of the Parcel No. 991 within ntulele "a" adjudication section was deemed to be finalised 60 days after the pronouncement of the Land Adjudication officer on the 16.12.2010.
37. The significance of the Adjudication Record under the [Land Adjudication Act](#), Cap 284 is to first and foremost identify the person on the ground with a legitimate right to be alienated land by the Government of Kenya.
38. Secondly, the Adjudication Record creates lawful beneficial rights to the person recorded as being entitled to the said land with a legitimate expectation that the registrable rights will ultimately be entered in his/her name after the survey process is complete and the 5th Respondent authorises the creation of the Green Cards and issuance of titles thereof.
39. In essence therefore, once the Adjudication Record was issued in favour of the Petitioner, it also created valid beneficial land rights which must be protected under Section 40 of the Kenyan Constitution, 2010.
40. It is also significant to point out that looking at a the Copy of the Official Search dated 20th March 2023 issued by the District Land Registrar, Transmara which is not in dispute, the suit property was actually registered in favour of the Petitioner on the 10/07/2011.
41. The issuance of this official search on the 20th of March 2023 reaffirms that not only was the Adjudication Record of the suit property deemed finalised in favour of the Petitioner but even the registrable rights were recorded through the opening of the Green Card and his name being entered therein as the bona fide beneficial and registered owner of the suit property.
42. In other words, any Appeal filed before the 2nd Respondent after the 60 days provided under the [Land Adjudication Act](#), Cap 284 is *ultra vires*, unconstitutional and infringed on the right of the Petitioner to own property as envisaged under Article 40 of the Kenyan [Constitution](#), 2010.



43. In other words, this Honourable Court is of the considered opinion that the proceedings before the 2nd Respondent were filed out of time and therefore infringed on the Petitioner's right to own property as spelt out in Article 40 of the Kenyan Constitution, 2010.

Issue No. 3- Will The Implementation Of The Decision By The 2nd Respondent Pronounced On The 19/10/2021 Infringe On The Petitioner's Rights Under Article 28, 40, 47 & 50 Of The Kenyan Constitution, 2010?

44. The next issue for determination is whether the Ruling of the 2nd Respondent would also infringe on the Petitioner's rights especially Article 40 and 50 of the *Kenyan Constitution*, 2010.

45. To be able to answer this question, it is important to first and foremost establish whether the Petitioner has rights which can be interfered with by way of an Appeal to the 2nd Respondent.

46. As earlier stated, the Petitioner's rights over the suit property are already registered under the *Land Registration Act*, No 3 of 2012.

47. The issuance of the official Search dated 20th of March 2023 by the District Land Registrar, Transmara confirms that the Adjudication process under the *Land Adjudication Act*, Cap 284 was finalised and the Petitioner's rights recorded under the *Land Registration Act*, No.3 of 2012.

48. According to the official search dated 20th March 2023, the Petitioner's registerable rights were duly entered in the Green Card created under the *Land Registration Act*, No. 3 of 2012 on the 10th of July 2011.

49. In other words, the Petitioner's legal and registrable rights over the suit property enjoy the protection of Section 26 *Land Registration Act*, No. 3 of 2011 with or without a restriction by the 5th Respondent.

50. As a result of the operation of Section 26 of the *Land Registration Act*, No.3 of 2011, the ownership rights by the Petitioner over the suit property can only be interfered with through the provisions of Section 80 of the *Land Registration Act*, No. 3 of 2011 which states as follows:-

“(1) Subject to subsection (2), the Court may order the rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake.

(2) The register shall not be rectified to affect the title of a proprietor, unless the proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by any act, neglect or default.”

51. In essence therefore, the decision of the 2nd Respondent and/or its subsequent implementation through alienating half of the suit property in favour of the 1st Respondent will affect, alter and/or interfere the Petitioner's ownership rights through an irregular quasi-judicial process will without no doubt infringe on the Petitioner's rights under Article 40 of the *Kenyan Constitution*, 2010.

52. It is important to state that the 2nd and 3rd Respondents in this Petition should be aware that the dispute resolution mechanisms provided under the *Land Adjudication Act*, Cap 284 must always be taken seriously and determined expeditiously.

53. It is completely unacceptable for a citizen to lodge an Appeal to the 2nd Respondent in the year 2011 and the same is heard and determined in the year 2021.



54. This is because once the Adjudication Record is finalised under the [Land Adjudication Act](#), Cap 284 and a Register is opened under the [Land Registration Act](#), No. 3 of 2012 as has happened in this Petition, then all those Appeals before the 2nd Respondent are deemed to have been overtaken by events and extinguished by operation of law.
55. Consequently, any decision by the 2nd Respondent based on an Appeal under the [Land Adjudication Act](#), Cap 284 after the 60 days period for filing an appeal has lapsed and/or the opening of a Land Register under [Land Registration Act](#), No. 3 of 2012 is not enforceable and any implementation of such a decision is contrary to the provisions of Section 80 of the [Land Registration Act](#), No. 3 of 2012.
56. Be as it may, the Petitioner herein has satisfied this Honourable Court that the decision of the 2nd Respondent pronounced on the 19th of October 2021 is unconstitutional and infringes on his rights as provided under Article 40 of the [Kenyan Constitution](#), 2010.

Issue No.4- Is The Petitioner Entitled To The Prayers Sought In The Present Petition?

57. The next issue is whether or not the Petitioner herein has proved infringement of his constitutional rights to warrant the issuance of the prayers sought in the present Petition.
58. This Honourable Court has indeed considered the constitutional issues contained in the present Petition and is satisfied that indeed the registration of the Appeal by the 1st Respondent before the 2nd Respondent was unconstitutional and the subsequent proceedings and determination infringed on his constitutional rights to Article 40 of the [Kenyan Constitution](#), 2010.
59. In essence therefore, the Petitioner herein is entitled to the prayers sought in this Petition.

Conclusion.

60. In conclusion therefore, this Honourable Court hereby makes the following Orders in determination of the Petition dated 23rd March 2023; -
 - a. A declaration be and is hereby issued to the effect that the 1st respondent's appeal no. 295 of 2011 before the 2nd respondent was filed out of time and therefore contravened the provisions article 50 of the [Constitution](#).
 - b. A declaration be and is hereby issued to the effect that the proceedings and determination of the 2nd respondent on the 19th of october 2021 was unconstitutional for infringing the petitioner's registered rights under section 26 the [Land Registration Act](#), no.3 of 2012.
 - c. A declaration be and is hereby issued that the subsequent implementation of the 2nd respondents determination on the 19th of october 2021 by the 3rd & 4th respondent is contrary to the provisions of section 80 of the [Land Registration Act](#), No.3 of 2012 and thereby infringes on the petitioner's constitutional right under article 40 of the [Kenyan Constitution](#), 2010.
 - d. A order of *ceriorari* be and is hereby issued bring into this honourable court and quashing the determination of the 2nd respondent made in respect of the minister's appeal no. 295 of 2011 relating to land reference no. Transmara/Ntulele "a"/14 between Michael Lebere Piride & Olonyori Lemashon Koinger directing that half of the said property to be alienated to the 1st respondent herein.
 - e. the costs of the petition with be borne by the respondents herein jointly and severally.



DATED, SIGNED & DELIVERED VIRTUALLY IN KILGORIS ELC COURT ON 14TH NOVEMBER 2023.

EMMANUEL.M.WASHE

JUDGE

In The Presence Of:

COURT ASSISTANT: MR. NGENO

Advocate For The Petitioner: Mr. Shira For Petitioner

Advocate For The Respondents: Ms. Osebe For 2Nd To 6Th Respondents

Mr. Kamwaro For 1St Respondent (n/a)

