



**Koyiet v Kereiya & 3 others (Environment & Land Petition  
20 of 2019) [2022] KEELC 3313 (KLR) (26 May 2022) (Ruling)**

Neutral citation: [2022] KEELC 3313 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAROK  
ENVIRONMENT & LAND PETITION 20 OF 2019**

**CG MBOGO, J**

**MAY 26, 2022**

**BETWEEN**

**MUMBI LESOIT KOYIET ..... PETITIONER**

**AND**

**LANCHOINE OLE KEREIYA ..... 1<sup>ST</sup> RESPONDENT**

**DISTRICT LAND ADJUDICATION & SETTLEMENT OFFICER,  
NAROK ..... 2<sup>ND</sup> RESPONDENT**

**LAND REGISTRAR NAROK ..... 3<sup>RD</sup> RESPONDENT**

**HON. ATTORNEY GENERAL ..... 4<sup>TH</sup> RESPONDENT**

**RULING**

1. The 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents filed Grounds of Opposition dated October 8, 2021 in opposition to the Petition dated July 2, 2019 on the following grounds: -
  1. That the Petition does not fulfil the requirements set out under article 165 (3) (d) of the Constitution of Kenya in that the said Petition does not state the alleged constitutional provisions violated and the acts or omissions complained of with reasonable precision.
  2. That the Petition is unmerited in that the petitioner ought to have instituted civil suit by way of a plaint in accordance with section 19 of the Civil Procedure Act and Order 3 of the Civil Procedure Rules considering that the competing claims over the suit properties have been disguised as a Constitutional Petition.
  3. That the suit is an abuse of the court process.
4. That based on the foregoing, the Petition is devoid of any merit and the orders sought should not be granted.



2. The petitioner filed a replying affidavit in opposition to the Grounds of Opposition sworn on February 9, 2022. The petitioner deposed that she has pleaded the constitutional provisions on which the petition is premised in and that the petition meets the tests laid down for pleading of petitions. She went on to depose that the constitutional provisions that have been violated and the precise manner of infringement have been specifically pleaded. The petitioner further deposed that a party is entitled to pursue the remedy that would be most efficacious in addressing the grievance which has been pleaded before the court and that it is not a principle of law that a constitutional petition cannot be filed where there is another remedy which the petitioner could have pursued.
3. The petitioner further deposed that the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents who are charged with protecting property rights of the citizens are the ones that perpetuated infringement and violation of her property rights and it was only fit and proper to approach this court for remedy through a constitutional petition and that a litigant has a right to file a constitutional petition whenever his or her rights are infringed as per article 20 (1) of the Constitution.
4. For clarity purposes and for the record, when the parties appeared before me on January 26, 2022, they agreed that the Grounds of Opposition dated October 8, 2021 and filed in court on 13<sup>th</sup> October, 2021 be treated a Notice of Preliminary Objection. Both parties agreed to dispose the same by way of written submissions.
5. The 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents filed written submissions dated March 3, 2022. The 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents raised two issues for determination namely: -
  - a. Whether the petition meets the threshold for a constitutional petition set out under article 165 (3) (d) of the Constitution; and
  - b. Whether the Petitioner ought to have instituted an ordinary suit.
6. The 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents submitted that article 165 (3) (d) of the Constitution clearly spells out issues that ought to be raised and determined in a petition. They relied on the case of Anarita Karimi Njeru versus Republic [1979] eKLR. They also submitted that the requirement for pleading with specificity and reasonable clarity was also underscored by the Court of Appeal in Mumo Matemu versus Trusted Society of Human Rights Alliance & 5 others [2013] eKLR. That in respect of the subject of the petition, other than making reference to Articles 40 and 50 of the Constitution, the petitioner has not supplied any particulars or clarification as to how her constitutional rights have been violated and or otherwise infringed upon by the respondents. That the petitioner has not sufficiently demonstrated a reasonable degree of precision, the contravention or infringement of her constitutional rights.
7. On the second issue the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents submitted that the prayers sought by the petitioner touch on issues of competing claims over land that ought to be conclusively determined in an ordinary suit by way of a plaint in accordance with section 19 of the Civil Procedure Act and Order 3 of the Civil Procedure Rules.
8. The petitioner filed written submissions dated March 4, 2022. On whether the petition has fulfilled the requirements as set out under article 165 (3) (d) of the Constitution, the petitioner submitted that the petition as drafted meets the test laid down for pleading as in the case of Anarita Karimi Njeru Versus Republic since the constitutional provisions that have been violated and the precise manner of infringement have been specifically pleaded in paragraph 8 of the petition and how those rights have been contravened and violated by the respondents therein. On whether the petition is unmerited, the petitioner submitted that courts have time and again held that a party is entitled to pursue the remedy



that would be most efficacious in addressing the grievance which has been pleaded before the court. As such the averments made by the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents are baseless and does not hold any water.

9. I have carefully analysed the Grounds of Opposition dated October 8, 2021 now referred to as a Notice of Preliminary Objection and the issue for determination is whether the petition ought to be filed in a civil suit as per Section 19 of the *Civil Procedure Act* and Order 3 of the Civil Procedure Rules.

10. Preliminary objections must be purely on points of law as was held in the case of *Mukisa Biscuit Manufacturing Co Ltd v West End Distributors* [1969] EA 696 in which it was held thus: -

“A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.”

11. In the case of *Joseph Kibowen Chemior v William C Kisera* [2013] eKLR the court extensively discussed filing of suits as follows:

“Under section 19 of the *Civil Procedure Act*, every suit shall be instituted in such manner as may be prescribed by rules. It will be observed that Section 19 does not pretend that the Civil Procedure Rules have a monopoly on how suits should be instituted. It provides that suits may be instituted in the manner prescribed by rules”.

12. On the enforcement of the Bill of Rights, article 22(1) of the *Constitution*, clearly provides that every person has the right to institute Court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed or is threatened.

13. The ingredients of a Constitutional Petition was clearly formulated in the case of *Anarita Karimi Njeru v Republic* (1979) eKLR where it was partly stated as follows: -

“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 a reasonable degree of precision that of which he complains, the provisions said to be infringed, and the manner in which they are alleged to be infringed.”

14. Similarly in the case of *Mumo Matemo v Trusted Society of Human Rights Alliance & 5 others* [2013] eKLR the court stated that: -

(42) 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. What Jessel, M.R said in 1876 in the case of *Thorpe v Holdsworth* (1876) 3 Ch D 637 at 639 holds true today:

“The whole object of pleadings is to bring the parties to an issue, and the meaning of the rules... was to prevent the issue being enlarged, which would prevent either party from knowing when the cause came on for trial, what the real point to be discussed and decided was. In fact, the whole meaning of the system is to narrow the parties to define issues, and thereby diminish expense and delay, especially as regards the amount of testimony required on either side at the hearing.”

- (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 1<sup>st</sup> 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 1<sup>st</sup> 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. In view of the substantive nature of these shortcomings, it was not enough for the superior court below to lament that the petition before it was not the “epitome of precise, comprehensive, or elegant drafting,” without requiring remedy by the 1<sup>st</sup> Respondent.”
15. It should be noted the case of *Anarita Karimi Njeru (supra)* has been relied upon from time and time again to demonstrate the threshold of a successful Constitutional Petition. It should be appreciated the requirements for a successful Constitutional Petition are simple and are thus: - the petitioner should set out the Constitutional provisions, which he believes have been violated or threatened, and the manner in which the respondent(s) have violated those provisions. It is not enough for the Petitioner to just list the Constitutional Provisions without demonstrating how they were infringed upon.
16. For this court to satisfy itself as to the whether the petitioner has fulfilled the requirements as stated above, the petitioner has outlined Article 40 and 50 (1) of the Constitution which she says have been violated. However, she has pointed out generally the wrongs she believed were committed to her without precision and not the manner in which it was done. In my view, the petitioner has not answered the ‘who’, ‘what’ and ‘why’ questions to meet the threshold for a Constitutional Petition. However, that is not to say all is lost, the petitioner may choose to amend the petition and or institute proceedings in a civil suit.
17. Arising from the above, Notice of Preliminary objection dated 8<sup>th</sup> October partially succeeds in terms of prayer 1. Costs to be in the cause. It is so ordered.

**DATED, SIGNED AND DELIVERED VIA EMAIL ON 26<sup>TH</sup> MAY, 2022.**

**MBOGO C.G**

**JUDGE**



26/5/2022

In the presence of: -

CA: Timothy Chuma

