



**Cheruiyot v Attorney General & 6 others (Environment & Land Petition
17 of 2020) [2022] KEELC 2974 (KLR) (17 May 2022) (Judgment)**

Neutral citation: [2022] KEELC 2974 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND PETITION 17 OF 2020**

EO OBAGA, J

MAY 17, 2022

**IN THE MATTER OF CONSTITUTIONAL PETITION LAWS OF KENYA
IN THE MATTER OF AN APPLICATION UNDER ARTICLE 27(1) (2) (3) (4)
AND (5) AND ARTICLE 43 (1) (B) (E) AND (F) AND SUB-ARTICLE (3) AND
ARTICLE 47(1) (2) AND (3) (A) (B) AND ARTICLE 48 OF THE
CONSTITUTION OF KENYA 2010 LAWS OF KENYA AND ALL OTHER
ENABLING PROVISIONS OF THE LAW**

AND

**IN THE MATTER OF ARTICLE 20, 21, 22, 27, 40 (1) (A) (B) (2) (A) (B) AND 47,
CONSTITUTION OF KENYA 2010 LAWS OF KENYA**

AND

**IN THE MATTER OF ENFORCEMENT OF THE APPLICATIONS OF
RIGHTS UNDER ARTICLE 40, 47, 50 CONSTITUTION OF KENYA 2010
LAWS OF KENYA**

BETWEEN

MIRIAM JELEGAT CHERUIYOT PETITIONER

AND

ATTORNEY GENERAL 1ST RESPONDENT

KOIBA EK SUB-COUNTY DEPUTY COMMISSIONER 2ND RESPONDENT

**DIRECTOR OF EDUCATION, ELDAMA RAVINE SUB-COUNTY
MANAGEMENT COMMITTEE 3RD RESPONDENT**

TRIPKATOI PRIMARY SCHOOL 4TH RESPONDENT



**CHAIRMAN TRIPKATOI, LAND DEMARCATION COMMITTEE 5TH
RESPONDENT**

LAND REGISTRAR KOIBATEK SUB-COUNTY 6TH RESPONDENT

LAND COMMISSION 7TH RESPONDENT

JUDGMENT

Background:

1. The history of this Petition can be traced to a huge parcel of land within Baringo County which was then under trust of the defunct Baringo County Council. The land was occupied by several people from the Lembus community. In or around 1997, Baringo County Council engaged services of surveyors and formed a plot allocation Committee which was to allocate the surveyed land to the occupants who were on the ground.
2. During the demarcation, the Petitioner's father Shadrack Cheruiyot Kipsui (Cheruiyot) was found to be occupying a portion which was earmarked for public school. As there was no any other land available which Cheruiyot could be given, the plot allocation Committee decided to allocate him a plot which was meant for the office of the District officer. Cheruiyot readily relocated to the new land and occupied it. When titles were processed in 2015, Cheruiyot got his title.
3. The land from which Cheruiyot relocated was given to Tripkatoi Primary School which proceeded to have title over it known as Lembus/Torongo/1015 (suit property) in the year 2015. In or around the year 2020, the Board of management of Tripkatoi Primary started putting up classrooms on the suit property. The Petitioner who had been a teacher and later on a board member of Tripkatoi Primary school and who was in possession of the suit property moved to court and filed the present Petition.

The Petitioner's contention

4. The Petitioner filed this petition in which she seeks the following reliefs:-
 1. An order be issued directing that the title deed issued to Tripkatoi primary school was illegally issued and was unconstitutional the same be revoked.
 2. A declaration that the Respondent's excessive power by arbitrarily ignoring the presence of the Petitioner in the suit land and proceeded to issue title deed continue committing the action of impunity with full swing to attack the Petitioners properties thus upon revoking the title deed the orders be issued directing the 6th respondent transfer and register the new title deed in favour of the petitioner/applicant.
 3. A declaration orders be issued that the 2nd and 3rd, 4th, 5th and 6th respondents willfully neglected their duty in failing to act as per the grievances of the petitioner/applicant.
 4. Damages against the respondent for abuse of office and irregularly allocation of land by the respondents targeting the petitioner's land.
 5. Costs of this petition be awarded to the petitioner.
5. The petitioner contends that she was a Squatter on the suit property and that during the demarcation process, the plot allocation committee discriminated her by not giving her the suit property as was the case with the other squatters. She states that when she went to pick her title in 2015, she found that



her name had been removed from those who were to benefit from allocation and that instead the suit property had been given to Triptakoi primary school which was established in 1974 and was about 1 or 2 kilometres away from the suit property.

6. The Petitioner states that she was born and brought up on the suit property and that when she became an adult, she put up a house on the suit property where she resides with her children. She states that she has complained to various authorities without success despite the local branch of the National Land Commission recommending that the suit property be allocated to her or that she be compensated.
7. The Applicant blames the plot allocation committee which she claims consisted of outsiders who were behind the removal of her name from the list of beneficiaries.

Respondents' contention

8. The Respondents contend that the Petitioner's petition is misconceived and does not raise any constitutional issues which were violated. The Respondents state that during demarcation process, the petitioner's father Cheruiyot happened to fall under land which had been earmarked for a public school. Cheruiyot was relocated to a plot which had been earmarked for the office of the District officer. Cheruiyot has since obtained title to the plot to which he relocated and that in addition, he has another parcel for which he too has a title. In total, Cheruiyot has about 16 acres from the two parcels.
9. The Respondents contend that the Petitioner is not being candid. The Petitioner was a board member of Triptakoi primary in 2015 when title was issued in favour of the school. The Respondents state that demarcation was being done based on households and that Cheruiyot's family who were found to be occupying land meant for a public school was re-located to one which was meant to house the District Officer. This is the land which was finally registered in Cheruiyot's name as Lembus/Torongo/965.
10. Though the National Land Commission was joined in this petition at the instance of the petitioner, there is neither evidence that the petition was amended to incorporate them nor evidence that they were served. For this reason, the National Land Commission did not file any pleadings.

Analysis

11. I have carefully considered the petition by the petitioner and the opposition to the same by the Respondents. I have also considered the submissions by the parties herein. This being a Constitutional petition, the only issues for determination are firstly, whether the Petitioner's Constitutional rights under Article 27, 40 and 47 were violated. Secondly, whether the Petitioner is entitled to the reliefs sought in the petition.

Article 27 of *the Constitution*

12. Article 27 of *the constitution* is titled "Equality and freedom from discrimination". Article 27(1) (2) and (3) of *the constitution* provides as follows:-
 - (1) Every person is equal before the law and has the right to equal protection and equal benefit of the law.
 - (2) Equality includes the full and equal enjoyment of all rights and fundamental freedoms.
 - (3) Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.
13. The petitioner contends that she was discriminated against on ground that she is a woman. She claims that her name was removed from the list of those who were to benefit from land allocation.



14. Black's Law Dictionary 10th Edition defines discrimination as follows:-

“Differential treatment; esp; a failure to treat all persons equally when no reasonable distinction can be found between those favoured and those not favoured.”

15. In the petition by the Petitioner specifically paragraph 9, the Petitioner concedes that demarcation was being done as per household. There is evidence in form of documents that it is the family of Cheruiyot father to the Petitioner who was found to be occupying the suit property. His family was relocated to the plot which was earmarked for the District Officer's office. This is the plot which became Lembus/Torongo/965.
16. The Petitioner states in paragraph 7 of the Petition that she was born and brought up on the suit property. As the Petitioner concedes that allocation was being done as per household, she cannot turn round and say that she was supposed to be allocated the suit property. The Petitioner's father having relocated from the suit property, the Petitioner has no basis of laying claim to the suit property in her own right. In a further affidavit sworn on 10th December, 2021, the Petitioner in paragraph 4 depones that her father never occupied the suit property during his entire lifetime. This is a contradiction of the averments in the petition. To demonstrate further that the Petitioner is not being candid, paragraph 2 of the supporting affidavit to the application for injunction is categorical that she was brought up by her parents on the suit property and that when she became a grown up, she put up a home where she lives with her children. It is therefore ironical when she later on claims that her father never lived on the suit property during his lifetime.
17. In her own pleadings, the Petitioner states that she was born in 1965 on the suit property. As at 1997 when demarcation started, she was 32 years old. In her supplementary affidavit sworn on 1st February, 2021, she depones that she was a teacher at Tiriptakoi primary between 1989 and 1992. Between 1997 to 2000 she was a board member. It is therefore clear that she was aware about the ownership of the suit property and she was trying to take advantage of the fact that her family used to reside there before relocation to try to lay claim to the suit property. There is therefore no basis upon which I can find that the Petitioner was discriminated. The Petitioner clearly stated in her petition that allocation was based on household yet in paragraph 9 of her further affidavit sworn on 10th December 2021, she claims that the Respondents are alleging that allocation was based on household as a cover up for the issue of discrimination. There was no discrimination against the Petitioner at all.

Article 40 1(a) and (b) 2(a) and (b)

18. Article 40 of the Constitution is titled “Protection of right to Property” article 40 1(a) and (b) 2(a) and (b) of the Constitution provides as follows;

- “(1) Subject to Article 65, every person has the right, either individually or in association with others, to acquire and own property--
- (a) of any description; and (b) in any part of Kenya.
- (2) Parliament shall not enact a law that permits the State or any person--
- (a) to arbitrarily deprive a person of property of any description or of any interest in, or right over, any property of any description; or



- (b) to limit, or in any way restrict the enjoyment of any right under this Article on the basis of any of the grounds specified or contemplated in Article 27 (4).”

19. While dealing with Article 27 of *the Constitution*, I have demonstrated in detail that the Petitioner was not entitled to the suit property, her family having been relocated to land which became L.R No.Lembus/Torongo/965. This being the case, the Petitioner’s right to own property or not to be discriminated on ground of sex were not violated. There is absolutely no evidence to support any violation of the Petitioner’s right to own property let alone the alleged discrimination. The letter from National Land Commission, Baringo County dated 24th September, 2020 was procured in preparation for filing of this Petition. How could the local coordinator of National Land Commission recommend that the Petitioner be compensated or be allowed to settle on public land when there is clear evidence that her family was given alternative land elsewhere?

Article 47 of *the Constitution*

20. Article 47 of *the Constitution* is titled “Fair Administrative action.” Article 47(1) of *the Constitution* provides as follows;

- “ 1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.”

21. The Petitioner did not state in which manner her rights under Article 47 of *the Constitution* were violated. In the case of *Anarita Karimi Njeru Vs. The Republic* {1976-1980}KLR 1272 Trevelyn and Hancox JJ (as they then were) 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”

22. The Petitioner has not stated which body violated her rights under this Article or the manner in which the alleged violation occurred. When there were complaints, the officers concerned such as the District Commissioner convened meetings and those grievances were addressed. There were minutes of such meetings and their resolutions were captured as confirmed by the affidavits of the local chief. The Petitioner cannot therefore allege in passing that her rights under Article 47 of *the Constitution* were violated without saying how that was done.

23. On the issue of whether the Petitioner is entitled to the reliefs sought, the analysis herein above is clear that there was no violation of the Petitioner’s right either under Article 27, 40 or 47 of *the Constitution*. The suit property is public property. The title was obtained by the school while the Petitioner was a member of the board of management in 2015. It therefore, follows that none of the reliefs which the Petitioner prays for can be granted.

Disposition

24. It is clear from the above analysis that the Petitioner’s Petition is devoid of merit. The Petition is dismissed with costs to the Respondents.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 17TH DAY OF MAY, 2022.



E. OBAGA

JUDGE

In the virtual presence of;

Ms. Kibet for Mr. Kibii for Petitioner

Ms. Cheruiyot for Respondents.

Court Assistant –Albert

E. OBAGA

JUDGE

17TH MAY, 2022

