



M’Igweta v Land Registrar – Meru & 2 others; Kathurima & another (Interested Parties) (Environment & Land Petition E002 of 2020) [2022] KEELC 2190 (KLR) (11 May 2022) (Judgment)

Neutral citation: [2022] KEELC 2190 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND PETITION E002 OF 2020**

CK NZILI, J

MAY 11, 2022

BETWEEN

JOYCE KARUTHU M’IGWETA PETITIONER

AND

LAND REGISTRAR – MERU 1ST RESPONDENT

COUNTY SURVEYOR – MERU NATIONAL GOVERNMENT 2ND RESPONDENT

ATTORNEY GENERAL 3RD RESPONDENT

AND

PASKWALINA KARIMI KATHURIMA INTERESTED PARTY

HENRY THURANIRA IGWETA INTERESTED PARTY

JUDGMENT

A. The Petition

1. By a petition dated September 11, 2020 brought under article 22, 23 & 40 of *the Constitution* and Section 26A, 27, 28 & 29 of the *Land Adjudication Act* Cap 284, The *Land Consolidation Act* Section 24, 25 & 26 of the *Land Registration Act* and Section 7 of *Land Act*. The petitioners averred she was allotted Parcel No 424 Kiirua Nkando Adjudication Section measuring 60 acres or thereby but the Land Adjudication And Settlement Officer Meru Central District in 1993 conspired with a third party and subdivided the petitioner’s land into two portions namely PN 424 and 2091 and fraudulently or illegally issued the same to an unknown third party.
2. Following the above, the petitioner successfully appealed against the decision to the Minister for Lands in Appeal Case No 17 of 1993 in which the Minister on July 5, 1995 ordered the alleged subdivisions to



revert back under her name as Parcel No 424. She averred that the District Surveyor Meru was ordered to implement the aforesaid decision by combining the two parcels both on the ground and through amendments of the registry index maps and thereafter forward the amended prints to the Director of Adjudication and Settlement for registration.

3. The petitioner averred that the 1st and 2nd interested party conspired with the Land Adjudication and Settlement Officer to illegally and fraudulently further subdivide her Parcel No 424 into parcel no's 3693 and 3682 which were unlawfully awarded to them and were currently registered as LR No Kiirua/Kiirua/Nkando/424, 3683 and 3682 in her favour and the 1st and 2nd interested parties respectively contrary to the Minister's decision aforementioned.
4. Further petitioner averred that the 1^s and 2nd respondents have declined to implement the Minister's decision which has defeated her constitutional rights as enshrined under Articles 40, 47 and 60 of *the Constitution*.
5. The petitioner averred she had initially filed Meru CMCC No 236 of 2018 which was struck out. She sought for declaratory orders that the respondents actions or decisions relating to her land were irregular, fraudulent, irrational, arbitrary, wrongful and unconstitutional; that the whole of LR No Kiirua/Kiirua-Nkando 424, 3683, 3682 and 2091 measuring 60 acres belongs to her; order of mandamus compelling the 1st respondent to cancel the titles no. LR 424/3863 and 3682 in her name and 1st and 2nd interested parties, order of mandamus compelling the 1st and 2nd respondent to implement the Ministers Appeal decision in File No 19 of 1993 and to consolidate LR Kiirua/Kiirua-Nkando 424, 3683, 3682 and 2091 to the original Parcel No 424 measuring 60 acres and register the same under her name.
6. The petition was supported by; a ruling in chief magistrates ELC Case No 236 of 2018 delivered on June 25, 2020, supporting affidavit of Joyce Karuthu M'Igweta sworn on September 11, 2020 annexing a letter dated 27.4.2002 from the Director of Land Adjudication and Settlement, letter dated 1.8.2002 from the Director of Land and Settlement to her, sketch map, title deeds for LR No 424, 3683 official search for LR 3683 and a letter dated 19.8.2020 from County Surveyor Meru to the petitioner marked as annexures JKM 1-7 respectively. The petition was also supported by a supplementary affidavit sworn on May 24, 2021.

B. Grounds of Opposition

7. The petition was opposed by the respondents through grounds of opposition dated January 7, 2022 and the 1st interested party's replying affidavit sworn on March 3, 2021.
8. The respondents averred the petition offended Sections 26, 27 & 28 of the *Land Adjudication Act* Sections 16 (2), 26, 85 (2) of the *Land Registration Act*, Sections 11 of the *Oaths and Statutory Declaration Act* and lastly Articles 47, 40 and 50 of *the Constitution*.
9. On the part of the 1st interested party the LR No Kiirua/Kiirua-Nkando 3682 was initially registered under her late husband's name which the 2nd interested party was in the names of Henry Thurania Igweta both of whom are sons of the petitioner who was her mother in law and is also the registered owner of LR No 424 and 2091 respectively.
10. She averred that LR No 2091 had objection proceedings where as a family they lost the land to Festus Kibiti Kiriinya and Lawrence Nteere Kiriinya who got registered as owners after they appealed against the decision and the land reverted to the family to be shared among them, but only the petitioner was able to get the title deed.



11. It was averred before the appeal was determined the petitioner had authorized the land adjudication officer to subdivide and share out Parcel No 424 between her two sons as per instructions letter produced and marked as PKK “1” that after a family meeting each of the sons was to get ten acres with the petitioner remaining with 12 acres. In Land Registration No 2091 which was to remain as the owner holding the same in trust of her other children who were minors. Further she averred in line with an agreement which was in place and was brought to the Minister’s notice, It was eventually affirmed in the minister’s ruling.
12. The 1st interested party averred the petitioner was lying under oath yet she was the author of the same directives and a beneficiary, more so when in Meru CMCC No 236 of 2018, she swore an affidavit dated October 22, 2018 affirming the correctness of the plaint but was now in paragraphs 13, 14 and 16 of the petition stating otherwise which amounted to perjury.
13. The 1st interested party averred unknown to the family the petitioner approached a land adjudication and settlement officer who purported to implement the Minister’s decision in a manner contrary to the decision itself as contained in the letter dated April 17, 2002.
14. It was averred that the purported new directives were done in collusion with the petitioner and formed the basis of the petition herein hence urged the court to be guided by the Minister’s order as annexed as PKK “1” and not the letter annexed as JKM “1” to the petition, which Minister’s order was implemented by the District Surveyor and confirmed in the letter dated August 1, 2002 annexed as JKM “2”.
15. The 1st interested party averred that the register for the adjudication was declared complete and published for all people to inspect and object.
16. Further, the 1st interested party averred that title deeds were issued, her late husband collected his in 2014 but died in 2016 she averred that she took a confirmation of grant in Meru CMCC No Succession Cause No 1 of 2017 as per the attached grant marked as PKK “4” which angered the petitioner and started laying claim to her land leading to a meeting before the area chief by the entire family where she was ordered to vacate the land as per the annexed minutes marked as PKK “8”.
17. The 1st interested party averred that the petition and Meru CMCC No 2366 of 2018 was aimed at ensuring that she did not inherit her late husband’s estate yet she was the one who had given out the land to the interested parties having agreed to the distribution earlier on, in accordance with African customary law.
18. It was averred the petition was a hatched plan by the petitioner and the 2nd interested party to pressurize her to surrender her title deed on the pretext that the Minister’s decision was not implemented with a promise to get a larger share by filing all manner of cases to cripple her financially, file inhibitions to make her incur legal costs and bills; especially coming only after her husband had passed on.

C. Court Directives

19. On March 21, 2021, the court directed the parties to file and serve any responses and written submissions to the petition within 30 days from that date. The 1st interested party relied on written submissions dated January 14, 2022, while the rest of the parties failed to comply.

D. Written submissions

20. The 1st interested party submitted that the court lacks jurisdiction to entertain the petition since the subdivisions were allowed by the District Land Adjudication and Settlement Officer, eliciting no



objection from the petitioner following which the register was declared complete. It was submitted the failure to follow the laid down mechanisms under Section 18 (1) Land Consolidation Act Cap 283 was fatal as held in *Martha Kigen v Johana Tibino* [2014] eKLR, as cited with approval in *Republic v Tigania East District Land Adjudication and Settlement officer and another; Joseph Mathita Ikirima exparte Solomon Mworio Samuel* [2020] eKLR and *Reuben Mwongera M’Itelekwa v Paul Kigea Nabea & 2 others* [2019] eKLR.

21. On the issue of fraud and collusion, the court was urged to be guided by *Mutsonga v Nyati* [1984] KLR, 426.
22. Additionally, the 1st interested party submitted that the petition had not indicated with precision which petitioners right had been infringed hence was a waste of courts time and a calculated move to frustrate the 1st interested party.
23. On 10.2.2022, the petitioner’s advocate on record Mr. Orimbo informed the court he had filed a notice to withdraw the petition dated 8.2.2022 which had not served upon the 2nd interested party.
24. Mr. Kieti, senior litigation counsel confirmed that the petitioner had engaged them on the issue of withdrawal while Mr. Mwirigi advocate for the 1st interested party stated they had no objection to the withdrawal of the petitioner but insisted on costs.
25. The court reserved the ruling on the withdrawal since the matter was already due for judgment on October 27, 2021.

E. Issues for Determination

26. Having gone through the pleadings, grounds of opposition and written submissions, the issues commending themselves for my determination are:-
 - i. If the petition meets the threshold of a constitutional petition.
 - ii. If the petitioner ought to have resorted to the internal dispute mechanism under the relevant statute
 - iii. If the petitioner has pleaded and proved the alleged breach of her constitutional rights to warrant the prayers sought.
 - iv. If the petitioner can withdraw a petition at the tail end of an impending determination on the merits and demerits thereof.
 - v. What is the order as to costs.
27. A party seeking for the enforcement of constitutional rights and freedoms is required to file a constitutional petition in line with the Constitution of Kenya (Protection of Rights and Fundamental Freedoms (Practice and Procedure Rules 2013, by indicating the capacity, nature of rights and freedoms breached, nature of injuries, loss and damage, reliefs sought and any civil or criminal cases pending or otherwise.
28. Similarly, a party is required under the law to plead with precision and specificity the nature of the constitutional controversy or questions at hand. See *Anarita Karimi Njeru v Republic* [1979] eKLR, *Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others* [2013] eKLR.
29. In this petition, the petitioner has invoked both her constitutional and statutory rights allegedly infringed by the respondents as regards her rights to land, fair administrative action, information and fair hearing, as per Article 35, 40, 47, 48, 50, 60, 68, 64 and 159 of the Constitution. She has given



particulars of the facts and injuries suffered and the specific reliefs she requires as regards the manner in which the respondents have failed to implement a decision in Minister's Appeal Case No 19 of 1993 over parcel No 424 and 2019 and the resultant subdivisions of the suit land. I find the petition raises constitutional questions for this court's determination.

30. As to whether the petitioner should have resorted to the internal mechanism set out by statutes the without resorting to a constitutional court. The petitioner's complaint is that a Minister's Appeal Case No 17 of 1993 regarding Parcel No 424 and 2091 Kiirua/Nkando adjudication section was duly communicated for action to the respondents as per the letter dated 17.4.2002 and required that parcel no 2091 revert back to the original no 424 and be registered under her and was to apportion the said original Parcel No 424 between herself and her sons.
31. Further she averred the effect of the letter was that Parcel No 2091 was to be combined with Parcel No 424 both on the ground and on the Registry Index Map and the amended prints were supposed to be forwarded to the Director of Land Adjudication and Settlement Nairobi for registration.
32. According to the petitioner, her land ought to have been 60 acres if the Minister's appeal had been implemented.
33. By a letter dated August 19, 2020 addressed to her, the 2nd respondent stated that they could not implement the Minister's order since by the time it was communicated to them, Parcel No 424 had allegedly mutated into 3 parcels of land and title deeds issued namely LR No's 424, 3682 and 3683 whose authenticity or originality, the said office could not establish.
34. The petitioner therefore averred that out of the said letter it was quite evident that the respondents have been reluctant and hesitant to carry out a statutory duty whose outcome has resulted to the denial or infringement of her constitutional rights and freedoms as pleaded.
35. The respondents were duly served with the petition including its factual basis as well as the annexures marked JK 1-7.
36. The respondents have not denied the facts as pleaded and affirmed by the petitioner.
37. The respondents have not denied that the letters attached thereto emanate from their good offices. There was a specific issue raised as to non-implementation of the Minister's decision by the County Surveyor through a letter dated August 19, 2020. That office is the 2nd respondent in this petition.
38. The said 2nd respondent together with the land registrar have not seen it fit to either deny or clarify the factual basis of this petition yet the back stops with them to set out the correct official position on land ownership documents held in their office and in particular the failure to implement the Minister's order.
39. In *Wareham t/a A.F Wareham & 2 others vs Kenya Post Office Savings Bank* [2004] 2 KLR 91 the court held that in our adversarial system of litigation, cases are determined on the basis of pleadings made, the issue of fact or law framed by the parties and that in discharging the burden of proof, it was only the evidence to be adduced on the existence or non-existence of the facts in issue or facts relevant to the issue.
40. The questions raised in the petition are whether there was a Minister's decision and orders and if the same was implemented or not, if not so, what the reasons were given to the petitioner; if the reasons are constitutional or not and lastly if the non-implementation of the same has infringed the rights and freedoms of the petitioner.



41. Section 100 of the [Evidence Act](#), provides that when the language used in a document is plain and it applies accurately to existing facts, evidence may not be given to show that it was not meant to apply to such facts.
42. The interested party has attempted to answer the petition for and on behalf of the respondents to an extent of saying that the petitioner was colluding with some officers of the respondents to purport to distort the minister's order. Unfortunately, the constitutional and the statutory duty regarding the matters raised herein rest with the respondents. It is only the respondents who can contradict, deny or explain out the reasons why they have not implemented the Minister's order, and or why they have not been able to implement the decision.
43. The issue at hand is whether or not a minister's appeal outcome was implemented. Once the party has filed a minister's appeal the next port of call under the both the [Land Adjudication Act](#) and the [Land Consolidation Act](#) is the court.
44. In this instance, the issues raised touching on the [Fair Administrative Action Act](#) and the implications of not implementing the Minister's order within reasonable time or at all by the respondents.
45. My finding is that the petitioner had already exhausted the internal dispute mechanism under the relevant statutes hence was properly before the court.
46. There is no dispute the petitioner is entitled to fair hearing, access to justice and fair administrative action, with regard to the right to property under the internal mechanism set out both under the [Land Consolidation Act](#) Cap 283 and [Land Adjudication Act](#) Cap 284.
47. In this instance, the petitioner has raised constitutional issues of breach of her rights as to property with regard to the minister's decision made and communicated to the respondents for implementation and which she avers has not been implemented at all.
48. The 2nd respondent letter dated 19.8.2020, leaves the petitioner with no other options but to come to this court so that the court can determine the constitutionality or otherwise of the impugned acts of the respondents in line with Article 47 of [the Constitution](#) as read together with the [Fair Administrative Actions Act](#).
49. No good reasons or explanation has been offered by the respondents why there has been a delay in the implementing of the Minister's order duly communicated through the letter dated April 17, 2002, following which delay or inaction subdivisions occurred and title deeds registered and issued regarding parcels No 424, 2091, 3682 and 3683.
50. Consequently, my finding is that there are no good reasons why the respondents have failed to act on time or at all.
51. In the premises I find the petitioner as pleaded and proved breach of her rights as to property, fair hearing and fair administrative action by the respondents herein.
52. I proceed to grant prayers no. (a), (c) and (d). There will be no order as to costs.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT THIS 11TH DAY OF MAY, 2022

In presence of:

Orimbo for petitioner

Mwirigi for 1st interested party



HON. C.K. NZILI
ELC JUDGE

