



**Kibuye & 2 others v Arunga & 3 others (Environment & Land Petition
12 of 2021) [2022] KEELC 2996 (KLR) (22 June 2022) (Ruling)**

Neutral citation: [2022] KEELC 2996 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY
ENVIRONMENT & LAND PETITION 12 OF 2021
GMA ONGONDO, J
JUNE 22, 2022
(FORMERLY MIGORI ELC APPEAL NO. 2 OF 2020)**

BETWEEN

**ISAAC MAURICE KIBUYE 1ST PETITIONER
BEATRICE ATIENO OCHIENG 2ND PETITIONER
ISAIAH AGWENGE ODERA 3RD PETITIONER**

AND

**ROBERT ARUNGA 1ST RESPONDENT
GEORGE KIDENDA 2ND RESPONDENT
LAND REGISTRAR RACHUONYO DISTRICT 3RD RESPONDENT
ATTORNEY GENERAL 4TH RESPONDENT**

RULING

1. The instant petition is set for judgment today further to this Honourable court's orders and directions given on 9th May 2022. However, this ruling is rendered in lieu of the expected judgment for reasons stated herein-below in the best interest of justice.
2. In the petition dated 18th September 2017 and filed in court on 19th September 2017, the petitioners through the firm of O.P Ngoge and Company Advocates, sought various orders including prohibition and mandamus orders. The same are noted accordingly.
3. The 1st and 2nd respondents who are represented by the firm of Odondi Awino and Company Advocates, opposed the petition by grounds of opposition dated 18th October 2019. The grounds include that no cause of action has been disclosed against the 1st and 2nd respondents.



4. The 1st, 2nd and 3rd petitioners filed further affidavits of 17 paragraphs, 18 paragraphs and 12 paragraphs respectively, all sworn on 13th November 2019.
5. On 16th February 2022, Ms Sarrah Juma, Litigation Counsel for the Honourable Attorney General sought the indulgence of this court to respond to the petition. She prayed thus;

“I seek indulgence to file and serve reply and submissions herein.....”
6. By a notice of motion dated 2nd December 2019 (the motion herein), the 1st and 2nd respondents sought orders including that the Land Registrar and County Surveyor Rachuonyo North, East and South to ascertain and determine the existing boundaries of the suit parcels of land, LR Nos. Kasipul/Kodera Karabach/765,679,917,715,774 and West Kasipul/Kokal/167. Indeed, interim preservation orders given on 19th December 2019 determined the said motion.
7. It is noted that on 24th November 2021, this Court directed, inter alia;
 - a. The parties were encouraged to embrace alternative methods of dispute resolution in this matter pursuant to Articles 60 (1) (g) and 159 (2) (b) of *the Constitution* of Kenya, 2010.
 - b. The petition be heard by way of written submissions.
8. Consequently, learned counsel for the petitioners filed submissions dated 15th December 2022 together with a list of authorities while the 1st and 2nd respondents’ counsel filed submissions dated 11th January 2022 on 20th January 2022. I also note the petitioners’ further submissions dated 31st January 2022 together with a list of authorities.
9. Interestingly, I have come across the 3rd and 4th respondents’ preliminary objection dated 26th April 2018 filed on even date to the effect that this Honourable court lacks jurisdiction to hear and determine this dispute. Thus, I subscribe to the decision in *Kakuta Maimai Hamisi-vs-Peris Pesi Tobiko and 2 others* (2013) eKLR, as regards a preliminary objection.
10. In the upshot, the court hereby orders and directs as follows;
 - a. The preliminary objection dated 26th April 2018 to take precedence and be heard on priority over all other issues in this petition.
 - b. The petition is fixed for directions on 6th October 2022.
 - c. The petitioners’ counsel to serve the 3rd and 4th respondents’ counsel accordingly.
11. Orders accordingly.

G.M.A ONG’ONDO

JUDGE

DELIVERED, DATED AND SIGNED AT HOMA-BAY THIS 22ND DAY OF JUNE 2022.

G.M.A ONG’ONDO

JUDGE

Present

1. Mr Ngoge, learned counsel for the petitioners
2. Mr. Odondi Awino, learned counsel for the 1st and 2nd respondents



3. Okello, Court Assistant

