



**Sorcha v Muhidin & 3 others (Environment & Land Case
009 of 2021) [2022] KEELC 2991 (KLR) (20 June 2022) (Judgment)**

Neutral citation: [2022] KEELC 2991 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ISIOLO
ENVIRONMENT & LAND CASE 009 OF 2021
PM NJOROGE, J
JUNE 20, 2022
IN THE MATTER OF SECTION 38 OF THE LIMITATION
OF ACTIONS ACT (CAP 22 LAWS OF KENYA)**

BETWEEN

ALI GUYO SORCHA PETITIONER

AND

NOOR MUHIDIN 1ST RESPONDENT

COUNTY GOVERNMENT OF MARSABIT 2ND RESPONDENT

LAND REGISTRAR, MARSABIT/ISIOLO 3RD RESPONDENT

ATTORNEY GENERAL 4TH RESPONDENT

JUDGMENT

1. This petition is dated 17th September 2015 and was filed on 22nd September 2015. Over the years, it has been handled by three judges, and for one of the judges he has handled it twice in two different stations. Although the Petition was filed in Meru, it was transferred to Isiolo at the end of 2021 when an Environment and Land Court was established at Isiolo.
2. In my view, Petitioners are suits that are capable of being heard expeditiously because when a petition is filed all the issues are already delineated. Upon service, respondents have all the issues which they need to respond to. It is, therefore, reprehensible that a petition can take seven years to be heard and determined.
3. A cursory examination shows that this petition has been heard in court for mentions or for other reasons at least twenty-five times. In most of those times, some of the parties have absented themselves from court attendance.



4. When court directions were given for the parties to file and exchange their written submissions, it took the patience of the court for even the Petitioner to file and exchange written submissions. In the case of all the respondents inspite of goading, cajoling and extreme patience by the court, all the respondents refused and or failed to file and exchange their written submissions. What can a court of law do in these circumstances? I opine that extreme indolence must attract consequences. The sword of justice cuts both ways. A petitioner and respondents must be accorded equal treatment by courts of law. Somehow, litigation must come to an end. Hence the genesis and decision of this court to deliver its judgement.
5. In this petition, orders are sought that:
 - a. A declaration that the respondents actions of taking away the Petitioners Land Parcel No.7 (sic) 47(Now subdivide (sic) into (126 and 127) was irregular unlawful and null and void abinitio.
 - b. An order directing the 2nd and 3rd respondents to revert plot No.127 back to the Petitioner.
 - c. An order directing the 2nd, 3rd and 4th respondents to compensation (sic) the petitioner in respect of Plot No 126 which is being used as a slaughter house at the present market value.
 - d. An order quashing the proceedings and decision of the purported committee on Land allegedly given in 1998.
 - e. A mandatory permanent injunction restraining the 1st and 2nd respondents, his agents, assignees from entering, encroaching and or in any way interfering with the quiet possession of the plaintiff (sic) plot No.127 Marsabit Town.
6. Only the petitioner has filed and served written submissions. In view of the fact that the respondents have refused or failed to file and exchange their written submissions, of course denying me a template against which I can juxtapose the petitioner's assertions, I hereby find it necessary to reproduce the petitioner's written submissions in full here below.

Petitioner's Submission In Respect Of The Main Petition Filed In Court On 22.9.2015 (exactly As Filed Without Erasure Or Any Change)

Backdrop of the petition

7. The petitioner filed this petition on 22nd September 2015, against the respondent and served all. The petitioner alleged contravention of the right to own and enjoy property under Article 40 of [*the Constitution*](#) of Kenya by the respondents.

a.Short Summary of petitioner's case

8. The petitioner contends that in the year 1972 the now defunct Marsabit County Council M.C.C vide minute number 2/72. Ref.No.M.C.C.8/08/197 allocated 4.46 Acres at allocation called JIRME within Marsabit Town.
9. The petitioner took possession, occupied the land and started cultivation with his family of eight children. That the petitioner continued to pay all the rates and rents as per law established without failure.
10. That sometimes in the year 1995 the petitioner realized that part of the particularly 2 acres had been curved away by the County Council of Marsabit to establish a slaughter house. It's the contention of the petitioner that the decision of the 2nd respondent to curve out 2 acres to establish a slaughter house was unlawful in that: -



- a. The petitioner was not informed.
 - b. He was not heard.
 - c. It was done behind his back.
11. That, a further inquiry from the 2nd Respondent office revealed that the original Plot No.747 Marsabit Town (Jirme area) was without the knowledge of the petitioner or any member of the family subdivided into two i.e. Plot 126 and 127 respectively and move surprisingly Plot No.126 reserved for the slaughter house while Plot No.127 was allegedly Re-allocated to the 1st Respondent herein; without the petitioners knowledge or consultation despite the fact that this is the only place the petitioner calls his home for over a period over 43 years.
 12. The petitioner despite attempts to have answers and or have issue resolved, reported to various offices, including the office of the Clerk to M.C.C. the district officer Marsabit Central Division. The land Adjudication office Marsabit. The C.I.D Marsabit did carry out investigation and the D.C.I.O found an opinion that an offence of making a false document would have been committed with intent to defraud or to deceive contrary to Section 345 of the penal code.
 13. The petitioner further discovered that in the year 1998, the 1st respondent in cahoots with the then county council of Marsabit through its town and market committee, purported to conduct some "mock proceeding" purporting to exercise powers Under Section 26 of the Land Adjudication CAP 284 of the Laws of Kenya and came out with a decision awarding Land Parcel No.127 to the 1st respondent albeit fraudulently: (I refer to Paragraph 14 of the Petitioner petition)

b. Is there evidence of petitioners allegations?

14. Contemporaneously with the filing of this petition, the petitioner filed an application dated 17th September 2015 which was heard and determined annexed the following documents to the application which form the basis of the petitioner's case:
 1. Letter dated 8th August 1972.
 2. Bundle of the receipts for payment of rates.
 3. Letter dated 26.3.2012 by the director of criminal investigations.
 4. Letter by District Officer Marsabit Central to the clerk Marsabit County Council.
 5. Letter by the District Land Adjudication officer in charge of Marsabit stating who is in occupation of plot.
 6. Proceedings allegedly conducted Under Section 26 of the Land Adjudication Office.
 7. Purported power of Attorney to one Mohammed Dide Guyo.
 8. Advertisement for sale.

Analysis of petitioner's evidence of record

- i. Letter Dated 8th August 1972



15. This letter dated 8th August 1972 is addressed to the petitioner Ali Guyo Sorchar. It's written by clerk to council Marsabit Town County Council. It reads in part: -

“This is to certify that you have been allocated a shamba by Marsabit County Council Under minute No.2/73”

the same is signed by the writer and certified as true copy of the original of the county council and by District Land Adjudication office Marsabit. That under the former Trust Land Act, the local County councils used to be entrusted with lands for purposes of allocated to applying.

ii. Receipts

There are 3 receipts namely; -

- a. Dated 1/9/1980 for fees of Kshs.16.00/=
 - b. Dated 1/9/1979 for Kshs. 15.00/=
 - c. Dated 31/7/1984 for Kshs. 100/=
17. Unclosely these are fees which were chargeable then as rates. These receipts bank the position that indeed the Land Parcel No.747 was allocated to the petitioner without official receipts; the claim by the petitioner would be unsupported.

iii. Letter By D.c.i.o Marsabit Dated 26.3.2012

18. The author of the letter is District Criminal Investigation Officer Marsabit County. It's addressed to the Director of Land Adjudication Office Nairobi.

The letter records in part; -

“This office is investigating a case of making of a false document with intent to defraud or deceive contrary to Section 345 of the Penal Code.

I understand that the suspect Mr Noor Muhidinis in the process of acquiring a title deed for Plot No.127 Jirne Adjudication Section Marsabit through forged documents.

I therefore request that you hold the issuance of the said title until we finalized our investigations to resolve the issue.

19. Consequently, the District Land Adjudication Officer does “a ground visit” and states in the letters dated 15/12/2009; -

“The plot is occupied and developed by the family of Ali Guyo Sorcha” 1 month from the date hereof, you will be notified of the progress of the case in the near future. I enclose the relevant copies of documents marked B-1 to B-6.

20. The title deed was issued to the 1st defendant on 30/10/2013, a few months after the DCIO Marsabit wrote a letter aforementioned.

At this juncture a few questions linger in mind: -

- a. Why would the ministry go ahead and issue a title deed despite the warning by a top Marsabit government spy/cop?



- b. In the circumstances will the title stand the test of scrutiny and validity?

(iv) Letter Dated 7/3/2011 & One Dated 15th December 2009

21. These two letters provide background information pre-existing before the letter dated 26/3/2012. Following the reporting of a dispute the District Officer Central writes a letter to the clerk of the Council and attempt to resolve the issue.
22. Consequently, the District Land Adjudication Officer does “ground visit” and states in the letters dated 15/12/2009: -

“The plot is occupied and developed by the family of Ali Guyo Sorcha”

Your Lordship:

23. The petitioner has demonstrated a background laying claim to the subject of this petition i.e. Plot No. 127, Jirme Adjudication Section, Marsabit. I wish to submit that such background information is conspicuously missing in respect of the (1st Respondent) Nur Muddin!!

How does one get registered as a owner of Title without any document or background information. Is this not what is commonly known in recent times as GRABBING!! I urge the court to so hold.

(v) Land Adjudication Land Committee Proceedings

24. A minute perusal of this proceeding which are purported to be proceedings Under Section 26 of CAP 284 of the Laws of Kenya would depict the following:
- a. They are in the first place not objection proceedings envisaged Under Section 26 of CAP 284 of the Laws of Kenya.
- b. The plaintiff is the petitioner herein but defendant is not Ali Guyo Sorcha but Marsabit County.
- c. Other than the said plaintiff and defendant; the rest of the coram is not disclosed Not Even The Land Adjudication Officer Who is supposed to be the presiding officer.
- d. The Order No. (2) discloses the name of the 1st respondent whose identity remained hidden throughout the proceedings i.e. fraudulently.

Your Lordship

Perhaps it's important to have a look at Section 26 of the land Adjudication Act and find out exactly what it says: -

- 26(1) Any person named in or affected by the Adjudication Registrar who considers it to be incorrect or incomplete in any respect, may within sixty days upon which the notice of completion of the adjudication register was published object to the adjudication register in writing, saying in what respect he considers the adjudication register to be incorrect or incomplete.
- (2) the adjudication officer shall consider any objection made to him under section (i) of this section, and after further consultation and inquiries as he thinks fit, he shall determine the objection.
25. It's now prudent to ascertain and or submit that these are not proceedings envisaged under section 26 of the act 284.



- a. There is no evidence of the notice having been published.
- b. There is no disclosure, whether the complaint was within the statutory 60 days.
- c. The right of the petitioner were not explained as per section 26(A) whereof
 1. Who considers it to be incorrect or incomplete in any respect may within sixty days upon which the notice of completion of the adjudication register was published object to the adjudication register in writing saying in what respect he considers the adjudication register to be incorrect or incomplete.
 2. The adjudication officer shall consider any objection made to him Under Section (1) of this Section, and offer such, further consultation and inquiries as he thinks fit he shall determine the objection.

It's now prudent to ascertain and or submit that these are not proceedings envisaged Under Section 26 of CAP 284 of the Laws of Kenya.

- a. There is no evidence of the Notice having been published.
- b. There is no disclosure whether the complaint was within the statutory 60 days.
- c. The rights of the petitioner were not explained as per Section 26 (A) whereof.

(v) Purported power of attorney & sale advert

Your Lordship

26. This is perhaps the highest demonstration of the blatant daylight FRAUD committed by the 1st respondent in modern civilized society.
27. A lawful power of attorney does not only, look like this mere piece of paper, but it's a structured document stating whether its limited or general and particularly one touching on immovable property requires registration in our legal jurisdiction.
28. In this useless piece of paper styled as power attorney it's purported to be executed by one "Mohammed Duda"
29. We submit that this was a scheme by the 1st defendant to sale of Land conflated as somebody else.
 - i. Every person has a right to own property of any description and in any part of Kenya.
 - ii. Parliament shall not make laws to arbitrarily deprive a person of property of any description or interest.
 - iii. The state shall not deprive a person of any property or interest unless the deprivation is done to acquisition Under Chapter 5 or prompt payment and or compensation must be done.
30. The constitution does not restrict a property to those who have "titles" but also "interest" was the petitioners herein compensated for the property? Was the petitioner given affair hearing before the 2 acres were curved off?
31. Further the petitioner was not accorded a fair administrative action as stated Under Article 47 of the constitution. Moreover, his natural justice in as far as this purported deprivation is concerned.

The constitution stated Under Article 47

47"



- i. Every person has the right to administrative action that is expeditious efficient lawful reasonable and procedurally fair.
 - ii. A right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has a right to be given written reasons for the action.
32. In this case, no reason or written reasons were given to the petitioner or at all.
33. We submit that the petitioner’s rights were violated. The remedy is to be provided by this court.

2.Is the petitioner rightfully before the court

33. Article 2 of *the constitution* state the interalia: -
- i. This constitution is the supreme law of the Republic and binds all persons and all state organs at both levels of government.
 - ii. No person may claim or exercise state authority except as authorized under *the constitution*.
34. The manner in which the 1st and 2nd respondents acted is not commensurate with the constitutional ideas as dictated by our constitution and other laws, hence the petition.
35. Further, the Provision of Article 23 of the Kenya Constitution 2010, states clearly: -
- 1. The high court has jurisdiction in accordance with Article 165 to hear and determine application for redress of a denial violation or infringement of or that to a right or fundamental freedom in the bill of rights.
 - 2.
 - 3.
36. This court rightfully seized with the necessary jurisdiction and authority to handle and give the remedies stated Under Article 23 (3) of *the constitution* of Kenya 2020
37. The *Environment and Land Court Act* in Section 13 (3) of the Act states: -
- 13 (3) Nothing in this Act shall preclude the court from hearing and determining application for redress of a denial, violation or infringement of threat to, rights or fundamental freedom relating to the environment and land matter Under Articles 42,69 and 70 of *the constitution*.
38. This provision should be constricted to mean even a person affected Under our current Article 40 can rightfully move the court by extension a petition could equally service.

Conclusion

We humbly submit on behalf of the petitioner that this petition is merited and we wish to rely on the following legal precedents: -

- 1. Garissa Elc Pet No. 10/2020 Ahmed Bashir Abdi -vs- Abiwoor Ahmed Magan
- 2. Constitutional Petition No.15/2015 Ernest Kevin Lughidio -vs-attorney General &others Dated At Meru This 3Rd Day Of March 2022 Leonard K. Ondari & Co. Adv.for The Petitioner



39. The only issue for determination is if or if not, the Petitioner has proved on a balance of probability that the orders craved for in this petition are merited.
40. I have considered the pleadings and the submissions proffered by the Petitioner in support of his case. I have also considered the pleadings filed by the respondents who have not filed submissions.
41. In the absence of any countervailing assertions, I find that the Petitioner has proved his case on a balance of probabilities except for the prayer for an order to compensate him in respect of Plot No. 126 which is being used as a slaughter house at the present market value. I find that this prayer is veritably nebulous and has not been proved.
42. Consequently, the following orders are issued.
- a. It is hereby declared that the actions by the respondents to take away the Petitioner's Plot No.747, Marsabit, were irregular, unlawful and null and void ab initio.
 - b. An order is hereby issued directing the 2nd and 3rd respondents to revert Plot No.127 back to the Petitioner.
 - c. An order is hereby granted quashing the proceedings and decision of the purported committee on land which allegedly took place in 1998.
 - d. A mandatory permanent injunction is hereby issued restraining the 1st and 2nd respondents, their agents and assignees from entering, encroaching, upon or in any way interfering with the quiet possession by the Plaintiff of Plot No.127, Marsabit Town.
 - e. Costs are awarded to the petitioner.

DELIVERED IN OPEN COURT AT ISIOLO THE 20TH DAY OF JUNE, 2022 IN THE PRESENCE OF:

Court assistant: Balози

Ondari present for the Petitioner

Kigen present for the 1st Respondent

Mutembei for 2nd Respondent Absent

Kimathi present for 3rd and 4th Respondents.

HON. JUSTICE P. M. NJOROGE

JUDGE

