



**Muruka v Land Registrar Tigania East District & 2 others; Muruka
& 2 others (Interested Parties) (Environment & Land Petition
005 of 2020) [2022] KEELC 3349 (KLR) (27 July 2022) (Judgment)**

Neutral citation: [2022] KEELC 3349 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND PETITION 005 OF 2020**

CK NZILI, J

JULY 27, 2022

**IN THE MATTER OF BREACH OF THE CONSTITUTION AND ESPECIALLY ARTICLES
1 910 (B), 1(4) (B), 2, 3, 6, 10, 12, 19, 20, 21, 22, 23, 24, 27, 28, 40, 47, 48, 50, 60, 61, 64,
66, 67, 73, 75, 77, 174, 175, 185 AND 197 OF THE CONSTITUTION OF KENYA 2010**

AND

IN THE MATTER OF SECTION 24, 25 AND 78, 79 OF THE LAND REGISTRATION ACT

AND

**IN THE MATTER OF ARTICLES 2, 3, 4, 7, 13 AND 19 OF THE AFRICAN CHARTER
ON HUMAN AND PEOPLES RIGHTS AND OTHER PROVISIONS THEREOF**

AND

IN THE MATTER OF THE LAND REGISTRATION ACT AND THE LAND ACT

AND

**IN THE MATTER OF THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS AND
FUNDAMENTAL FREEDOMS PRACTICE AND PROCEDURE RULE 2012 SECTION 4**

BETWEEN

MICHAEL MUGAMBI MURUKA PETITIONER

AND

THE LAND REGISTRAR TIGANIA EAST DISTRICT 1ST RESPONDENT

**THE ADJUDICATION OFFICER KARAMA ADJUDICATION
SECTION 2ND RESPONDENT**

THE HONOURABLE ATTORNEY GENERAL 3RD RESPONDENT

AND



JOSEPH M’IMUNYA MURUKA INTERESTED PARTY
PETER MILIONEA INTERESTED PARTY
GERVASIO KAKAMBI THITURA INTERESTED PARTY

JUDGMENT

A. Pleadings

1. The petitioner, describing himself as a male adult resident, a registered voter and the owner of L.R No. 4787 Karama Adjudication Section hereinafter the suit land has sued the respondents alleging that they colluded in reducing the size of his land and arbitrarily deprived him his constitutional rights to own land by displacing or shifting him to another location far from where he has developed and put a permanent dwelling house. Instead they re-allocated his land to the 2nd respondent and the interested parties.
2. The petitioner prayed for; an order of mandamus compelling the 1st & 2nd respondents to amend the adjudication register and record the land in its correct size namely 1.50 acres; declaration that he owns the land hence any reallocation without his notice or an opportunity to be heard was unlawful, unreasonable and unconstitutional; an order of certiorari to quash the decision made on 11.2.2019 regarding objection no. 839 over the land; prohibition restraining the respondents from issuing the interested parties with title deeds for L.R No. 4787 & 557; permanent injunction restraining the respondents and the interested parties from taking possession, developing or in any way whatsoever interfering with his quiet possession and enjoyment of the land; exemplary damages for the unconstitutional acts by the respondents and lastly an order declaring the recording of the interested parties as the owners of part of his L.R No. Karama 4787 as wrongful and erroneous.
3. The petition is supported by an affidavit of Mathiu M’Thuruaine sworn on 29.10.2020 regurgitating the contents of the petition and attaching a copy of confirmation letter from the land adjudication & settlement officer, objection proceedings & receipts, a letter requesting for intervention dated 21.7.2016 and police summons marked as annexures MM “1” to MM “5” respectively.
4. Briefly, the petitioner averred that despite being the recorded owner and having enormously developed the land, the 1st & 2nd respondents made amendments of the adjudication records without involving him or any member of his family and proceeded to apportion some of the land in favour of the interested parties who are also his relatives and neighbours. As a consequence, the interested parties have threatened to the petitioner and have been using the police to have him arrested and or detained.
5. Further the petitioner averred that the respondent’s acts are arbitrary, his land size has been reduced and this amounts to infringement of his constitutional right as to land ownership.

B. Response to Petition

6. The petition is opposed by the 1st and 3rd interested parties affidavits sworn on 22.12.2020 respectively. The first ground is that the suit land was initially recorded in the name of the 3rd interested party whereafter the petitioner lodged an objection which was dismissed after a full hearing.
7. The 1st interested party averred he gave out the petitioner who is his brother 0.75 acres which was hived from his Parcel No. 557 Karama adjudication section who sold the same to one Henry Kailichi and was left with only 0.50 acres which is Parcel No. 2763 where he has settled.



8. It is averred by the 1st interested party since filing the petition, the petitioner has started to extend his land by making illegal construction of permanent houses on the 3rd interested party's parcel without his consent or authority.
9. Further, the interested parties aver the petitioner has his lawful share of which land which was allocated to him notwithstanding the fact that he did not gather any land on his own unlike the interested parties, who never inherited anything from their late father who apparently gave out all his land to the children of their step mother.
10. Additionally, the 1st interested party avers he has already developed his Parcel No. 557 and subdivided the same among his children including the 2nd interested party who have settled with their families in the respective portions but the petitioner was out to push them from their entitlement despite the fact that he has his Parcel No's 2763 and 5181.
11. The 3rd interested party has attached a letter dated 7.10.2020 from the District Land & Settlement Officer as GKT "I" confirming ownership, a copy of proceedings and decision made on 11.2.2019 as annexure GKT "2" in which the petitioner failed to appeal against to the minister.
12. The 3rd interested party maintained that he has permanent buildings on his land but the petitioner is using the order of the status quo as a cover up to encroach onto his land by putting up illegal buildings thereon.
13. Even though there is an affidavit of service, on the respondents they did not file any responses to the petition.

C. Written Submissions

14. With leave of court parties opted to canvass the petition by way of written submissions dated 23.12.2021 and 1.2.2022 respectively.
15. The petitioner submitted that the 1st and 2nd respondents are appointed under section 4 of the [Land Adjudication Act](#) with clear roles, powers and duties under section 5 thereof.
16. The petitioner submitted that the adjudication records were amended without due regard to his rights to notification, public participation and in utter disregard of the fact of his long occupation and developments on the suit land since 1983.
17. The petitioner submitted the respondents should have involved him in the process of the demarcation, survey and registration since his rights and interests have been apparent and in absence of which the 1st and 2nd respondents as holders of public office, failed to comply and disrespected not only the land laws but also [the Constitution](#).
18. Further the petitioner submitted the acts failures of the respondents demand an order of certiorari do issue to remedy the defects of justice as provided under articles 20 (3) (b) and 20 (4) of [the Constitution](#) otherwise he would stand to suffer immensely if the interested parties are allowed to take up part of his land out on a land adjudication process allegedly conducted without due regard to equality, equity and fairness hence urged the court to find the respondents acted arbitrarily, wrongfully, null, void and unconstitutional on account of fair administrative action.
19. The petitioner urged the court to issue orders to have the register amended and the correct acreage indicated.



20. The interested parties submit that they rely on the replying affidavit sworn on 23.12.2020. It is submitted that the land the petitioner is seeking is currently recorded under the name of the 3rd interested party which has not be challenged.
21. The 3rd interested parties submitted it was the petitioner who is encroaching on their land despite the order of status quo issued on 2.11.2020.
22. The interested party submitted that as a gesture of kindness, the 3rd interested party excised 0.75 acres now parcel no. 2763 in favour of the petitioner out of his Parcel No. 557 who unfortunately sold a portion of the said parcel to Henry Kairichi and currently occupies the remainder of 0.50 acres where none of them had the intention of evicting him.
23. On the law, the interested parties submitted the land laws have internal dispute mechanisms with clear timelines but the petitioner failed to lodge a minister's appeal as required under the said laws as well as section 9 (3) of the *Fair Administrative Action Act* 2015.
24. The interested parties submitted that the consent to sue issued to the petitioner did not demonstrate any exceptional circumstances exempting the petitioner from lodging a minister's appeal hence the petition was not only premature but also lacking merits.

D. Issues for Determination

25. Having gone through the pleadings and written submissions the issues for determination are:
 - i. If the petition meets the constitutional threshold.
 - ii. If the petitioner exhausted the internal mechanisms under the *Land Adjudication Act*.
 - iii. If the petitioner has pleaded and proved any breach of his constitutional rights and freedoms.
26. What amounts to a constitutional petition and what is a constitutional question have been a subject of several court pronouncement.
27. In *Mumo Matemu vs Trusted Society of Human Rights Alliance & 5 others* (2013) eKLR the court held the principles in Anarita Karimi the need for reasonable precision in the framing of issues in constitutional petitions cannot be gainsaid.
28. The court held a petition must not only refer to constitutional provisions but must also provide clear particulars as to the allegations and the manner of the alleged infringements.
29. In *Dr. Rev Timothy Njoya vs the Hon. Attorney General & Kenya Review Authority* H.C Constitutional & Human Rights Division Petition No. 479 of 2013, Lenaola J as he then was held that a petitioner cannot come to court to seek facts and information he intends to use to prove the very case that he is arguing before the court. The court held a petitioner has to plead his case with some degree of precision and set out the manner in which *the Constitution* has been violated and by whom.
30. In *Leonard Otieno vs Airtel Kenya Ltd* (2018) ekLR, the court held it is a fundamental principle of law that a litigant bears the burden of proof in respect of the proposition he asserts to prove his case. The court held decisions on constitutional rights should not and must not be made in a factual vacuum. Further the court held that a litigant must present clear evidence in support of a violation of a constitutional right.
31. Applying the above principles to this petition, other than invoking articles 1, 2, 3, 6, 10, 12, 19, 20, 21, 22, 23, 27, 40, 47, 48, 50, 60, 61, 64, 66, 68, 73, 75, 77, 174, 175, 185 & 197 of *the Constitution*, there



- are no precise and specific details and particulars in the body of the petition linking the respondents to the alleged rights belonging to the petitioner.
32. The supporting affidavit has not provided any particulars of the constitutional rights infringements and the manner in which the respondents have violated threatened and or infringed on the petitioner's rights as to fair hearing, fair administrative action and ownership of property.
 33. On the contrary, what the petitioner has attempted to plead is that he was directed by the respondents to lodge an objection No. 839 which he did and the same was determined as per the [Land Adjudication Act](#).
 34. In [Francis James Ndegwa vs Tetu Dairy Cooperative Society Ltd](#) (2016) eKLR, the court reiterated that not all breaches of the law should pave way for a constitutional petition.
 35. In this petition, the petitioner is simply alleging the law relating to the hearing of objections was not followed. The petitioner seems to be elevating a statutory breach to a constitutional breach.
 36. In [Godfrey Paul Okutoyi vs Habil Olaka](#) (2018) eKLR the court held that rights conferred by statute are not fundamental rights under the bill of rights and therefore a breach of such rights being a breach of ordinary statute are redressed though a court of law in the manner allowed by that particular statute or an ordinary suit as provided for by procedure.
 37. Further, the court held it was not every failure to act in accordance with a statutory provision or where an action is taken in breach of a statutory provision should give rise to a constitutional petition.
 38. The court went on while citing with approval [Harrikisson vs A.G](#) 265 went on to state a path of constitutional petition should not be misused as a remedy for every alleged unlawful administrative action which involves no contravention of any human rights or fundamental freedoms.
 39. In the reply, the interested and adduced annexures marked GKT "1" confirming ownership over Parcel No. 4787 Karama adjudication section, said to be under A/R stage in line with Cap 283 [Land Consolidation Act](#). Annexure marked GKT "2" shows that the objection was heard by the land committee composed of ten members.
 40. The petitioner was issued with a consent by the respondent dated 18.8.2020 to institute Judicial Review proceedings. The consent was only valid for 60 days otherwise it would be null and void.
 41. This petition was filed on 29.10.2020 which was outside the 60 days stipulated in the consent. The decision complained about was delivered on 11.2.2019. There has been no explanation why the petitioner had to wait for close to one year and eight months to lodge the petition.
 42. Coming to the issue raised as to the failure to invoke the internal dispute mechanisms under the [Land Adjudication Act](#), it is clear from the consent and annexures GKT '1' & '2' that the proceedings and the decision was made on 11.2.2019. The petition refers to the land act and the Land Registration Act instead of the [Land Consolidation Act](#) or the [Land Adjudication Act](#).
 43. That notwithstanding the law is that an A/R decision made under the [Land Consolidation Act](#) is final as provided under section 26 thereof, except on account of compensation.
 44. In [Geoffrey Muthinja Kabiru & 2 others vs Samuel Munga Henry & 1756 others](#) (2015) eKLR the court held the exhaustion doctrine was a sound which aimed at the postponement of the judicial consideration of matters to ensure that a party invokes the internal mechanism outside the court.
 45. In [Reuben Mwongela M'Itelekwa vs Paul Kigea Nabea & 2 others](#) (2019) eKLR the court held an objection made under the [Land Consolidation Act](#) is final except on account of compensation. See also



Republic vs Tigania East District Land Adjudication & Settlement Officer and another, Joseph Mathita Ikirima Exparte Solomon Mworio Samuel (2020) eKLR.

46. Looking at the proceedings and the decision herein, I take the view that the respondents complied substantially with the law as held in *Peter Kimandiu vs Land Adjudication Officer Tigania West District and 4 others* (2016) eKLR and ensured that the primary decision makers the committee was involved in handling the dispute.
47. The petitioner alleged that there was collusion between the land adjudication officer Karama adjudication section, the 2nd respondent and the interested parties in having his land reduced in size and added to the interested parties land parcel and or displaced/shifted to another locality.
48. The petitioner laid no blame on the land committee which is the primary decision-making organ under the *Land Consolidation Act*. The petition lacks are no specific particulars of any constitution breach as regard the hearing and determination of the objections by the committee individually and or jointly with the 2nd respondent. The petitioner has also failed to plead any particulars of collusion and prove the same with cogent evidence.
49. In absence of any credible evidence, my finding is that the petitioner has failed to discharge the burden of proof under section 107 – 112 of the *Evidence Act* as to the alleged breach of his rights to fair hearing, fair administrative action and ownership of land. See *Republic vs Tigania East District land adjudication & settlement officer exparte Joseph Kubai Tarichia; Peter Mukondo (interested party)* (2021) eKLR.
50. In the premises I find the petition lacking merits. The same is dismissed with costs. Orders accordingly.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT THIS 27TH DAY OF JULY, 2022

In presence of:

C/A: Kananu

Gikunda Anampiu for interested party

Miss Gitonga for petitioner

Kieti for respondents

HON. C.K. NZILI

ELC JUDGE

