



Chemurwok & another v Director of Land Adjudication and Settlement & 3 others (Environment & Land Petition E002 of 2021) [2025] KEELC 3089 (KLR) (3 April 2025) (Judgment)

Neutral citation: [2025] KEELC 3089 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERICHO
ENVIRONMENT & LAND PETITION E002 OF 2021**

LA OMOLLO, J

APRIL 3, 2025

IN THE MATTER OF ARTICLES 2, 3, 10, 19, 20, 21, 22(1), 23(1), (3), 27(1) AND (2), 28, 31 (B), 40(1), (2) AND (3), 42, 47, 48, 60 (A), (B) AND (F), 70, 159 (1), (2), (A), (B) AND (E), 165 (3) (A), (B) & 258 OF THE CONSTITUTION OF KENYA, 2010 AND IN THE MATTER OF CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS UNDER ARTICLES 20, 21, 22(1), 27(1) AND (2) AND (3), 47 & 48 OF THE CONSTITUTION OF KENYA, 2010. AND IN THE MATTER OF THE NATIONAL LAND COMMISSION ACT NO. 5 OF 2012 AND IN THE MATTER OF THE LAND ACT NO. 6 OF 2012 AND LAND REGISTRATION ACT NO. 3 OF 2012.

BETWEEN

RAEL CHEMURWOK 1ST PETITIONER

ZIPPORAH CHEMURWOK 2ND PETITIONER

AND

THE DIRECTOR OF LAND ADJUDICATION AND SETTLEMENT 1ST RESPONDENT

THE NATIONAL LAND COMMISSION 2ND RESPONDENT

THE CHIEF LAND REGISTRAR 3RD RESPONDENT

THE ATTORNEY GENERAL OF KENYA 4TH RESPONDENT

JUDGMENT

Introduction.

1. The Petitioners commenced the present proceedings vide the Petition dated 26th March, 2021 which petition was amended on 27th June, 2023.



2. The Petitioners aver that they are the administrators of the estate of the late Daniel Chepkeiyo Chemurwok (Deceased) who took a loan from the Settlement Fund Trustee for the purchase of LR No. 8700/2.
3. The Petitioners also aver that the late Daniel Chepkeiyo Chemurwok cleared his Settlement Fund Trustee (SFT) loan in the year 1985.
4. It is the Petitioners averment that they tried to secure a discharge of charge from the 1st Respondent but they have not been able to.
5. The Petitioners aver that the 1st Respondent refused to issue a discharge of charge so that they can be issued with a title deed for LR No. 8700/2 Manori farm (assisted Farm A/C No. 40/6025) after the loan was fully paid.
6. It is also the Petitioners averment that the County Land Adjudication and Settlement Officers Kericho/ Bomet vide their letters dated 19th August, 1993 and 16th February, 2016 confirmed the clearance of the loan.
7. It is further the Petitioners averment, that they have lived on the suit parcel for over fifty years and the 1st Respondent's failure to discharge the charge is an affront to the democratic gains and advancements made under the new constitutional order.
8. The Petitioners aver that the 1st Respondent should be compelled to discharge LR No. 8700/2 so that survey and subdivision can be done for subsequent transfer to the rightful beneficiaries. They add that their right to peacefully own the suit parcel has been infringed without following the requisite legal process.
9. The Petitioners aver that the Respondents' failure to discharge the suit parcel has violated their rights as provided for under Articles 21(1), 27, 40(1), 60(1) and 64 of *the Constitution* of Kenya and consequently seek the following orders;
 - a. A declaration that the Petitioners' right to acquire and own property without arbitrarily being deprived of the same as guaranteed by Article 40 of *the Constitution* has been and will be contravened if the intended discharge, transfer and issuance of title is upheld by the Respondents.
 - b. A declaration that Respondents' acts are in violation of the Petitioners' right to equality before the law and the right to equal benefit and protection of the law as enshrined in Article 27 of *the Constitution*.
 - c. An order of prohibition restraining the 1st Respondents from further refusing to discharge and transfer LR No. 8700/2 to the Petitioners.
 - d. An order of prohibition restraining the 3rd Respondents from further refusing to issue the Petitioners with a title deed for LR No. 8700/2.
 - e. An order of mandamus compelling the 1st Respondents (sic) to discharge and transfer LR No. 8700/2 to the Petitioners.
 - f. An order of mandamus compelling the 3rd Respondents to issue a title deed for LR No. 8700/2 in the names of the Petitioners.
 - g. Costs of this Petition.
 - h. Any other relief the Honourable Court may deem fit and just to grant.



The Petitioners' Contention.

10. The amended Petition is supported by the affidavit of one Rachel Chemurwok sworn on 27th June, 2023.
11. She reiterates that the Petitioners late husband Daniel Chepkeiyo Chemurwok is the owner of LR No. 8700/2 and that before he died, he finished paying his Settlement Fund Trustee loan and was in the process of processing his title.
12. She contends that their late husband tried to have the suit parcel discharged but the Respondents frustrated him and refused to transfer the suit parcel to his name.
13. She also contends that the said frustrations and his advanced age caused him to suffer a cardiac arrest in the year 1994.
14. She further contends that after his demise the 2nd Petitioner and herself took out letters of administration for his estate in Kericho HCC Succession No. 21 of 2010.
15. It is her contention that upon getting the confirmed grant, they on numerous occasions approached the Respondents to seek sub-division of the suit parcel and the transfer to the rightful beneficiaries to no avail.
16. It is also her contention that the suit parcel has been invaded by third parties who have secured title deeds illegally without involving them as they are the administratrix of the estate of the deceased.
17. It is further her contention that despite demand and notice of institution of suit being issued, the Respondents have failed and/or neglected to issue them with transfer documents, discharge and the title for the suit parcel.
18. She reiterates that unless the 1st Respondent is compelled to discharge the suit parcel, their right to own property shall be infringed.
19. She ends her deposition by stating that *the Constitution* guarantees the right to equal benefit and protection of the law which includes full and equal enjoyment of all rights and fundamental freedoms, security of person and property, inherent dignity and the right to have that dignity respected and protected, right to own property and not to be deprived of any property or have its enjoyment unlawfully restricted which constitutional dictates the Respondents have refused, ignored and neglected.

The 1st Respondent's Response To The Amended Petition.

20. The 1st Respondent filed a Replying Affidavit sworn by one Eliab Muchiri Kamaru the Deputy Director of Land Adjudication and Settlement in the State Department of Land and Physical Planning. It is sworn on 4th June, 2024.
21. He deposes that in the year 1962 the Settlement Funds Trustees (SFT) now the Land Settlement Fund Board of Trustees (LSFBT) gave loans to seventy-five people with beneficial interests in LR No. 8700 (Kipkelion/Chepsoen Block/Monori farm) to assist them in purchasing the said farm.
22. He also deposes that Daniel Chemurwok who is represented by the Petitioners was among the seventy-five individuals who had beneficial interest in the suit parcel and had benefited from the loan granted by the Settlement Funds Trustees. (SFT)



23. He further deposes that on 12th February, 1991 the title of the suit parcel was surrendered to the government for purposes of subdivision upon repayment of the loan.
24. It is his deposition that upon advisory from the County Land Adjudication and Settlement Officer, the Director Land Adjudication and Settlement prepared the clearance for discharge and transfer relating to LR No. 8700/1 which was a proposed subdivision of LR No. 8700.
25. It is also his deposition that the 1st Respondent conducted due diligence and the suit parcel was subdivided as directed by the Chief Land Registrar into 75 portions. He adds that this is set out in paragraph 4 of the letter dated 20th September, 2020 written by the County Land Adjudication & Settlement Officer, which letter is attached to the Replying Affidavit.
26. It is further his deposition that the 1st Respondent denies engaging in discriminatory acts against the Petitioners as the suit parcel was subdivided and titles issued to all members of the farm including the late Daniel Chemurwok.
27. He deposes that the 1st Respondent cannot issue a discharge of charge and transfer of documents in relation to a parcel of land that does not exist.
28. He also deposes that LR No. 8700 was never subdivided into LR No. 8700/2 as alleged by the Petitioners and that the Petitioners did not furnish the Court with any official search to prove that LR No. 8700/2 exists.
29. He further deposes that even though the Petitioners allege that their rights as provided for by the [Land Adjudication Act](#) have been violated, they have filed their Petition prematurely as they (Petitioners) did not exhaust all the dispute resolution avenues set out in the said Act.
30. He ends his deposition by stating that if the Petitioners are granted the orders sought, the other parties not joined to the suit would be prejudiced.

THE 3RD AND 4TH RESPONDENTS' RESPONSE TO THE AMENDED PETITION.

31. In response to the amended Petition, the 3rd and 4th Respondent filed Grounds of Opposition dated 31st May, 2024.
32. The grounds of opposition are as follows;
 - a. That this Honourable Court is not clothed with the requisite jurisdiction to hear and determine the petition.
 - b. That further to the above and in accordance with Section 30 of the [Land Adjudication Act](#), no person shall institute, and no Court shall entertain, any civil proceedings concerning an interest in land in an adjudication section, without the mandatory written consent of the Land Adjudication Officer.
 - c. That the Petitioners failed to annex the statutorily required written consent of the Land Adjudication Officer when filing the petition.
 - d. That the petition has been filed prematurely as the Petitioners did not exhaust all the dispute resolution avenues set out in Section 26 and 29 of the [Land Adjudication Act](#).
 - e. That it is imperative that where a dispute resolution mechanism exists outside Courts, the same has to be exhausted before the jurisdiction of the Courts is invoked.



- f. That to the extent that *the Constitution* requires dispute resolution mechanisms to be promoted, usurpation of their jurisdiction by the Honourable Court would not be promoting but rather, undermining a clear constitutional objective.
- g. That the petition is an abuse of Court process and ought to be dismissed with costs.

ISSUES FOR DETERMINATION.

- 33. The Petitioners and the 1st and 3rd Respondents filed their submissions on 31st October, 2024.
- 34. The Petitioners in their submissions give a summary of their case, the Respondents response and submit on the following issues;
 - a. Whether the parcel number LR No. 8700/2 (Kipkelion/Chepseon Block/Monori Farm) exists.
 - b. Whether the said LR No. 8700/2 (Kipkelion/Chepseon Block/Monori Farm) has been discharged and subsequently the title deed issued.
 - c. Whether the failure to discharge LR No. 8700/2 (Kipkelion/Chepseon Block/Monori Farm) amounts to a violation of the Petitioners right to own property.
 - d. Whether this Court has jurisdiction to hear this petition.
 - e. Whether the Petitioners are entitled to the orders sought in their Petition.
- 35. With regard to the first issue, the Petitioners submit that LR No. 8700/2 exists and that they have annexed documents to their affidavit in support of the amended petition which originate from the District Settlement Officer and the Ministry of Lands and Settlement which confirm that the deceased was allotted LR No. 8700/2.
- 36. The Petitioners also submit that the District Settlement Officer confirms that the deceased settled his loan to the Settlement Funds Trustee in the year 1985.
- 37. The Petitioners refer to the document attached to their Affidavit in support of the amended petition marked as “RC - 7” which was written by the Director, County Land Adjudication and Settlement Officer Kericho which they submit acknowledges the existence of LR No. 8700/2.
- 38. The Petitioners refer to a document attached to the 1st Respondent’s Replying Affidavit marked as “EMK-4” and submit that the said document makes reference to LR No. 8700/2.
- 39. The Petitioners also submit that they have established on a balance of convenience that LR No. 8700/2 exists and rely on Sections 107, 108 & 109 of the *Evidence Act* in support of their submissions.
- 40. With regard to the second issue, the Petitioners submit that LR No. 8700/2 has never been discharged to date.
- 41. The Petitioners also submit that they have attached to their affidavit in support of the amended petition copies of letters written by the Petitioners, the District Settlement Officer and the County Adjudication Officer seeking that the said parcel be discharged.
- 42. The Petitioners further submit that the 1st, 3rd and 4th Respondents failed to bring to Court the discharge that is in their possession and that they also failed to disclose the resultant titles that were issued upon subdivision of the suit parcel.



43. It is the Petitioners submissions that the 1st, 3rd and 4th Respondents deny that LR No. 8700/2 exists in their replying affidavit but in their grounds of opposition state that the Petitioners did not exhaust all the internal dispute resolution mechanisms.
44. The Petitioners rely on the judicial decision of *Mbita Ntiro v Mbae Mwirichia & another* [2018] eKLR and submit that the 1st, 3rd and 4th Respondents have not adduced any evidence to show that the suit parcel was subdivided and they have also failed to discharge the suit parcel to the Petitioners who are the rightful beneficiaries.
45. With regard to the third issue, the Petitioners rely on Articles 40(1) & 40(3) of *the Constitution* of Kenya and submit that their right to own property has been infringed upon by the state through the 1st and 3rd Respondents.
46. The Petitioners submit that there exists no dispute that would warrant the invocation of Sections 26 and 29 of the *Land Adjudication Act*.
47. The Petitioners also submit that the documents attached to the amended Petition confirm that the suit parcel belongs to the deceased and the adjudication register that was prepared recognizes the deceased as a beneficiary of LR No. 8700/2.
48. The Petitioners submit that the Respondents attached to their Replying Affidavit a document marked as “EMK-3” that is titled “Discharge and Transfer for LR No. 8700/1” which is meant to misguide the Court as the suit parcel in dispute is LR No. 8700/2 whose discharge has not been issued by the 1st Respondent.
49. On whether this Court has jurisdiction, the Petitioners rely on the judicial decisions of *West Kenya Sugar Company Ltd v Busia Sugar Industries Ltd & 2 Others* [2017] eKLR, *Mutisya (Suing on his own behalf & as an Administrator of the Estate of Samuel Mutisya Somba) v Land Adjudication Officer, Makueni & 11 Others; Mutisya & another (Interested Parties) (Environment & Land Petition 13 of 2020) [2022] KEELC 15501 (KLR) (21 December 2022) (Ruling)*, *Abidha Nicholus v The Attorney General & 7 Others* [2023]eKLR, *Kenya Revenue Authority & 2 Others v Daraza Investments Ltd* [2018] eKLR and submit that the Respondents contend that they (Petitioners) have not exhausted all the avenues of dispute resolution as envisaged under Sections 26 and 29 of the *Land Adjudication Act*.
50. The Petitioners rely on Section 26 and 29 of the *Land Adjudication Act* and submit that there exists no dispute that would require the filing of any objection or appeal at the tribunal. They add that the only issue in dispute is why the 1st Respondent has not discharged the suit parcel to the rightful beneficiaries.
51. With regard to the fifth issue, the Petitioners reiterate that the late Daniel Chemurwok settled his loan with the 1st Respondent but the 1st Respondent has not discharged the said parcel to enable the 3rd Respondent to register it in the name of Petitioners.
52. The Petitioners reiterate that the failure by the 1st and 3rd Respondents to discharge the suit parcel in order for it to be registered in their (Petitioners) names amounts to violation of their right to own property and contravenes Article 27 of *the Constitution* of Kenya.
53. The Petitioners urge the Court to allow the amended Petition as prayed.
54. The 1st and 3rd Respondents submit on the following issues;
 - a. Whether the Petition meets the threshold for a Constitutional Petition.
 - b. Whether the Petitioners satisfied the doctrine of exhaustion.



- c. Whether the Petitioners are entitled to the orders sought.
55. With regard to the first issue, the 1st and 3rd Respondents rely on the judicial decisions of Anarita Karimi Njeru vs Republic [1979] eKLR, Manase Guyo & 260 Others vs Kenya Forest Services [2016] eKLR and submit that it is not enough for the Petitioners to list constitutional provisions without demonstrating how those rights were infringed.
56. The 1st and 3rd Respondents submit that the Petitioners have not established a prima facie case as they have failed to adduce any evidence to show that LR No. 8700/2 exists and that they are the proprietors.
57. The 1st and 3rd Respondents also submit that LR No. 8700 (Kipkelion/Chepseon Block/Minori Farm) was transferred to the national government for registration as provided for under Section 28 of the [Land Adjudication Act](#).
58. The 1st and 3rd Respondents further submit that the late Daniel Chepkeiyo Chemurwok benefited from the said registration.
59. It is their submissions that the issuance of a discharge of charge by the 1st Respondent to the Petitioners is not a requirement for them to obtain proprietary interest in the suit property. They add that if it was a requirement, then the other individuals with proprietary interest in the land would equally seek recompense for infringement of their rights.
60. It is also their submissions that the amended Petition was filed in disregard to the doctrine of avoidance. They submit that where infringement of rights is founded on substantive law, the proper course is to bring the claim under the law and not under [the Constitution](#).
61. The 1st and 3rd Respondents rely on the judicial decision of KKB v SCM & 5 Others (Constitutional Petition 014 of 2020) [2022] KEHC 289 (KLR) and submit that the issues raised by the Petitioners are civil in nature and they emanate from the [Land Adjudication Act](#) and can be addressed without invoking [the Constitution](#).
62. The 1st and 3rd Respondents rely on the judicial decision of Matatu Welfare Association & another v Invesco Assurance Co. Ltd & 3 Others [2019] eKLR and submit that the Petitioners have not proved that the 1st Respondent infringed on their rights.
63. With regard to the second issue, the 1st and 3rd Respondents rely on the judicial decisions of William Odhiambo Ramogi & 3 others v Attorney General & 4 others; Muslims for Human Rights & 2 others (Interested Parties) [2020] eKLR, Speaker of National assembly v Karume [1992] KLR 21 and submit that any party aggrieved with an adjudication process can file an appeal under Section 29 of the [Land Adjudication Act](#).
64. The 1st and 3rd Respondents reiterate that the 1st Respondent surrendered the title of the suit parcel to the national government with the records of the intended proprietors which included the Petitioners.
65. They also submit that the Petitioners have the right to appeal any determination thereof if they were not satisfied with the process.
66. They further submit that there exists an alternative remedy through statutory law and that it is desirable that the said statutory remedy be pursued first.
67. With regard to the third issue, the 1st and 3rd Respondents rely on Halsbury's Laws of England, 4th Edn. Vol 7 P. 11 para 89 as was cited in the judicial decision of Republic vs Kenya National Examinations Council ex parte Gathenji & 8 Others Civil Appeal No. 234 of 1996 and submit that



the 1st Respondent is not bound by any public duty to issue documents that will lead to an illegality such as multiple documentation of the same parcel of land.

68. The 1st and 3rd Respondents also submit that the Petitioners have not relied on any provision of the law that mandates the Respondent to furnish Discharge of Charge documents.
69. The 1st and 3rd Respondents conclude their submissions by urging the Court to dismiss the amended Petition with costs.

Analysis And Determination.

70. After considering the amended Petition, the responses thereto and the submissions, it is my view that the following issues arise for determination;
 - a. Whether the jurisdiction of this Court was properly invoked.
 - b. Whether the Petitioners are entitled to the orders sought in the amended petition.
 - c. Who should bear the costs of the amended petition.

A. Whether the jurisdiction of this Court was properly invoked.

71. In the judicial decision of Anarita Karimi Njeru v Republic [1979] eKLR the Court held as follows on the threshold for grant of orders in a constitutional Petition;

“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.”

72. The Petitioners contend that they are the legal representatives of the estate of the late Daniel Chepkeiyo Chemurwok.
73. They also contend that the deceased took a loan from the Settlement Funds Trustees for the purchase of LR No. 8700/2 Manori Farm.
74. The Petitioners further contend that the late Daniel Chepkeiyo Chemurwok paid his loan with the Settlement Funds Trustee in the year 1985 but the 1st Respondent refused to discharge the property.
75. It is the Petitioners contention that they have made numerous follow ups with the 1st Respondent but he is yet to issue the discharge of charge.
76. The Petitioners therefore contend that their right to property has been infringed by the 1st Respondent for their failure to discharge the suit parcel.
77. In response, the 1st Respondent contends that the late Daniel Chepkeiyo Chemurwok was among seventy-five individuals who had a beneficial interest in LR No. 8700 (Kipkelion/Chepsoen Block/Minori Farm).
78. The 1st Respondent also contends that the said individuals were given loans by the Settlement Funds Trustees and upon clearing the said loans, the title for LR No. 8700 was surrendered to the government on 12th February, 1991 for subdivision.



79. The 1st Respondent further contends that LR No. 8700 was subdivided and titles issued to all members of the farm but denies that LR No. 8700 was ever subdivided into LR No. 8700/2.
80. It is important to note that on one hand the Petitioners contend that LR No. 8700/2 belongs to Daniel Chepkeiyo Chemurwok (deceased) while on the other hand the 1st Respondent contends that the original title LR No. 8700 was never subdivided into LR No. 8700/2 and was instead subdivided into seventy-five portions.
81. Among the documents attached to the affidavit in support of the amended Petition is a copy of a letter dated 16th February, 2016 written by Ali H. Chemasuet the County Land Adjudication & Settlement Officer Kericho/Bomet. The letter is marked as “RC-4”.
82. The letter is addressed to the Director, Land Adjudication and Settlement. The subject of the letter is as follows; “Discharge of Charge LR No. 8700/2 Manori Farm Assisted Owner Farm A/C No. 40/6025”.
83. In the said letter the County Land Adjudication & Settlement Officer Kericho/Bomet informs the Director, Land Adjudication and Settlement that the next of kin of Daniel Chepkeiyo Chemurwok were following up on the discharge of charge and transfer document for LR No. 8700/2.
84. He also states that from the records available, the farm was initially LR No. 8700 (Monori Farm) and it was purchased by three persons.
85. Edward Lelon purchased 150 acres, Daniel Chemurwok purchased 392 acres while David Ngochoch purchased 400 acres and that the total acreage is 1042 acres.
86. The County Land Adjudication & Settlement Officer Kericho/Bomet also states that there have been several disputes amongst the three owners since the suit parcel was purchased.
87. Conversely, among the documents attached to the 1st Respondent’s Replying Affidavit is a letter dated 20th September, 2020 written by Erick Korir the County Land Adjudication & Settlement Officer Kericho/Bomet Counties and addressed to the Director Land Adjudication and Settlement Attention Purity Mwangi. The letter is marked as “EMK-4”
88. The subject of the letter is as follows; “Official Search – LR No. 8700 Kipkelion/Chepseon Block/Minori (IR No. 16696)”.
89. The County Land Adjudication & Settlement Officer informs the Director Land Adjudication and Settlement that seventy-five title deeds were prepared from LR 8700/2 Kipkelion/Chepseon Block 5 (Minori) upon directions from the Office of the Chief Land Registrar through the letter dated 13th February, 1991.
90. It is evident that one of the prominent issues in dispute is whether LR No. 8700 was subdivided into three parcels with one of the resultant parcels being LR 8700/2 and/or whether LR No. 8700 was subdivided into seventy-five parcels.
91. The 1st and 3rd Respondents in their submissions contend that the issues raised in the amended Petition are civil in nature and they can be addressed without invoking *the Constitution*. The Petitioners did not submit on this issue.



92. In the judicial decision of *Rumasila v Kenya Urban Roads Authority & 2 others* (Environment & Land Petition E006 of 2022) [2024] KEELC 4826 (KLR) (20 June 2024) (Judgment) the Court observed as follows;

“The procedural law relating to constitutional matters requires that where there exist ample statutory avenues for resolution of a dispute, the statutory options for redress must be followed and the constitutional Court will decline to entertain the dispute. The basis for that kind of approach is the principle of constitutional avoidance. The principle bars the practice of bringing ordinary disputes to the constitutional Court.”

93. The Supreme Court in *Communications Commission of Kenya & 5 others v Royal Media Services Limited & 5 others* (Petition 14, 14A, 14B & 14C of 2014 (Consolidated)) [2014] KESC 53 (KLR) (29 September 2014) (Judgment) discussed the principle of Constitutional avoidance as follows;

“(256) The appellants in this case are seeking to invoke the “principle of avoidance”, also known as “constitutional avoidance”. The principle of avoidance entails that a Court will not determine a constitutional issue, when a matter may properly be decided on another basis. In South Africa, in *S v. Mhlungu*, 1995 (3) SA 867 (CC) the Constitutional Court Kentridge AJ, articulated the principle of avoidance in his minority Judgment as follows [at paragraph 59]:

I would lay it down as a general principle that where it is possible to decide any case, civil or criminal, without reaching a constitutional issue, that is the course which should be followed.”

(257) Similarly the U.S. Supreme Court has held that it would not decide a constitutional question which was properly before it, if there was also some other basis upon which the case could have been disposed of (*Ashwander v. Tennessee Valley Authority*, 297 U.S. 288, 347 (1936)).

(258) From the foundation of principle well developed in the comparative practice, we hold that the 1st, 2nd and 3rd respondents’ claim in the High Court, regarding infringement of intellectual property rights, was a plain copyright-infringement claim, and it was not properly laid before that Court as a constitutional issue. This was, therefore, not a proper question falling to the jurisdiction of the Appellate Court.” [Emphasis mine]

94. In *KKB v SCM & 5 others* (Constitutional Petition 014 of 2020) [2022] KEHC 289 (KLR) (22 April 2022) (Ruling) the Court held as follows;

“36. In summation, the doctrines of ripeness and constitutional avoidance shun to deal with a constitutional issue where there exists another legal course which can give the litigant the relief he seeks. In other words, a constitutional issue is not ripe for determination until the determination of the constitutional issue is the only course that can give the litigant the remedy he seeks. Both constitutional avoidance and ripeness avert the determination of the constitutional issues until it becomes very necessary to the extent that it is the only course available to assist the litigant’s cause.” [Emphasis mine]

95. Essentially, the principle of Constitutional avoidance deals with instances where a Constitutional Court declines to deal with a matter because there exists another remedy provided in law which the aggrieved party is yet to utilize.



96. In the judicial decision of *Bamaftah & another v Cabinet Secretary, Ministry of Lands, Public Works and Housing and Urban Development & 7 others (Environment and Land Constitutional Petition E012 of 2023) [2023] KEELC 21412 (KLR) (7 November 2023) (Ruling)* the Court held as follows;

“...Fundamentally, and without any iota of doubt or contradiction, the Petition raises issues which are purely matters of ownership over the suit land and other such related issues which to me are civil in nature and whose remedies ought to be found and fall squarely onto ordinary readily to be redressed in a Civil Court. The Petitioner ought to have filed a civil suit as opposed bypassing the same and coming to the constitutional Court.

48. Having found that there exists a remedy in civil law, which the Petitioner ought to have pursued, this Court must refuse to be bogged down by a matter which is so plainly provided for under statute...

Having considered the foregoing, I find and hold that the Petitioner’s claim which is founded on issuance of the Certificate of Title and the ownership of land...

Accordingly, the Petition is not properly laid before this Court as a constitutional issue. As such, this Court invokes the doctrine of avoidance and declines jurisdiction.” [Emphasis Mine]

97. As stated in the preceding paragraphs, one of the obvious issues in dispute is whether LR No. 8700 was subdivided into three parcels with one of the resultant parcels being LR 8700/2 and/or whether LR No. 8700 was subdivided into seventy-five parcels a consequence of which Daniel Chepkeiyo Chemurwok (deceased) and others were issued with title deeds.

98. My view is that all these issues are civil in nature and are capable of determination in a Civil suit.

99. This Court, sitting as a Constitutional Court, invokes the doctrine of constitutional avoidance and finds that the issues raised in this petition are such as can be pursued in a Civil Court.

B. Whether the Petitioners are entitled to the orders sought in the amended petition.

100. Given my finding on issue (a) above, the prayers sought in the amended Petition cannot be granted.

C. Who should bear the costs of the amended petition.

101. It is now settled that costs shall follow the event. This is in accordance with the provisions of Section 27 of the *Civil Procedure Act* (Cap. 21). A successful party should ordinarily be awarded costs of an action unless the Court, for good reason, directs otherwise.

Disposition.

102. In the result, the Amended Petition is hereby struck out with costs to the 1st, 3rd and 4th Respondent.

103. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO THIS 3RD DAY OF APRIL, 2025.

L. A. OMOLLO

JUDGE.

In the presence of: -

Mr. Morata for the Petitioners.



Miss Chepkemoi for the 1st,3rd and 4th Respondents

No appearance for the 2nd Respondent.

Court Assistant; Mr. Joseph Makori.

