



**Barkutwo & 3 others v District Land Adjudication & Settlement Officer, Elgeyo-Marakwet County & another; Barmoto & 11 others (Interested Parties) (Environment and Land Constitutional Petition 16 of 2022) [2022] KEELC 4789 (KLR) (18 July 2022) (Judgment)**

Neutral citation: [2022] KEELC 4789 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT ITEN**  
**ENVIRONMENT AND LAND CONSTITUTIONAL PETITION 16 OF 2022**  
**L WAITHAKA, J**  
**JULY 18, 2022**  
**N THE MATTER OF THE INTERPRETATION OF**  
**ARTICLES 2, 3, 10, 22, 23, 25, 27, 28, 40 AND 63 OF**  
**THE CONSTITUTION OF KENYA, 2010**

**BETWEEN**

**MOSES BARKUTWO ..... 1<sup>ST</sup> PETITIONER**  
**NICHOLAS KIGEN ..... 2<sup>ND</sup> PETITIONER**  
**BENJAMIN KIGEN ..... 3<sup>RD</sup> PETITIONER**  
**DAVID KORIR ..... 4<sup>TH</sup> PETITIONER**

**AND**

**DISTRICT LAND ADJUDICATION & SETTLEMENT OFFICER, ELGEYO-MARAKWET COUNTY ..... 1<sup>ST</sup> RESPONDENT**  
**ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**MOSES BARMOTO ..... INTERESTED PARTY**  
**STEPHEN SANG ..... INTERESTED PARTY**  
**CHRISTOPHER SANG ..... INTERESTED PARTY**  
**JEREMIAH CHANGWONY ..... INTERESTED PARTY**  
**SAMUEL CHEMWOTEI ..... INTERESTED PARTY**  
**JOAHAN KIMULWO ..... INTERESTED PARTY**  
**DAVID BARBOI ..... INTERESTED PARTY**



WILSON BARMAO .....	INTERESTED PARTY
STEPHEN KIPRONO KIPCHOGE .....	INTERESTED PARTY
SAMWEL KWAMBAI .....	INTERESTED PARTY
JOSPHAT WENDOT .....	INTERESTED PARTY
RICHARD KIGEN .....	INTERESTED PARTY

## JUDGMENT

### Introduction

1. On August 28, 2020, the petitioners herein filed this suit complaining that their rights to property among other rights guaranteed under the [Constitution of Kenya, 2010](#) were either violated or threatened with violation by the 1<sup>st</sup> respondent. The circumstances giving rise to the petition/suit are that the 1<sup>st</sup> respondent had kicked off the process of adjudication of land in the area known as Emsea/Chang'ach Adjudication Section within Keiyo South Sub-County.
2. The petitioners who have described themselves as members of Kaptarkok and Kaptoiyo clans and as the local residents of the adjudication section have pleaded that the section was declared an adjudication area in 1997; that the process of adjudication never kicked off until sometime in 2020 when the 1<sup>st</sup> respondent started the process. The petitioners have pleaded that the 1<sup>st</sup> respondent started the adjudication process without conducting public participation/adequate public participation and that he unlawfully nominated the interested parties to be members of the land adjudication committee and failed to issue the notice required under section 5 of the [Land Adjudication Act](#) (LAA), Cap 284 Laws of Kenya.
3. The actions/omissions of the 1<sup>st</sup> respondent complained of are said to have been actuated by malice and motivated by intention to deprive the petitioners of their right to property. The 1<sup>st</sup> respondent is said to have secretly appointed the interested parties as the members of the Land adjudication committee. The 1<sup>st</sup> respondent is also said to have failed to adhere to the [constitution](#) and the applicable statutory provisions in commencing the adjudication process. In particular, the 1<sup>st</sup> respondent is said to have failed to ensure proper public participation before starting the process and to comply with the constitutional gender test by nominating men only to sit in the land adjudication committee.
4. The petitioners acknowledge that the 1<sup>st</sup> respondent published some notices in respect of the impugned process but contend that the notice was inadequate for purpose of ensuring proper public participation.
5. For the foregoing reasons, the petitioners seek various reliefs. These include a declaration that their constitutional rights under articles 2(1), 2, 3(1), 10(1)(2); 22(1), 23(1) 27, 40, 47 and 63 of the [Constitution](#) were either violated by the 1<sup>st</sup> respondent or threatened with violation; a declaration that the decision of the 1<sup>st</sup> respondent of appointing the 2<sup>nd</sup> to 13<sup>th</sup> interested parties to serve in the Adjudication Committee for Keiyo South Adjudication area is unlawful, null and void; a declaration that the petitioners are entitled to payment of damages and compensation for gross violation and contravention of their constitutional rights and freedoms under the aforementioned provisions of the [constitution](#); a permanent injunction to restrain the 1<sup>st</sup> respondent and the interested parties from continuing with the process of adjudication of the area/section in question until their rights and the rights of the residents of Emsea-Changach area are fully respected; an order disbanding the current



land adjudication committee, if already sworn in, and directing the 1<sup>st</sup> respondent to appoint a new adjudication committee with approval of the land owners; an order for fresh adjudication to be undertaken in Emsea/Changach adjudication section ensuring there is public participation; that the process be undertaken by any other land adjudication officer other than the current adjudication officers in conduct with the adjudication process and any other relief that this court may deem fit and just to grant in the interest of justice.

6. The petition is opposed through the replying affidavit of the Land Adjudication Officer-Keiyo, G.M Bosire, sworn on September 30, 2020 and filed in court on October 1, 2020. In that affidavit, the 1<sup>st</sup> respondent has deponed as follows:-
- i) That the petition is incurably defective, incompetent, frivolous, scandalous and devoid of substance;
  - ii) That the affidavit sworn in support of the petition is full of falsehoods and misrepresentations tailored to unfairly win the sympathy of the court;
  - iii) That the court lacks jurisdiction to entertain the petition as it seeks to challenge an ongoing adjudication process without the consent of the land adjudication officer as required by law;
  - iv) That Emsea-Changach section was gazetted and declared open for adjudication in 1997 and gazetted *vide* Gazette Notice No LN 140/1970;
  - v) That the process of adjudication was temporarily halted due to unavailability of satellite images among other logistics including but not limited to court cases.
  - vi) That on or about August 20, 2019, demarcation and survey work was officially started through participation of residents of Emsea-Changach by way of baraza after numerous consultations with land owners;
  - vii) That the petitioners alongside other members of the affected communities were at all times kept abreast of the steps being taken by the 1<sup>st</sup> respondent in restarting the stalled adjudication process.
  - viii) That at all times the Kaptoiyoi and Kaptarkok clans have been part of the consultative meetings.
  - ix) That the actions of the 1<sup>st</sup> respondent were well within the knowledge of petitioners and the general public;
  - x) That if there was any failure on the part of the petitioners to participate in the impugned adjudication process, the failure cannot be blamed on the respondents;
  - xi) That appointment and constitution of the impugned adjudication committee was commenced on August 20, 2020 upon participation, consultation and assent of the residents within Emsea-Changach through barazas held on 20<sup>th</sup> and August 21, 2020.
  - xii) That in accordance with section 6 of the *Land Adjudication Act* cap 284, the process of appointing the members of the adjudication committee was commenced on August 20, 2020 upon consultation and approval from the relevant administrative offices due to the restrictions and protocols placed by the Government in covid 19 pandemic;
  - xiii) That it was only upon confirmation that all necessary health measures were in place that barazas held on 20<sup>th</sup> and August 21, 2020 were carried out to consult and sensitize the land owners within the affected areas;



- xiv) That the members of the adjudication committee were duly appointed by their peers in the barazas held on 20<sup>th</sup> and August 21, 2020.
- xv) That it is upon consensus of the majority, that the 1<sup>st</sup> respondent approved the appointment of the nominated members of the adjudication committee;
- xvi) That the petitioners are lamenting the fact that they were unsuccessful in their bid to be appointed members of the adjudication committee.
- xvii) That grant of the orders sought by the petitioners would be against public interest and contrary to values of justice and fairness.
- xviii) That the petitioners were in attendance in the impugned meeting and their concerns were addressed before the public baraza began;
- xix) That the suit is meant to scuttle the revival of the adjudication process and micro manage it.
- xx) That the allegation that the interested parties were appointed without public participation is an outright lie and perjury;
- xxi) That the members of the adjudication committee were sworn in after confirmation by the public;
- xxii) That the final list of the members of the adjudication constitutes both male and female members despite opposition from participants of the baraza citing cultural norms forbidding female election.
- xxiii) That the currently constituted land adjudication committee does not infringe on the constitutional rights of the petitioners;
- xxiv) That the petition is completely groundless, full of misleading and uncorroborated allegations meant to hoodwink and sway the court into believing that the respondents acted in unprofessional, illegal manner;
- xxv) That the petition suffers from lack of precision and falls short of the threshold of *Anarita Karimi Njeru v The Republic* (1976-1980) KLR 1272.
- xxvi) That it is in the interest of justice that the petition be dismissed.

7. The 1<sup>st</sup> respondent has annexed the following documents to the replying affidavit:-

- i) Gazette Notice No LN 140/1970 and notice letter dated August 13, 1997 marked GMB 1 and 2 respectively;
- (ii) Letter dated August 20, 2020 Marked GMB 3;
- (iii) Letters dated September 2, 2016 and March 23, 2018 Marked GMB 4(a) and (b) respectively;
- (iv) Letter dated June 30, 2020 Marked GMB-5
- (v) Letter dated August 17, 2020 Marked GMB-6;
- (vi) Copies of attendance register for the barazas held on 20<sup>th</sup> and August 21, 2021 Marked GMB-7.
- (vii) List of Committee members for Emsea-Changach section Marked GMB-9(a) to (e).

8. The Interested parties, through the replying affidavit of David Barboi, the Chairperson of Emsea/ Changach Land Adjudication Committee, have opposed the petition on the following grounds:-



- (i) That it is fatally and incurably defective, bad in law, misconceived and an abuse of the process of the court;
- (ii) That the averments contained in the affidavit of Moses Barkuto sworn in support of the petition are false;
- (iii) That they are aware of the Ministry of Lands and Settlement letter dated August 13, 1997 through which the Ministry issued a notice for establishment and adjudication section Changach and Emsea Locations.
- (iv) That all interested parties are residents of Emsea and Changach sub-locations within Elgeyo Marakwet County and duly appointed members of Emsea-Changach Land Adjudication Committee.
- (v) That the sub-locations consist of eleven (11) clans who have occupied, developed and established homes thereon from time immemorial;
- (vi) That the residents were sensitized about the adjudication process through public notices and radio announcements.
- (vii) That the residents were also sensitized through public notices informing the residents of the meetings of 20<sup>th</sup> and August 21, 2020 for purposes of electing members of the Land Adjudication Committee;
- (viii) That in the meetings, the residents were informed about covid 19 protocols and given comprehensive information on land adjudication process and the election requirements.
- (ix) That the Interested parties were duly nominated and elected on 20<sup>th</sup> and August 21, 2020 at two centres where the elections were conducted, Emsea sub location and Changach sub location.
- (x) That according to the minutes of those meetings, the petitioners participated in the consultative meetings and the elections.
- (xi) That the 1<sup>st</sup> petitioner participated in the election but lost the election to the 4<sup>th</sup> Interested party with whom they were competing for election as representatives of Segut/Chemkiwo village.
- (xii) That the 4<sup>th</sup> petitioner attended the meeting held on August 20, 2020 representing Tarigo village and proposed the 2<sup>nd</sup> Interested Party as a member of the committee who was duly elected;
- (xiii) That Emsea/Changach area elected committee members of their choice in a free and fair environment in the presence of land officers and administration officers.
- (xiv) That the committee includes representatives from all the clans including Kaptoiyoi and Kaptarkok which the petitioners claim to represent.
- (xv) That the committee consists of both gender and is not discriminatory to the female gender as alleged by the petitioners.
- (xvi) That the members of the committee have taken oath and affirmation of office.
- (xvii) That the members were sworn on August 27, 2020 and inducted before they commenced their duties, which stopped after the orders issued in this case.



- (xviii) That the election of the members was conducted through public participation-barazas and other available forums.
  - (xix) That because the elections were conducted during covid 19 pandemic, the elections were conducted in each village;
  - (xx) That there is need for survey and subdivision to be completed to enable members of the area access compensation from Kentraco;
  - (xxi) That the adjudication committee took office and received complaints from members of public including the 1<sup>st</sup> petitioner in acceptance of the interested parties' legality and jurisdiction.
  - (xxii) That the petition has been filed by disgruntled members of Emsea/Changach who failed to have their way in the free and fair election carried out by the 1<sup>st</sup> respondent.
  - (xxiii) That the 3<sup>rd</sup> petitioner had moved the interested parties to register the section under the Community Land Act, which request was rejected;
  - (xxiv) That the petition is unsubstantiated, ill-motivated, malicious, misleading and full of spite as the petitioners' interest were not met in the election;
  - (xxv) That the journey of acquiring title deeds has been bumpy, long, expensive, tasking and would be frustrating for the residents of Emsea-Changach to miss the opportunity on account of frivolous and malicious petition like this one;
  - (xxvi) That the petition is bad in law for failure to comply with rule 7 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013.
  - (xxvii) That the orders sought in the petition will, if granted cause harm to the public; and
  - (xxviii) That the petitioners have not made up a case for being granted the orders sought hence the petition ought to be dismissed with costs.
9. The deponent of the replying affidavit has annexed the following documents to the affidavit in proof of the averments therein:-
- (i) Copy of authority to depone and copy of letter dated August 13, 1997both Marked DB-1;
  - (ii) Copy of notice dated July 10, 2020and August 21, 2020 Marked DB-2 and 3 respectively;
  - (iii) Copies of minutes of the meetings held on 20<sup>th</sup> and August 21, 2020 and attendance register Marked DB-4, 5 and 6 respectively.
  - (iv) Letter from the 1<sup>st</sup> respondent confirming names of persons elected as members of Emsea-Changach Adjudication Section dated August 27, 2020 Marked as DB-8;
  - (v) Bundle of copies of oath/affirmation of office Marked DB-9.
  - (vi) Copy of letter dated January 22, 2020Marked DB-10;
  - (vii) Copy of letter by the 1<sup>st</sup> petitioner to the committee dated September 29, 2020
  - (viii) Copy of letter from the 3<sup>rd</sup> petitioner to the committee dated September 2, 2020 Marked DB-12.



10. Vide a notice of withdrawal filed on October 26, 2021 and an order given in respect thereof on February 3, 2022, the 3<sup>rd</sup> and 4<sup>th</sup> petitioners herein withdrew as petitioners and also withdrew their claims and reliefs in the petition.
11. Pursuant to directions given on February 8, 2022, the petition was disposed of by way of written submissions. From the pleadings filed in this matter, the affidavit evidence adduced in support thereof and the submissions by the parties, I find the following to be the issues for the court's determination: -
- (i) Whether the petition meets the requirements of a representative suit?
  - (ii) Whether the petition meets the constitutional threshold?
  - (iii) Whether there was adequate public participation before the 1<sup>st</sup> respondent commenced the impugned adjudication process?
  - (iv) Whether the 1<sup>st</sup> respondent complied with section 5 of the *Land Adjudication Act*, cap 284 before he commenced the impugned adjudication process?
  - (v) Whether the 1<sup>st</sup> respondent complied with the law in appointing members of the land adjudication committee?
  - (vi) Whether the petitioners have made up a case for being granted the orders sought and
  - (vii) What orders should the court make?
12. On whether the petition meets the requirements of a representative suit, the Interested Parties have pointed out that the law and procedure to make a constitutional petition for enforcement of rights and freedoms alleged to have been breached or threatened with breach is found on articles 20, 21, 22, 23, 159, 165(2)(d) and 258 of the *Constitution* of Kenya as read with the *(protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013 (the Mutunga Rules)*. Whilst the Mutunga Rules, in particular rule 4, provides that a Petition may be presented by a person, a group or class of people for and on behalf of a group or a class of people the person bringing the petition belongs to, the interested parties have taken issue on the petition herein on the ground that the petitioners (read the 1<sup>st</sup> and 2<sup>nd</sup> petitioners as the claim by the 2<sup>nd</sup> and 4<sup>th</sup> who claimed to represent Kaptaitoi clan was withdrawn) claim to have brought the suit for the benefit of and on behalf of the members of Kaptarkok clan yet they have not attached a copy of any document to show that they are registered members of the community under the relevant law. It is pointed out that the petitioners have not annexed any document to the petition capable of proving that they represent the clan or community they claim they represent. Based on the provisions of order 1 rule 8 of the *Civil Procedure Rules*, which requires persons instituting suits on behalf of others to give notice, it is submitted that without proof of compliance with the provisions of order 1 rule 8 of the *Civil Procedure Rules*, the petitioners cannot be heard to say that they represent their clan. In the absence of authority to plead on behalf of their clan, it is submitted that the petitioners can only represent their personal interests. In that regard reference is made to the case of *Law Society of Kenya v Commissioner of Lands & 2 others* (2001)e KLR where the court emphasized the need for compliance with order 1 rule 8 of the *Civil Procedure Rules* in representative suits.
- My view on this issue is that the provisions of order 1 rule 8 would only apply in ordinary suits. This being a petition seeking enforcement of constitutional rights, it is the Mutunga Rules that apply to the petition.
13. On whether the petition meets the constitutional threshold, reference is made to the cases of *Anarita Karimi Njeru v Attorney General* (1979) e KLR and *Mumo Matemu v Trusted Society of Human*



*Rights Alliance & 5 others* (2013)e KLR in which the threshold of a constitutional petition was set and submitted that the petitioners have not proved there was none compliance with constitutional provisions or demonstrated how any of their personal rights or the rights of the group they belong to were violated or threatened with violation. The petitioners are said to have failed to plead any specific rights which were violated or threatened with violation. The petitioners are said to have failed to plead any specific injury they suffered or were threatened with suffering on account of the impugned land adjudication process.

14. I have carefully considered the issues raised in the petition vis-a-vis the submissions by the interested party that the petition does not meet the constitutional threshold. In addressing the issue, I draw the interested party's attention to the ruling of my sister Odeny J. Delivered on January 19, 2021. In that ruling the Honourable Judge inter alia observed:-

“The petitioners are complaining that there was no public participation, no notice was issued declaring the area an adjudication area and finally that the committee appointed were from one gender violating article 27 of the *constitution*. The petitioners are within their right to question the legitimacy of the process by bringing this matter to court as the land adjudication procedures would not have jurisdiction to deal with violation of rights as provided for in the *constitution*.”

The import of that decision, as relates to the question raised by the interested parties is that there are constitutional issues raised in the petition which this court is called upon to look into and make a determination in respect thereof. One being whether there was public participation. If the answer is in the affirmative, whether the participation was adequate in the circumstances of this case. There are also issues touching on the right to a fair administrative process in the selection of the adjudication committee, the right to protection from discrimination among other rights. For those reasons, I am of the view that the pleadings meet the threshold in the above cited authorities (*Anarita Kirimi Njeru and Mumo Matemu*).

15. On whether there was adequate public participation before the 1<sup>st</sup> respondent commenced the impugned adjudication process, the petitioners have reiterated their contention that the 1<sup>st</sup> respondent commenced the impugned adjudication process and public participation without involvement of the community and stakeholders; that the process was commenced in the middle of the covid 19 pandemic thereby denying the elderly members of the society who have the historical facts necessary for the adjudication process an opportunity to safely participate in the process; that the 1<sup>st</sup> respondent illegally nominated the interested parties to sit in the adjudication committee.
16. Terming the actions of the 1st respondent complained of tantamount to alienating their land and disenfranchising the community's fundamental rights, the petitioners assert that the adjudication process was commenced without the minimum criteria for public participation.
17. It is acknowledged that the 1st respondent announced the process through radio and public notices but contended that the notices were short and meant to curtail dress the process. It is further submitted that the petitioners had legitimate expectation that they would be accorded sufficient time to attend to their civic duty of participating in the adjudication process.



18. On that issue, the interested parties have made reliance on the case of *David Wanyeki Kago v Kenya National Examination Council* (2022) e KLR where the issue of public participation was discussed thus:-

“The manner in which public participation is carried out depends on the matter at hand. There is no straight jacket application of the principle of citizen participation. However, any mode of undertaking public participation which may be adopted by a public entity must factor in the minimum, the following basic four parameters:-

- a) First, the public must be accorded reasonable access to information which they are called upon to give their views on. In other words, the mode of conveying the information to the public reigns.
- b) Second, the people be sensitized or made to understand what they are called upon to consider and give their views on. In this case, the language used in conveying the information to the public becomes of paramount importance. For instance, if those affected by the intended decisions or the legislation are mostly illiterate, then such realities must be factored in deciding the mode and manner of conveying the information.
- c) Third, once the public is granted reasonable access to the information and is made to understand it, the public must be accorded reasonable time to interrogate the information and to come up with views.
- d) Fourth, there must be a defined manner in which the public or stakeholders will tender their responses on the matter.”

19. In applying those principles to this case, it is submitted that the respondents satisfied those principles fully by according the public reasonable access to the information they were being called upon to give their views on. In this regard, it is said that three notices were issued notifying the public about the meeting that was to be held on August 20, 2020. The notices are said to have been issued on July 10, 2020, July 17, 2020 and a notice broadcasted via Changei FM, Kass FM and Citizen FM on August 19, 2020. As a result, over 1000 people are said to have attended the meeting as evidenced by the registers signed and annexed to the Interested Party replying affidavit and Marked DB 6 and DB 7.

20. It is submitted that by broadcasting the meetings via platforms such as Kass FM and Changei FM the respondent ensured that the people understood since the stations broadcast in vernacular.

21. It is further submitted that there is evidence that people were given enough time to interrogate the information and come up with views. In this regard, it is said that the first notice was given a month before the meeting took place.

22. The members of the public are said to have been advised comprehensively on the land adjudication process and the election requirements. It is reiterated that the 1st petitioner participated in the election process but lost.

23. I have carefully considered the contention by the petitioners that there was inadequate public participation, the reasons given for that contention and the evidence adduced in this case showing the kind of public participation that was undertaken, how it was undertaken and its outcome. I have also taken into account the special circumstances of this case being that the exercise was undertaken in the middle of a pandemic-covid 19, and the subject matter of the public participation in question, being land adjudication.



24. The evidence adduced in this case shows that the petitioners alongside the other residents of Emsea-Changach Land Adjudication Section were notified of the process and accorded an opportunity to participate in election of their representatives in the election. From the uncontroverted evidence of the respondents and the interested parties, the petitioners participated in the election of members of the land adjudication committee. Some like the 1<sup>st</sup> petitioner are said to have participated as candidates in the election, a fact they neither disputed nor controverted. The community they purport to represent had an opportunity and did elect its representative who unfortunately turned out not to be the petitioners. For those reasons, I find the petitioner's claim that there was no public participation or that the public participation carried out was inadequate to be without basis and dismiss it.
25. As to whether the 1<sup>st</sup> respondent failed to comply with section 5 of the *Land Adjudication Act* by failing to issue notice to the residents declaring that interests in the land within the area would be ascertained and recorded in accordance with the Land Adjudication, I do find that the area was declared a land adjudication area long time ago, on August 13, 1997. The 1<sup>st</sup> respondent was merely reviving a process that stalled on account of what is described in paragraph 7 of the replying affidavit of the 1<sup>st</sup> respondent as logistical challenges. In the circumstances, the 1<sup>st</sup> respondent was not required to issue a fresh notice after the challenges dissipated. The notice attached to his replying affidavit dated August 13, 1997 and marked GMB-2 coupled with the notices issued concerning the revival of the adjudication process namely letters dated 17<sup>th</sup> and August 20, 2020 marked GMB-6 and GMB-3 sufficed for that purpose.
26. On whether the 1<sup>st</sup> respondent complied with the law in appointing members of the land adjudication committee, the petitioner have made reliance on the case of *Marilyn Muthoni Kamuru & 2 Others v Attorney General & Another* Nairobi HCC Petition No 566 of 2012 where import of article 27(8) of the *Constitution of Kenya 2010* is discussed and submitted that the two third gender principle is an important element of human rights in our constitution; that the *constitution* is clear that one gender should not occupy more than two thirds of elective or appointive positions in a body.
27. In applying the above principles to the circumstances of this case, the petitioner contends that the members of the land adjudication committee appointed by the 1<sup>st</sup> respondent were all of the same gender/male. Terming the appointment unlawful, null and void, the petitioners urge the court to permanently restrain the respondents and the interested parties from continuing with the adjudication of Emsea/Changach Adjudication Section unless and until the rights of the petitioners and the residents of Emsea/Changach Adjudication Section are duly respected.
28. Concerning this issue, both the respondents and the interested parties through their respective responses appear to be conceding that there was no full compliance with the gender rule requirement. On his part, the 1<sup>st</sup> respondent avers that the final list of the members of the adjudication, constitutes both male and female members despite opposition from participants of the baraza citing cultural norms forbidding female election.
29. In the peculiar circumstances of this case, where the process of selection of members was elective as opposed to being appointive and cognizance of the challenge compliance with the gender rule principle has posed especially in elective positions, I am not persuaded that the petitioners have made a case for interference with the adjudication process on account of the failure to strictly adhere with the gender rule principle. The reason for failure to comply with the principle has been sufficiently accounted for, cultural challenges.
30. It is clear from the foregoing that the petitioners have not made up a case for being granted the orders sought. Consequently, I dismiss the petition with costs to the respondents and the interested parties.



31. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT ITEN THIS 18<sup>TH</sup> DAY OF JULY, 2022.**

**L. N. WAITHAKA**

**JUDGE**

