



**Bartuos v County Land Adjudication & Settlement Officer, Baringo & 4 others;  
Roberts (Interested Party) (Environment and Land Constitutional Petition  
18 of 2022) [2022] KEELC 4810 (KLR) (22 September 2022) (Judgment)**

Neutral citation: [2022] KEELC 4810 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ITEN  
ENVIRONMENT AND LAND CONSTITUTIONAL PETITION 18 OF 2022**

**L WAIHAKA, J**

**SEPTEMBER 22, 2022**

**IN THE MATTER OF CONTRAVENTION OF FUNDAMENTAL RIGHTS  
& FREEDOMS UNDER ARTICLE 40 OF THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF ARTICLES 22, 23 AND  
165 OF THE CONSTITUTION OF KENYA 2010**

**AND**

**IN THE MATTER OF SECTION 14, 26A, 27 AND 28 OF THE  
LAND ADJUDICATION ACT CAP 284 LAWS OF KENYA**

**AND**

**IN THE MATTER OF SECTION 4, 5 AND 6 OF  
THE COMMUNITY LAND ACT NO.27 OF 2016**

**AND**

**IN THE MATTER OF THE PHYSICAL AND LAND USE PLANNING ACT NO.13 OF 2019**

**AND**

**IN THE MATTER OF SECTION 7 OF THE LAND ACT NO.6 OF 2012**

**AND**

**IN THE MATTER OF BARTUM ADJUDICATION SECTION, BARINGO**

**AND**

**IN THE MATTER OF PLOT NUMBERS 1-77  
BARTUM ADJUDICATION SECTION, BARINGO**

**BETWEEN**

**KIPKEMBOI ARAP BARTUOS & 13 OTHERS ..... PETITIONER**



AND

COUNTY LAND ADJUDICATION & SETTLEMENT OFFICER,  
BARINGO ..... 1<sup>ST</sup> RESPONDENT  
COUNTY GOVERNMENT OF BARINGO ..... 2<sup>ND</sup> RESPONDENT  
DIRECTOR OF LAND ADJUDICATION AND SETTLEMENT .... 3<sup>RD</sup>  
RESPONDENT  
CHIEF LAND REGISTRAR ..... 4<sup>TH</sup> RESPONDENT  
COMMITTEE BARTUM ADJUDICATION SECTION ..... 5<sup>TH</sup> RESPONDENT

AND

MURRAY HENRY DAVID ROBERTS AND 30 OTHERS . INTERESTED PARTY

### JUDGMENT

**The facts of this case can be summarized as follows:-**

1. Bartum Adjudication Section (BAS) was declared as an adjudication section on December 8, 1983. A notice to that effect was issued notifying the residents of BAS that all rights and interests in land within the section would be ascertained and recorded in accordance with the provisions of the [Land Adjudication Act](#), Cap 284 Laws of Kenya (LAA). Through the notice, any person claiming any right or interest in the land in the section was requested to present his/her claim to the recording officer either in person or through a duly authorized agent within three months from the date of the notice.
2. Following issuance of that notice, the residents of BAS, who are pastoralists, requested that their interests be recorded collectively as a group ranch-Bartum Group Ranch. The Group Ranch was, however, not incorporated as by Law required.
3. A Land Adjudication Committee comprising of 25 members was appointed by the Land Adjudication Officer to be the Land Adjudication Committee for the Group Ranch. It is important at this juncture to point out that there is no meeting of mind between the Petitioners and the Respondents and the Interested parties on whether or not the members of the Committee were drawn from the members of the Group Ranch or from the residents of BAS. In that regard, whilst the Petitioners have deposed that the members were drawn from the members of the Group Ranch, the Respondents have deposed that the Committee members were never members of the Group Ranch. According to the Respondents and the Interested parties, the members of the committee were drawn from the residents of BAS.
4. During the adjudication process, public utilities were reserved and a portion of land measuring 45,000 acres or thereabout (plot No 1) set aside for the 821 identified and registered members of the Group Ranch.
5. At close of the adjudication exercise, a notice was issued under Section 25(c) of [LAA](#) to the effect that the Adjudication Register for BAS (Group Ranch) had been completed. The Adjudication Register was opened for inspection for 60 days. Any person named in the Register or affected by it or considering it to be incorrect or incomplete in any respect, was required to submit written objection within 60 days.
6. There is evidence that some of the persons affected or dissatisfied with the register objected to the register. Notable about the objections are objections numbers 14 and 15 lodged by Ryamond K



- Chelimo (chairman Bartum Group Ranch). The objections relate to change of names of public utilities and addition of public utility parcels and others. The objections were allowed. The parcels of land affected by the objection are plot Nos 37, 47, 48, 50, 51, 52, 55, 56, 57, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76 and 77.
7. There is evidence that arising from the objections, particularly, objection number 15, plot No 1 measuring about 45,000 acres which had been reserved for the 821 members of Bartum Group Ranch was subdivided to reserve land for additional public utilities and other entities, some of which are private. The private entities which were allocated land following the objection were:- Ngenyin Community Conservancy-plot No 65 measuring 85 hectares; Murray Henry David Roberts-plot No 66 measuring 3.81 hectares; Koyo Investment Ltd which was allocated plot No 67 measuring 112.19 hectares; Richard Kipsimnyan Kambala and Eunice Mkiyo Kandie-plot No 68 measuring 21.88 hectares; Richard Kipsimnyan Kambala-plot No.69 measuring 8.5 hectares; Simeon Kiplagat Chebon-plot No 70 measuring 3.79 hectares; Henry Chepkok Kandie-Plots Nos 74 and 75 measuring 6.31 and 0.71 hectares respectively; Kennedy Kombo Kiptosok-plot No. 76 measuring 1.6 hectares and Wilson Chesire Chemursoi-plot No.77 measuring 4.25 hectares.
  8. The Petitioners acknowledge that public utilities were set aside during the demarcation exercise that occurred in 1983 but contend that no acreages were ascribed to those utilities. In support of that assertion, the Petitioners have made reference to the demarcation book attached to the Respondents' replying affidavit, which book does not indicate the acreages ascribed to the reserved public utilities.
  9. Wondering how and when acreages were ascribed to the public utilities, the Petitioners have contended that the demarcation exercise that led to ascribing acreages to the public utilities and other private entities created from the land reserved for members of Bartum Group Ranch was secretly carried out by the 1<sup>st</sup> Respondent, in collusion with the 2<sup>nd</sup> Respondent and the Interested parties between 2015 and 2018 without their involvement or participation.
  10. Terming the impugned demarcation a violation of Articles 10, 40 and 47 of the Constitution of Kenya, the Petitioners seek judgment against the Respondents and Interested parties for :-
    - a) A declaration that the actions of the Respondents to adjudicate, demarcate and register the Petitioners' and 821 other registered members of lands in Bartum Adjudication Section in the name of the 2<sup>nd</sup> Respondent and the Interested parties as plot Nos 1-77 is unlawful, arbitrary, unreasonable, contrary to good governance and without regard to the Petitioners' legitimate expectation of a fair administrative action;
    - b) A permanent injunction restraining the 2<sup>nd</sup> Respondent and the Interested parties by themselves and their employees or servants howsoever from registering, alienating, dealing with, engaging in construction activities, transferring and/or evicting the Petitioners from their parcels of land;
    - c) A declaration that the purported adjudication, demarcation and registration process carried out between 2015 and 2018 of parcels numbers 1-77 Bartum Adjudication Section is unlawful, illegal, null and void.
    - d) A mandatory injunction compelling the 1<sup>st</sup> and 3<sup>rd</sup> Respondents to constitute the Land Adjudication Committee for Bartum Adjudication Section;
    - e) The honourable court do issue such other orders and give such further directions as it may deem fit to meet the ends of justice;
    - f) The costs of the Petition be awarded to the Petitioners.



11. The Respondents and the Interested parties have maintained that the impugned demarcation was done in 1983 and that the applicable law and procedures were complied with. The Respondents and the Interested parties have also faulted the Petitioners for failing to invoke the dispute resolution mechanism provided for under LAA to challenge the adjudication if they were aggrieved. According to the Respondents and the Interested parties, the Petitioners' claim, if any, is vitiated by the delay of over 35 years in bringing the suit and the failure to invoke the dispute resolution mechanism provided by LAA.
12. The Respondents and the Interested parties, in particular the 2<sup>nd</sup> Respondent and the 30<sup>th</sup> Interested party, have argued that the claim against the 2<sup>nd</sup> Respondent is bad in law as the 2<sup>nd</sup> Respondent was none existent in 1983 when the impugned adjudication took place. It is the case of the 2<sup>nd</sup> Respondent and the 30<sup>th</sup> Interested Party that the 2<sup>nd</sup> Respondent could not have violated or threatened to violate the rights of the Petitioners because it was none existent in 1983. The 2<sup>nd</sup> Respondent contends that any violations of the Petitioners' rights by the defunct County Council of Baringo ought to have been raised with the Transition Authority formed under the Transition to [Devolved Governments Act, 2012](#) or through a Petition to the 2<sup>nd</sup> Respondent and not through a suit like the instant one. The Petitioners are also said to have failed to prove that they have Interest in the subject matter of the suit and that their constitutional rights were violated by the Respondents and the Interested parties.
13. The Petition was disposed of by way of written submissions.

#### **Analysis and determination**

14. From the pleadings filed in this suit, the affidavit evidence adduced and the submissions by the respective parties, I find the following to be the issues for the court's determination;
  - i) Whether the Petitioners have *locus standi* to bring this suit?
  - ii) Whether the impugned demarcation (creation of the 77 plots registered in the name of the 2<sup>nd</sup> Respondent and the Interested parties) was created in 1983/84 or between 2015 and 2018?
  - iii) Whether the Law was complied with in carrying out the impugned demarcations?
  - iv) Whether the 2<sup>nd</sup> Respondent is wrongly sued?
  - v) Whether the Petitioners' suit is vitiated by delay in bringing it and/or the failure to challenge the impugned adjudication process using the process provided for under LAA?
  - vi) Whether the Petitioners have made up a case for being granted the orders sought or any of them?
  - vii) What orders should the court make?
15. On whether the Petitioners have *locus standi* to bring this suit, the 2<sup>nd</sup> Respondent has submitted that the Petition was brought without any proper basis; that the Petitioners have not demonstrated sufficient *locus standi* to urge the rights in the case. In that regard, it is contended that the Petitioners claim to be members of Bartum Group Ranch yet they have not annexed any certificate of Incorporation of the Group Ranch which empowers them to hold the subject matter of the suit as a group; that there is no proof that the Petitioners are members of the group. The Petitioners are also said to have failed to prove that they are residents of the adjudication section. It is contended that the Petitioners are strangers to the adjudication process and they have failed to demonstrate their interest in the adjudication section by identifying the land they are laying claim to. The sentiments of the 2<sup>nd</sup>



Respondents are shared by the other Respondents and the Interested parties, who filed a response and submissions to the Petition.

16. In response, the Petitioners have referred to the affidavits sworn in support of the Petition (supporting and supplementary) where they have deposed that they are inhabitants of the Adjudication Section and that some of them were members of land adjudication committee and submitted that the Petitioners have established and set out a clear and identifiable stake and interest in the adjudication section.

PARA 17.

Concerning that issue, having read and considered the totality of evidence adduced in this case by the parties, I entertain no doubt that the Petitioners have identifiable stake in the subject matter of the suit entitling them to bring this suit and to challenge the impugned demarcation of the subject matter of this suit. Evidence of the Petitioners' interest in the subject matter of this suit is comprised in the supplementary affidavit of the Petitioners sworn on April 14, 2021 where the 2<sup>nd</sup> Petitioner, Stephen Kipyegon Arap Limo, has deposed that he is a registered and ascertained member number 138 in BAS. That fact is laid bare by the annexed members' register marked SKL 8.

18. The question as to whether the Petitioners are residents of BAS is also answerable through the response of the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> 6<sup>th</sup> and 9<sup>th</sup> Interested parties who through their replying affidavit sworn on February 4, 2021, and filed on February 11, 2021, have confirmed that the Petitioners are residents of BAS. In that regard, the deponent of the affidavit, Simeon Kiplagat Chebon, has inter alia deposed as follows:-

- “ 2. That I am the 6<sup>th</sup> Interested Party conversant with the facts and circumstances in respect of the rights of the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 9<sup>th</sup> IPs regarding this Petition hence competent to swear this affidavit.....
25. That the 1<sup>st</sup> Petitioner lives on a piece of land in Ngenyin village near lake Baringo 10 Kilometers away from the 2<sup>nd</sup> IPs parcel of land;
26. That the 2<sup>nd</sup> Petitioner lives about 10 Kilometers away from the 2<sup>nd</sup> IPs land, on a piece of land situated within Kapkirwok village.
27. That the 3<sup>rd</sup> Petitioner lives on a piece of land about 5 kilometers away from the 2<sup>nd</sup> IP's parcel of land;
28. That the 5<sup>th</sup> Petitioner lives on a piece of land in Kipcherere/Biringweny about 20 Kilometers away from the 2<sup>nd</sup> IPs parcel of land;
29. That the 6<sup>th</sup> Petitioner lives on a piece of land in Kapseiywa about 15 kilometers away from the 2<sup>nd</sup> IP's parcel of land.
30. That the 10<sup>th</sup> Petitioner is the immediate neighbour to the 2<sup>nd</sup> Respondent with only the road separating them.....
35. That in view of the foregoing, it is not true that the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup>, 12<sup>th</sup> and 14<sup>th</sup> Petitioners have been rendered landless and destitute and can be evicted at any time since they have their parcels of land within the adjudication section that is plot No.1 that has been set aside for the community....”

19. In view of the foregoing, the Respondents and the Interested parties cannot be heard to say that the Petitioners have no *locus standi* to bring this suit to challenge the impugned demarcation of the Section



as they are persons affected or likely to be affected by it. For the foregoing reason, I return a positive verdict on the issue as to whether the Petitioners had a *locus standi* to bring this suit.

20. On Whether the impugned demarcation (creation of the 77 plots registered in the name of the 2<sup>nd</sup> Respondent and the Interested parties) was created in 1983/84 or between 2015 and 2018; I have read and considered the reasons given by the Petitioners for arguing that the impugned demarcation was done between 2015 and 2018 as opposed to 1983 and 1984 namely that no acreages were ascribed to the public utilities identified in 1983; that acreage of the public utilities was to be carried out by the group representatives upon registration; that no such exercise was carried out because the group ranch was never registered and that the purported objections pursuant to which some public and private utility land were reserved is fraudulent.
21. Although from the demarcation book attached to the replying affidavit of John Ongalo Laku sworn February 5, 2021, no acreages were ascribed to the public utilities, that alone cannot be said to be proof of the allegations that the impugned demarcation was done between 2015 and 2018. The rule of evidence is that he who alleges must prove. The Petitioners alleged that the impugned demarcation was fraudulently done between 2015 and 2018 but failed to adduce evidence capable of proving that fact. Instead of adducing evidence capable of proving the serious allegations made against the Respondents and the Interested parties, the Petitioners engaged in speculation concerning what could have happened. It is trite law that speculation and suspicion cannot take the place of evidence. For those reasons, I find and hold that the Petitioners have not proved that the impugned demarcation was done between 2015 and 2018 as opposed to 1983 and 1984. I hasten to point out that, it is highly unlikely that the demarcation were done in 1983/84 as alleged by the Respondents and the Interested parties for the simple reason that the demarcation must have taken place following the successful objections lodged by among others Ryamond K Cherimo (Chairman Bartum Group Ranch). The objections, in particular objections No 14 and 15 which allegedly yielded the impugned demarcations were allowed on December 1, 1987. Any demarcation, therefore can only have taken place after December 1, 1987 and not 1983/84 as contended by the Respondents and the Interested parties. Being the ones with knowledge as to when the impugned demarcations were done, the burden of proof shifted to the Respondents and the Interested parties to prove not only when the impugned demarcation was done but also that there was public participation when such demarcation were done. Other than giving evidence showing that there were objections lodged by the Chairman Bartum Group Ranch which led to subdivision of the parcel of land set aside for the 821 members of Bartum Group Ranch, there is no evidence whatsoever that the members were consulted during the demarcation carried out following the successful objection lodged by the Chairman of the Bartum Group Ranch. Taking into account that Bartum Group Ranch had not been incorporated to give it legal personality, issues abound concerning the legal capacity of the said chairman of the Group Ranch to lodge the objection on behalf of the members of Bartum Group Ranch and to represent the members in the demarcation which ensued. There is also the issue of conflict of interest arising from the fact that the said Ryamond K Chelimo was also the Chairman of the Land Adjudication Committee appointed by the 1<sup>st</sup> Respondent to assist him in adjudicating the section. There is no evidence that the said person declared his conflict of interest in the process as required by law.
22. As to whether the Law was complied with when carrying out the impugned demarcations, the Petitioners have submitted that the 1<sup>st</sup> Respondent did not issue the demarcation notice required to be issued under Section 14 of LAA. The Respondents and the Interested parties, on the other hand, have maintained that the adjudication process was carried out in strict compliance with the law and procedures stipulated under the LAA.



23. I have carefully considered the submissions concerning this issue vis-a-vis the evidence adduced in this case. Of particular interest is the evidence to the effect that the residents of BAS requested that their interest in the section be registered as a group ranch as opposed to being registered as individuals. The evidence adduced shows that the request by the residents was accepted leading to the interests of the residents being ascertained and registered as a group. The evidence adduced shows that a parcel of land measuring 17,504.80 hectares was set apart and registered as plot No 1 to cater for the 821 residents of BAS whose interests were ascertained and registered. After the adjudication register was declared complete and members/persons affected by it were invited to inspect it and if dissatisfied to lodge objections against it, there is evidence that various objections were received and determined by the 1<sup>st</sup> Respondent or his predecessor in office. Of interest are objections Nos 14 and 15 in the register of objections. Those objections were lodged by Ryamond K Chelimo (Chairman Bartum Group Ranch). The said person was also the Chairman of the Land Adjudication Committee appointed by the 1<sup>st</sup> Respondent to assist him in the adjudication of the section. As a result of those objections, the names of public utilities were changed and additional public utilities were added from the land reserved for the residents of BAS. In that regard, see the document marked JOL 6 annexed to the replying affidavit of John Ongalo Laku filed on February 10, 2021.
24. Cognisance of the fact that the person who lodged the objections was a member of the Land Adjudication Committee and that Bartum Group Ranch had not been registered at the time, a question of both Law and fact arises as to who represented or could have represented the residents during the hearing of the objections. It is also curious how the objection by the said person could have resulted in subdivision of plot No 1 reserved for the 821 members of Bartum Group Ranch to some private individuals. It is noted that neither the Respondents nor the Interested parties have given any explanation on the circumstances upon which the objection by the Ryanmond K Chelimo resulted in subdivision of the land set aside to all the 821 members and issuance of some of the subdivisions to private individuals.
25. In the absence of any explanation of how the objection by Ryamond resulted in subdivision of the land reserved for the 821 residents of BAS, the Respondents cannot be heard to say that there was strict adherence of the law and procedures provided under LAA. I say so because under LAA the only way the objection by Ryamond could result in subdivision of the land set aside for all the residents of BAS was if it was demonstrated that he was an agent of the residents and/or the other persons in whose favour the subdivisions were meant. No evidence whatsoever was led capable of showing that Ryamond was an agent/guardian of the residents or the other beneficiaries of the subdivision.
26. From the pleadings filed in this case, it is also clear that Bartum Group Ranch was not incorporated to give it legal personality. That being the case, the actions of the purported Chairman of Bartum Group Ranch cannot be said to have been action of a legal representative of the group ranch.
27. Whilst there is evidence that pursuant to the objection raised by the purported chairman of Bartum Group Ranch, the parcel of land reserved for collective use of the 821 members of the group ranch was sub-divided to create additional public utility parcels of land and some parcels registered in the name of private individuals, there is no evidence of any involvement of the residents in the demarcation which took place following those objections. Since the plot being subjected was vested in the entire membership of the Group Ranch, which had not been registered to form legally recognizable group representatives, the Respondents and the Interested parties cannot be heard to say that the 821 beneficiaries were consulted and involved in the process that yielded the impugned parcels of land, particularly the parcels arising from the objections done by Ryamond to wit objection No 14 and 15.



28. In view of the foregoing, I am of the considered view that there was no compliance with the Law in carrying out the impugned demarcation, whether carried in 1983/84 or any other time thereafter.
29. On whether the Petitioners' suit is vitiated by the delay in bringing it and/or the failure to challenge the impugned adjudication process using the process provided for under Cap 284, whereas the law imposes an obligation to exhaust remedies provided for in the parent statute before seeking any other legal remedy, in the special circumstances of this case where the Petitioners had no individual interest to protect in the suit property, the same having been held communally, and with the intended group ranch having not been incorporated as by Law contemplated, insisting that the Petitioners ought to have challenged the impugned adjudication process using the process provided under Cap 284 may result in unjust outcomes. Concerning the delay in bringing the suit, the Petitioners have explained that they only got to know about the impugned demarcation in 2020. In the peculiar circumstances of this case, where it is not even possible to tell when the impugned demarcation was carried out, I find the delay in bringing the suit to have been properly explained and excusable. Consequently, I find and hold that neither the failure to challenge the impugned demarcation using the process provided for under Cap 284 nor the delay in bringing the suit vitiates the Petitioners case in the circumstances of this case.
30. On whether the Petitioners have made up a case for being granted the orders sought or any of them, having determined that the impugned adjudication process was not carried in accordance with the Law, I enter judgment in favour of the Petitioners in terms of prayers numbers (a), (b) and (f) of the Petition.

PARA 31.

Orders accordingly.

**DATED, SIGNED AND DELIVERED, AT ITEN THIS 22ND DAY OF SEPTEMBER, 2022.**

**L N WAITHAKA**

**JUDGE**

