



REPUBLIC OF KENYA



**KENYA LAW**  
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**Muntere & 24 others v District Land Adjudication & Settlement  
Officer, Narok South & 24 others (Environment & Land Petition  
27 of 2019) [2022] KEELC 13671 (KLR) (25 October 2022) (Judgment)**

Neutral citation: [2022] KEELC 13671 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAROK  
ENVIRONMENT & LAND PETITION 27 OF 2019  
CG MBOGO, J  
OCTOBER 25, 2022**

**BETWEEN**

MARTINE OLE MUNTERE ..... 1<sup>ST</sup> PETITIONER  
NAIYOLANG NHWALA ..... 2<sup>ND</sup> PETITIONER  
LESIAMON OLE KULET ..... 3<sup>RD</sup> PETITIONER  
LEMEIN OLE KARIAMKEI ..... 4<sup>TH</sup> PETITIONER  
SIMIMNTEI OLE KIITA ..... 5<sup>TH</sup> PETITIONER  
KAREESI OLE KISOTU ..... 6<sup>TH</sup> PETITIONER  
MOSES MUSANKA ..... 7<sup>TH</sup> PETITIONER  
PARLENTUAN OLE PESI ..... 8<sup>TH</sup> PETITIONER  
PARSEROI KARIANKEI ..... 9<sup>TH</sup> PETITIONER  
TOPOIKA OLE SAIDIMU ..... 10<sup>TH</sup> PETITIONER  
KEREMA OLE PINGWA ..... 11<sup>TH</sup> PETITIONER  
OLORRUSHA OLE KAIRUNG ..... 12<sup>TH</sup> PETITIONER  
KOIMEREN OLE KOSHAL ..... 13<sup>TH</sup> PETITIONER  
POSE OLE TAPANEI ..... 14<sup>TH</sup> PETITIONER  
LENKANASA OLE KARIANKEI ..... 15<sup>TH</sup> PETITIONER  
MERANKA OLE TIRA ..... 16<sup>TH</sup> PETITIONER  
MUKARE OLE DAPASH ..... 17<sup>TH</sup> PETITIONER  
TOBIKOYIE OLE KULET ..... 18<sup>TH</sup> PETITIONER



SEYIANDUKI OLE KARKAR .....	19 <sup>TH</sup> PETITIONER
SIMONOLE KIITA .....	20 <sup>TH</sup> PETITIONER
KISARU ENE SOLIO .....	21 <sup>ST</sup> PETITIONER
RIAMET OLE KIBELEKENYA .....	22 <sup>ND</sup> PETITIONER
KEPRE OLE KAIRUNG .....	23 <sup>RD</sup> PETITIONER
LEMIAN GIDEON .....	24 <sup>TH</sup> PETITIONER
LETEYO OLE LETOLU PARTY .....	25 <sup>TH</sup> PETITIONER

**AND**

DISTRICT LAND ADJUDICATION & SETTLEMENT OFFICER, NAROK SOUTH .....	1 <sup>ST</sup> RESPONDENT
MINISTRY OF LAND & PHYSICAL PLANNING .....	2 <sup>ND</sup> RESPONDENT
ATTORNEY GENERAL .....	3 <sup>RD</sup> RESPONDENT
KAMAKEY OLE NYAKUNI .....	4 <sup>TH</sup> RESPONDENT
PETER KONANA SINTI .....	5 <sup>TH</sup> RESPONDENT
CHARLES NTINAL OLE MPOE .....	6 <sup>TH</sup> RESPONDENT
LEINA OLE MUSANKA .....	7 <sup>TH</sup> RESPONDENT
MUSANA OLE KOIRANG .....	8 <sup>TH</sup> RESPONDENT
KAANO OLE SAIPIRI .....	9 <sup>TH</sup> RESPONDENT
KINANTA OLE PING'WA .....	10 <sup>TH</sup> RESPONDENT
KERINGOT OLE KARIANKEI .....	11 <sup>TH</sup> RESPONDENT
PUSHATI OLE SAYIATON .....	12 <sup>TH</sup> RESPONDENT
AITAOS OLE MARPE .....	13 <sup>TH</sup> RESPONDENT
PATIO OLE NGOTIEK .....	14 <sup>TH</sup> RESPONDENT
DANIEL SEURI OLE MAKO .....	15 <sup>TH</sup> RESPONDENT
MOITALEL OLE ROTIKEN .....	16 <sup>TH</sup> RESPONDENT
TENTERE OLOLKIJAPE .....	17 <sup>TH</sup> RESPONDENT
DANIEL MEITUTUO OLE SAIGEU .....	18 <sup>TH</sup> RESPONDENT
MEISI OLE ROTIKEN .....	19 <sup>TH</sup> RESPONDENT
JUMA OLE SAMPU-ERRAP .....	20 <sup>TH</sup> RESPONDENT
PAUL OLE SENAH .....	21 <sup>ST</sup> RESPONDENT
MOKOLO OLE NKOYO .....	22 <sup>ND</sup> RESPONDENT
STANLEY OLE MPOE .....	23 <sup>RD</sup> RESPONDENT



JAMES MWANA KARIANKEI ..... 24<sup>TH</sup> RESPONDENT

KOTOINE OLE NCHUALA ..... 25<sup>TH</sup> RESPONDENT

## JUDGMENT

1. The petitioners filed a petition dated November 11, 2019 seeking the following orders: -
  1. A declaration that the actions of the respondents Naikarra Adjudication Section during the adjudication process are unconstitutional, arbitrary, wrongful, null and void and violate, infringe and threaten the constitutional rights of the members of the whole of Naikarra Adjudication Section should be stopped forthwith.
  2. A declaration that the actions of the private surveyor who conducted the survey work in Naikarra Adjudication Section is null and void and the survey of Naikarra Adjudication Section be undertaken afresh by a survey officer who is a public officer.
  3. A permanent injunction restraining the respondents and the interested parties, their servants, agents, representatives and/or anyone else acting for and /or their behalf from continuing with the said adjudication process in Naikarra Adjudication Section unless and until the rights of the petitioners and the resident land owners of Naikarra Adjudication Section are duly respected.
  4. An order that the Land Adjudication Officer do hold a public baraza in Naikarra area within 21 days from the date of the judgment with an agenda of sensitising the land owners of the adjudication process.
  5. An order that the current land adjudication committee, being the interested parties herein, be disbanded forthwith and a public baraza be held in Naikarra area where the land adjudication officers shall appoint a new land adjudication committee with the approval of the land owners.
  6. That this honourable court be pleased to order that fresh adjudication process be undertaken in Naikarra Adjudication Section taking into account public participation as required by the Constitution and the relevant statutes including the Land Adjudication Act and that process be undertaken by any other Land Adjudication Officer other than the current Adjudication Officers in conduct of the adjudication process and whose actions has precipitated this petition.
  7. The costs of this petition be borne by the respondents.
  8. Such other orders as this honourable court may deem fit, just and expedient to grant for the end of justice.
2. In the petition, the petitioners stated that vide a letter dated October 2, 2008, the 1<sup>st</sup> respondent called for a baraza to be held on October 14, 2008 in Naikarra/Osarara sub-locations and that vide a notice dated October 14, 2008, Naikarra/Osarara sub-locations was declared an adjudication section. On April 15, 2009, the 1<sup>st</sup> respondent called for another baraza that was to be held on May 28, 2009 whose agenda was to access the progress of the work and sensitise residents of the adjudication section on the provisions of the Land Adjudication Act. That since then, the resident land owners of the adjudication section have issued demands for information and the status of the demarcation process from the adjudication committee but the said committee were not willing to disclose information to the land owners.



3. Further, that while these complaints remain unaddressed, a private surveyor went to the adjudication section and subdivided the land and placed beacons to mark boundaries which work was to be done by a government surveyor. In addition, the land adjudication committee has failed to address their concerns and together with the 1<sup>st</sup> respondent, they have continued to prepare the adjudication records in total disregard of the provisions of the law. As such the actions of the 1<sup>st</sup> respondent has caused immense distrust, suspicion, and anxiety between the resident land owners and the adjudication committee.
4. The petitioners contended glaring irregularities such as that while one land owner was entitled to one equal share measuring approximately 20 acres, the respondents have caused the land to be divided to 10 acres and less while other members were allocated more than one share. The petitioners further contended that 8 campsites were created by the adjudication committee without their involvement, consultation and participation, more than 200 members have been left out with no land allocated to them which is discriminatory, impersonation by individuals with the intention of acquiring more parcels of land, marginalisation of women leaving out widows and the disabled and allocating land to non-members, leaving members of Naikarra community landless.
5. The petitioners further contended that they are aggrieved that there are parcels of land that have not been allocated and they are apprehensive that the respondents have the intention of allocating the land to themselves. In addition, there are dependants of the petitioners who have not been allocated land, there are rivers and waterpoints that have been blocked by parcels of land crossing over them and as such they demand transparency, access to information and accountability.
6. The petitioners further contended that the 1<sup>st</sup> respondent is obligated under section 9 (2) of the [Land Adjudication Act](#) to hear and determine any issues arising. However, the 1<sup>st</sup> respondent has turned a blind eye to the numerous complaints by the land owners requesting for a copy of the demarcation map, list of all the land owners whose interests and claims have been recorded as well as the adjudication records confirming the total acreage of the adjudication section.
7. The petitioners pleaded that the actions of the respondents are in utter disregard of the spirit of the [Constitution](#) and are in violation of articles 10,19, 21 and 35 of the [Constitution](#). Further, that the refusal by the respondents to supply information and documents is in contravention of their constitutional rights and that despite seeking requisite consent to institute legal proceedings, the same was denied and the appeal to the minister has elicited no response.
8. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents filed grounds of opposition dated December 5, 2019 challenging the petition on the following grounds: -
  1. That the application and the petition herein are an abuse of the court process as they offend the provisions of section 6 of the [Civil Procedure Act](#), cap 21 Laws of Kenya.
  2. That the applicants are abusing the court process as they have not disclosed the existence of another petition being Narok ELC Petition 16 of 2019 dealing with the same subject matter herein that is still pending.
  3. That the application and the petition filed herein are premature as the applicants have not exhausted the mechanisms provided for in the [Land Adjudication Act](#), cap 284 Laws of Kenya.
  4. That the applicants are busy bodies intended to meddle with the adjudication process whose relief sought are not yet crystallized.



5. That the application is vexatious, frivolous and an abuse of the court process and the same ought to be dismissed with costs to the respondents.
9. The 4<sup>th</sup> to 25<sup>th</sup> respondents filed a replying affidavit dated February 18, 2020 which was sworn by Kamakei Ole Nyakuni-the 4<sup>th</sup> respondent. He deposed that Naikarra Adjudication section was declared on October 14, 2008 which section was subdivided into 25 clusters. That on November 7, 2008, the Land Adjudication Officer, Narok South District appointed 25 members to the Land Adjudication Committee in consultation with the Deputy County Commissioner, Narok South where he was duly elected as chairman. Further, that the chairman's role in an adjudication section is limited because the demarcation officer is assigned to guide the committee and the land owners on all the demarcation process and that the exercise of subdivision is now at the stage of demarcation, survey and beaconing of land as such the register is yet to be availed and therefore the petition is premature because the period for inspection of the register was halted by an order of this court in ELC Petition No. 16 of 2019.
10. The 4<sup>th</sup> respondent further deposed that the demarcation officer prepared a map of the entire section as per section 5 (2) (d) of the [Land Adjudication Act](#) and the land owners together with the committee are invited to assist the demarcation officer in the demarcation exercise and to clear any such boundaries. Further, that the demarcation officer has constantly and transparently discharged his duties and being the overall supervisor, he has regularly briefed the land owners of all stages of the demarcation exercise. In addition, the 4<sup>th</sup> respondent deposed that by virtue of section 9 of the [Land Adjudication Act](#), the petitioners have not exhausted all avenues provided in the Act and therefore it is an offence for any land owner who refuses to demarcate his land or assist in clearing any boundary when called upon by the demarcation officer. Further, that the register is yet to be completed, published and displayed for a 60 days inspection period which everyone will be accorded an opportunity to challenge any entry or omission and therefore the petitioners are creating unnecessary apprehension and mistrust. Further that the adjudication process has not yet reached the stage for filing an objection and therefore this court lacks jurisdiction to entertain the application and petition until the adjudication register is completed.
11. The 4<sup>th</sup> respondent further deposed that the adjudication committee has no intention of disinheriting or dispossessing any member of the adjudication section and it is therefore premature to assert that some members are being mistreated. Further, that in a group representative situation, the chairman calls for a meeting under the guidance of the adjudication officer but in this case, members are briefed through their cluster representatives.
12. Parties agreed to dispose off the petition by way of written submissions. The petitioners filed written submissions dated August 30, 2022. The petitioners submitted that under article 63 (3) of the [Constitution](#), any unregistered community land shall be held in trust by the County Governments on behalf of the communities for which it is held and that the law applicable in the management of land is the [Community Land Act](#). On the issue of jurisdiction, the petitioner submitted that there is no provision in either the [Constitution](#) or the National Land Commission which purports to oust the jurisdiction of the court to determine a land dispute and the petition is properly before court in line with the provisions of article 165 of the [Constitution](#). The petitioners relied on the cases of *Kilewa Limited & another v Commissioner of Lands & 3 others* [2015] eKLR, [Michael Osundwa Sakwa v Chief Justice and President of the Supreme Court of Kenya & another](#) [2016] eKLR and *Kenya Bankers Association & others v Minister for Finance* [2002] 1KLR 61.
13. The petitioners further submitted that the land in question is trust land and the adjudication process should be conducted under the now enacted [Community Land Act](#). The petitioners submitted that



- section 48, 46 (1) and (2) and section 8 (1) and (2) of the [Community Land Act](#) are applicable in this case.
14. On whether the adjudication process has been commenced in flagrant disrespect of the [Constitution](#), the Land Act, the [Land Adjudication Act](#), Trust Land Act and [Community Land Act](#), the petitioners submitted that under the [Land Adjudication Act](#), it is critical for the county government to make a request in the initiation of the adjudication process and the Land Adjudication Officer proceeded to invoke the provisions of section 5 of the [Land Adjudication Act](#) hence there was no basis upon which the 1<sup>st</sup> respondent declared the land as an adjudication section. The petitioners relied on the cases of [Gitson Energy Limited v Francis Chachu Ganya & others](#) [2017] eKLR. The petitioners further submitted that there was no public participation. Reliance was placed on the cases of [Thuku kirori & 4 others v County Government of Murang'a](#) [2014] eKLR and [In the matter of National Land Commission](#) [2015] eKLR Advisory Opinion Reference No 2 of 2014.
  15. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents filed written submissions dated September 12, 2022. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents invited the court to look at ELC Petition No. 19 of 2018 and ELC Petition No. 22 of 2019 which in the latter case, this court delivered a ruling on February 9, 2022 striking out the petition for being premature. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents further submitted that the petitioners have not exhausted the dispute resolution mechanism as set out in the [Land Adjudication Act](#) and that they have invoked the jurisdiction of this court prematurely based on speculation. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents relied on the case of [Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others](#) [2012] eKLR. Further they submitted that the [Land Adjudication Act](#) under section 29 provides an avenue of appeal to the Minister by any party aggrieved by the determination of the adjudication officer. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents relied on the case of [Mohamed Ahmed Khalid \(Chairman\) & 10 others v Director of Land Adjudication & 2 others](#) [2013] eKLR. They submitted that the petitioners have not shown by way of evidence that the register in respect of the suit property was ever published and that they raised objections in respect to the manner in which the adjudication process was carried out. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents relied on the court of appeal decision in [Musane Ole Pere & another](#) Civil Appeal (Application) No 233 of 2019.
  16. The 4<sup>th</sup> to 25<sup>th</sup> respondents filed written submissions dated 19<sup>th</sup> September, 2022. The 4<sup>th</sup> to 25<sup>th</sup> respondents submitted that under the [Land Adjudication Act](#), a court cannot entertain a claim on interest in land which is still under adjudication without the consent of the adjudication officer as provided under section 30 of the Act. The 4<sup>th</sup> to the 25<sup>th</sup> respondents relied on the cases of [Owners of the Motor Vessel 'Lillian S' v Caltex Oil Kenya Limited](#) (1989) KLR, [Justus Ntuiti v Mwirichia Kaumbuthu](#) [2004] eKLR, [Benjamin Okwaro Estika v Christopher Anthony Ouko & another](#) [2013] eKLR and [Kilusu Julius Sile & 60 others v Chairperson, Oloirien Adjudication Section "B" Committee & 3 others](#) [2016] eKLR.
  17. The 4<sup>th</sup> to 25<sup>th</sup> respondents further submitted that section 29 of the [Land Adjudication Act](#) provides for an elaborate and comprehensive procedure for dealing with any dispute that arises during the adjudication process and the decision of the minister is final. As such, the jurisdiction of this court is clearly ousted and, at any rate, cannot be invoked unless the process set out under the Act has been exhausted. They relied on the case of [Mohamed Ahmed Khalid \(Chairman\) & 10 others versus Director Land Adjudication & 2 others](#) [2013] eKLR.
  18. I have carefully analysed and considered the petition, grounds of opposition, replying affidavit and the written submissions filed by the parties and the issues for determination is outlined as below: -
    - i. Whether this court has jurisdiction to hear and determine this petition.



- ii. Whether the petitioners are entitled to the reliefs sought.
19. Adjudication process is provided in the Land Adjudication cap 284. The Act outlines procedure to be followed up until issuing of title deeds. In the event that a person is aggrieved by the decision or is challenging the process thereof, he or she may file an objection with the adjudication officer in writing as is provided under section 26 of the [Land Adjudication Act](#).
20. The procedure for acquisition of land under Adjudication is clearly set out in the [Land Adjudication Act](#). Section 5 of the Act provides that: -
- “(1) The adjudication officer shall by notice either— (a) establish adjudication sections within the adjudication area; (b) establish the whole adjudication area as an adjudication section. (2) A separate notice shall be published in respect of each adjudication section, and in each such notice the adjudication officer— (a) shall define as clearly as possible the area of the adjudication section; (b) shall declare that interests in land within the adjudication section will be ascertained and recorded in accordance with this Act; (c) shall fix a period within which a person claiming an interest in land within the adjudication section must make his claim to the recording officer, either in writing or in person or by his agent duly authorized according to law (including recognized customary law); and (d) may require any person making a claim to point out to the demarcation officer or to demarcate or assist in the demarcation of the boundaries of the land in which he claims to be interested or to clear any such boundaries or any other line in the manner and before a date fixed by the demarcation officer.”
21. Section 26 of the Act provides for Objection to adjudication register as follows: -
- “(1) Any person named in or affected by the adjudication register who considers it to be incorrect or incomplete in any respect may, within sixty days of the date upon which the notice of completion of the adjudication register is published, object to the adjudication officer in writing, saying in what respect he considers the adjudication register to be incorrect or incomplete. (2) The adjudication officer shall consider any objection made to him under subsection (1) of this section, and after such further consultation and inquiries as he thinks fit he shall determine the objection.”
22. Further, Section 29 (1) on Appeal provides that: -
- “Any person who is aggrieved by the determination of an objection under section 26 of this Act may, within sixty days after the date of the determination, appeal against the determination to the Minister by— (a) delivering to the Minister an appeal in writing specifying the grounds of appeal; and (b) sending a copy of the appeal to the Director of Land Adjudication, and the Minister shall determine the appeal and make such order thereon as he thinks just and the order shall be final.”
23. Section 30 (1) of the Act provides: -
- “Except with the consent in writing of the adjudication officer, no person shall institute, and no court shall entertain, any civil proceedings concerning an interest in land in an adjudication section until the adjudication register for that adjudication section has become final in all respects under section 29 (3) of this Act. (2) Where any such proceedings were begun before the publication of the notice under section 5 of this Act, they shall



be discontinued, unless the adjudication officer, having regard to the stage which the proceedings have reached, otherwise directs. (3) Any person who is aggrieved by the refusal of the adjudication officer to give consent or make a direction under subsection (1) or (2) of this section may, within twenty-eight days after the refusal, appeal in writing to the Minister whose decision shall be final.” (Emphasis mine)

24. The above cited provisions of the law provide elaborate procedure for acquisition of land and disputes resolution mechanisms that may arise from land that has been declared an Adjudication Section. It is the petitioners’ belief that the adjudication process in Naikarra Adjudication Section is marred with glaring anomalies and irregularities which continue to violate, threaten and infringe on their constitutional rights.
25. I have taken time to read the petition and peruse the documents annexed to the petitioners’ application dated November 11, 2019. The Land Adjudication Officer, Narok South Adjudication Area vide a letter dated October 14, 2008 issued a Notice of Establishment of Naikarra Adjudication Section. In the said notice the Land Adjudication Officer declared Naikarra/Osarara to be an adjudication section and set out the boundaries. The said letter provides details for the rules of engagement during this exercise. On November 7, 2008, the Land Adjudication Officer appointed 25 persons to be members of the Land Adjudication Committee. Thereafter, counsel for the petitioners wrote a letter dated December 5, 2018 addressed to the 4<sup>th</sup> respondent which letter raised concerns on irregularities of the adjudication process within the adjudication section. The petitioners counsel sought consent to enable him file a case challenging the composition of the register, the process of adjudication and the failure to involve them vide a letter dated July 18, 2019. The 1<sup>st</sup> respondent vide a letter dated July 19, 2019 responded to the request and denied the petitioners’ counsel consent. Notably, is the reason for refusal to grant the said consent where the 1<sup>st</sup> respondent believes that the issues raised by the petitioners’ counsel can be solved through the procedure laid down in the [Land Adjudication Act](#).
26. The petitioners contended that the adjudication process is not transparent, there is lack of access of information and there is need for accountability. However, the petitioners besides these claims, have not placed any documentary evidence to prove these allegations. The 1<sup>st</sup> respondent declared the area an adjudication section as per the provisions of the law. At the point when the petitioners felt aggrieved and raised concerns through counsel, they were informed as to why consent would not be granted as there existed avenues for dispute resolution as provided under the [Land Adjudication Act](#). The petitioners have not provided any list to support their allegations whatsoever. Their concern remains speculative.
27. More importantly and as outlined in the above cited provisions of the [Land Adjudication Act](#), there exists procedure for dispute resolution where the suit property is in an area already declared an adjudication section.
28. In the case of *The Owners of Motor vessel ‘LILLIAN ‘S’ vs. Caltex Oil Kenya Ltd* (1989) 1 KLR 1, the Court of Appeal stated as follows: -

“Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction there would be no basis for a continuation of proceedings pending other evidence and court of law downs it tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”
29. Where a statute expressly provides for a dispute resolution mechanism as is with the [Land Adjudication Act](#), any party aggrieved with the adjudication process ought to exhaust all avenues for redress as per



the provisions of the Act. This is what the petitioners herein ought to have done before coming to this court. This court therefore has no jurisdiction to entertain this matter at this stage.

30. Arising from the above, the petition dated November 11, 2019 is hereby dismissed. Each party to bear its own costs. It is so ordered.

**DATED, SIGNED & DELIVERED VIA EMAIL ON THIS 25<sup>TH</sup> DAY OF OCTOBER, 2022.**

**HON. MBOGO C.G.**

**JUDGE**

**25/10/2022.**

**In the presence of:**

CA:Chuma

