



Kibithe v County Government of Uasin Gishu & 5 others (Environment & Land Petition 17 of 2021) [2025] KEELC 4179 (KLR) (29 May 2025) (Ruling)

Neutral citation: [2025] KEELC 4179 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND PETITION 17 OF 2021**

EM WASHE, J

MAY 29, 2025

**IN THE MATTER OF CONTRAVENTION OF FUNDAMENTAL RIGHTS
& FREEDOMS UNDER ARTICLES 2(1)(2),3(1),10(1)(C),12(1)(A), 20(1),
(2),23,27(1),40,46,47 & 238 OF THE CONSTITUTION OF KENYA, 2010**

BETWEEN

FRANCIS MAJOR WATUNU KIBITHE PETITIONER

AND

THE COUNTY GOVERNMENT OF UASIN GISHU 1ST RESPONDENT

CHIEF REGISTRAR OF LANDS 2ND RESPONDENT

THE LAND REGISTRAR, UASIN GISHU COUNTY 3RD RESPONDENT

DIRECTOR OF SURVEY 4TH RESPONDENT

THE HON ATTORNEY GENERAL 5TH RESPONDENT

THE NATIONAL LAND COMMISSION 6TH RESPONDENT

RULING

1. The 2nd to 5th Respondents in the present Petition (hereinafter referred to as “the Applicants”) filed a Preliminary Objection dated 04.09.2024 (hereinafter referred to as “the present P.O”) against the Petitioner’s (hereinafter referred to as “the Respondents”) Further Amended Petition dated 24.06.2024 (hereinafter referred to as “the present Petition”) seeking for the following prayer;-
 - a. The Petition herein be struck out with costs.
2. The grounds outlined in the Present PO are mainly three and are outlined as follows;-



- i. That the Petition is hollow having not been supported by an Affidavit or any other evidence and hence incurably defective.
 - ii. That the Petition does not bring out the facts clearly to meet the threshold set out in the case of Anarita Karemi.
 - iii. That the Petitioner is guilty of laches and the Petition has been brought after 50 years from when the cause of action arose.
3. The present PO was duly served on the Respondent who expressed his intention to oppose the same.
 4. The Court directed the parties to file their written submissions which the Applicants complied with by filing their submissions dated 21.02.2025 while the Respondent filed his submissions on 16.01.2025.
 5. However, before this Court proceeds to the merits and/or demerits of the present PO, it is important to remind itself the ingredients of what can be deemed to be a determinable Preliminary Objection.
 6. Based on the celebrated case of *Mukhisa Biscuits Manufacturers Limited v Westend Distributors Limited* [1969] EA, 696, the Court of Appeal stated as follows; -

“A preliminary objection is in the nature of what used to be called a demurrer. It raises a pure point of law which is argued on the assumption that all facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.”
 7. Having the above guidance in mind, any Court before entertaining a Preliminary Objection must look at the pleadings before it and establish whether the facts can sustain the same or not.
 8. In the present Petition, the Petitioner who is also the Respondent in the present PO filed the original Petition dated 09.12.2021 on the 14.12.2021.
 9. The Original Petition dated 09.12.2021 was supported by an Affidavit sworn by the Petitioner on the 09.12.2021 and entailed 17 annexures which were enclosed therein.
 10. Thereafter with the leave of this Court, the Petitioner was allowed to Amend the original Petition and an Amended Petition dated 06.06.2022 was duly filed together with the Supporting Affidavit dated 06.06.2022 which had 20 annexures enclosed herein.
 11. Again, the Petitioner with the leave of the Court filed a Further Amended Petition dated 24.06.2024 which was supported by an Affidavit sworn by the Petitioner on the 24.06.2024 which contained 17 annexures enclosed therein.
 12. The Further Amended Petition (now the present Petition) was duly served on the all the Respondents herein.
 13. The 3rd Respondent on behalf of the 2nd to 7th Respondents filed a Replying Affidavit dated 14.03.2025 in response to the present Petition.
 14. The following is a summary of the present Petition as pleaded by the Petitioner; -
 - i. The Late Watunu Kibithi(deceased) was the lawful proprietor of the suit property formerly known as LR.NO.8149 now known as LR.No.EldoretBlock15/5 which was subsequently vested in his beneficiaries.



- ii. The estate of Watunu Kibithe(deceased) and the beneficiaries therein have been in occupation of the suit property for over a period of 60 years including developing various structures and/ or improvements therein.
 - iii. However, on or about 08.08.2021, the Respondents and/or either agents trespassed into the suit property and began demarcating portions of it for the construction of various developments including a road.
 - iv. The Petitioner's position is that the Respondents actions were undertaken without following lawful procedure which includes compulsory acquisition of their private land before demarcation and/or using the same for a public objective.
 - v. The Petitioner later learnt that the Respondents herein had tampered with the ownership documents of the suit property by recording a caveat on the same which is still subsisting up to now without notifying the estate of Watunu Kibithe(deceased).
 - vi. As a result of this interference with the ownership documents of the suit property by the Respondents, neither the late Watunu Kibithe(deceased) was issued with the ownership documents and the beneficiaries thereof including the Petitioner have also suffered a similar fate.
 - vii. In essence therefore, the Petitioner outlined various Constitutional violations of the interference in their private land by the Respondents, the failure by the Respondents to issue the appropriate ownership documents to the Petitioners and denying the estate of Watunu Kibithe (deceased) including the Petitioner their right to be compensated where the Respondents use a citizen's private property for public good.
15. The 2nd to 7th Respondents opposed the Petitioner's facts outlined in the present Petition based on the following grounds pleaded in the Replying Affidavit sworn on the 14.03.2025; -
- i. The 3rd Respondent confirmed in the Replying Affidavit that the property known as LR.No.Eldoret Municipality Block 15/5 measures approximately 452 Acres and was recorded in the name of the late Watunu Kibethe (deceased) as per the White Card placed before Court as ABG 1.
 - ii. However, the Recording of the late Watunu Kibethe (Deceased) as the lawful owner of the suit property was cancelled on the 30.04.1979 and a caveat recorded on behalf of East African Power & Lighting granting them an easement on the property.
 - iii. Similarly, the Government of Kenya through Gazette Notices No. 1458 and 1459 both dated 19.05.1978 expressed its intention to acquire the suit property through the Land Acquisition Act.
 - iv. The 3rd Respondent similarly placed before the Court a Gazette Notice inviting any person with an interest in the suit property to attend a compensation hearing on the 20.06.1978.
 - v. As fate would have it, after the demise OF Watunu Kibethe (deceased), the administrators and beneficiaries of his estate proceeded with succession of the suit property and had various Certificates of Confirmation of Grant and Transfers by Transmission recorded in the White Card of the suit property on the 20.02.1989.



- vi. Similarly on the 09.02.1989, the Administrators of the estate of Watunu Kibethe (deceased) presented and recorded a Discharge of Charge issued by Kenya Commercial Bank in relation to a Charge created by the late Watunu Kibethe (deceased) on the 30.04.1979.
 - vii. On the 10.05.1989, beneficiaries of the suit property surrendered the Certificate of Lease of the suit property in exchange of two new Certificate of Leases known as LR.NO.Eldoret Municipality Block 15/27 & LR.NO.Eldoret Municipality Block 15/227.
 - viii. On the 03.10.1989, the Caveats granting an easement for the East Africa Power & Lighting Company Limited was deleted from the White Card of the suit property.
 - ix. In essence, the 3rd Respondent compulsorily acquired the suit property and the Petitioner herein does not have any proprietary interest over the same as this property is now government earmarked for public use.
 - x. In addition to the above, the 3rd Respondent pleaded that the Petitioner was guilty of laches for the reason that it had been over 40 years since the Government acquired the suit property and he did not take any actions to enforce his ownership rights.
 - xi. Lastly, the 3rd Respondent was of the view that because the present Petition did not have any Affidavit in support, then the same should be struck out forthwith.
16. Looking at the above scenario about the facts of the present Petition, it is clear that the Respondents have vehemently opposed the facts pleaded by the Petitioner.
 17. The obvious outcome of this variance in the facts before the Court is that it is impossible for the Court to consider the grounds outlined in the present PO without engaging itself in ascertaining the true facts between the parties and/or exercise its discretion to make determinations which are discretionary about the rights of the parties.
 18. As such, this Court is of the considered opinion and finding that the issues contained in the Present Petition cannot be determined through a Preliminary Objection and ought to be subjected to a full hearing.
 19. As regards the issue of whether the Present Petition is supported by an Affidavit or not, the same can be canvassed in the submissions by the parties keeping in mind that the Petitioner had in the previous Petitions filed on the 09.12.2021 and 06.06.2021 filed the relevant Affidavits and the documents to be relied upon at the hearing.
 20. On the other issues of whether the present Petition does not meet the threshold in the case of Anarita Karemi and whether or not the same is guilty of laches, it is the Court's view and finding that the Respondents can be able canvass the same in their submissions in opposition of substantive Petition.

Conclusion

21. In conclusion therefore, this Court hereby makes the following Orders as regards the present PO; -
 - A. The preliminary objection dated 04.09.2024 is not merited and therefore dismissed.
 - B. The costs of the preliminary objection dated 04.09.2024 will abide the outcome of the main petition.

DATED, SIGNED & DELIVERED VIRTUALLY AT ELDORET ELC THIS 29TH DAY OF MAY 2025.

EMMANUEL.M. WASHE



JUDGE

In the presence of:

Court Ass: Brian

Petitioners: Mr. Otwal for the Petitioner

Respondent: Mr. Kutei holding brief Ms. Cheruiyot for the 2nd, 3rd, 4th and 5th Respondent

Ms. Obino for the 6th Defendant (N/A)

Mr. Kuter for 1st Respondent

