



**Mbwana v Principal Secretary, Ministry of Lands and Physical Planning & 5 others (Environment & Land Petition E036 of 2021) [2025] KEELC 4154 (KLR) (27 May 2025) (Judgment)**

Neutral citation: [2025] KEELC 4154 (KLR)

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MALINDI**

**ENVIRONMENT & LAND PETITION E036 OF 2021**

**FM NJOROGE, J**

**MAY 27, 2025**

**IN THE MATTER OF SECTION 5 AND 10 OF THE  
LAND ADJUDICATION ACT CAP 284 LAWS OF KENYA**

**AND**

**IN THE MATTER OF ARTICLE 62, 63 AND 67 OF THE CONSTITUTION OF KENYA, 2010**

**AND**

**IN TH EMATTER OF THE RIGHT TO EQUALITY BEFORE  
THE LAW AND FREEDOM FROM DISCRIMINATION**

**AND**

**IN THE MATTER OF SECTION 15 OF THE NATIONAL LAND COMMISSION ACT  
AS AMENDED BY SECTION 38 OF THE LAND LAWS (AMENDMENT) ACT, 2016**

**BETWEEN**

**MOHAMED MBWANA ..... PETITIONER**

**AND**

**THE PRINCIPAL SECRETARY, MINISTRY OF LANDS AND PHYSICAL  
PLANNING ..... 1<sup>ST</sup> RESPONDENT**

**THE NATIONAL LAND COMMISSION ..... 2<sup>ND</sup> RESPONDENT**

**THE DIRECTOR SURVEY OF KENYA ..... 3<sup>RD</sup> RESPONDENT**

**THE LAND SETTLEMENT BOARD OF TRUSTEES ..... 4<sup>TH</sup> RESPONDENT**

**THE REGISTRAR OF LANDS, LAMU COUNTY ..... 5<sup>TH</sup> RESPONDENT**

**THE ATTORNEY GENERAL ..... 6<sup>TH</sup> RESPONDENT**



## JUDGMENT

1. In a Petition dated 7/12/2021, the Petitioner sought the following reliefs: -
  1. A declaration that the omission by the Respondents to survey, demarcate and issue the indigenous people of Lamu (Bajuni Community) with title documents to their ancestral land despite the Respondents' repeated assurance has disfranchised the indigenous community and is against the just and legitimate expectation of the Petitioner and indigenous community of Lamu County;
  2. A declaration that there has and still is a recurrent irregular acquisition with impunity of land in the greater Lamu County without due procedure and respect of the law;
  3. Freezing of land settlement, adjudication and land allocation until a committee is created by the Respondents in conjunction with the representatives of Lamu County to investigate and address all questionable historical land allocation and land rights abuses with (sic) the greater Lamu County;
  4. No new settlement schemes be initiated nor should any un-alienated land be privatized or/and until a community land holding and governance entity identified by the community through a transparent and participative process is appointed to govern the administration of community lands in Lamu county;
  5. Land owners whose titled land was used for settlement schemes or other government projects be adequately compensated whilst taking into account inflation rates from the date of appropriation;
  6. Communities' members who have had their lands gazetted as reserve to have their user rights officially recognized as per the National Land Policy which obligates the government to facilitate benefit-sharing and co-management process for the sustainable use of natural resources;
  7. All land titles deemed irregularly obtained be revoked and the court does order a time line for the adjudication, survey and issuance of title documents to deserving persons in the greater Lamu County;
  8. Individuals who have encroached on protected ecologically sensitive areas be evicted forthwith.
2. The Petition is supported by the affidavit of the Petitioner sworn on 7/12/2021. In the said affidavit, the Petitioner described himself as a Kenyan citizen, a resident of Lamu County and the chairman of Shungwaya Welfare Association, with authority to swear the affidavit on behalf of the members of the said Association. The Petitioner narrated that post-independence and after the shifta/bandit conflicts, the government of Kenya established settlement schemes within Lamu County, formerly Lamu District, without consulting the indigenous community; that despite the government's efforts to mitigate the displacement of persons in Lamu, it emerged that private ranches were unprocedurally and irregularly allocated to individuals and companies, thus disenfranchising the local community; that the foregoing actions have resulted into unresolved issues and resistance by the local community with the most recent dispute being ownership dispute over the land earmarked for the extension of the Lamu Port Project. He stated that following an order in Msa HCCC No. 62 of 1996, the status of the entire Lamu District Land was to be maintained, and that the Court ordered the Commissioner of Lands declare the Lamu District as a land adjudication area. The Petitioner gave a long narration of events that



- occurred post the said orders, stating the Association’s failed attempts to stop land adjudication within Lamu so as to have the plight of the Bajuni Community considered, and proper procedures followed.
3. The Petition was opposed. The 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Respondents filed grounds of opposition dated 18/11/2024, by Senior State Counsel, Mr. Gabriel Ojwang stating that:
    1. The Petition is bad in law, misconceived, mischievous and an abuse of the court process;
    2. That the form of the Petition filed exhibits child’s play at it best for its overt-blatant infraction of rule 10 of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 (otherwise referred to as “the Mutunga Rules”);
    3. That the Petition does not meet the threshold for a constitutional petition as enunciated in the case of Anarita Karimi Njeru v The Republic [1979] eKLR;
    4. That the constitutional rights alleged to have been breached are not absolute but limited and that the Petitioner has not demonstrated in any manner regarding the entitlement of the remedies being sought;
    5. That no prima facie case is established from the Petition that would remotely suggest that the Respondents’ conduct amounted to a violation of the Petitioner’s rights;
    6. That the Petition is fatally defective, incompetent and devoid of merit and we pray it be dismissed with costs.
  4. On 3/2/2025, the Court issued directions that the Petition be disposed of by way of written submissions to be filed by all parties within 28 days. In addition, counsel for the Petitioner, Mr. Wekesa, was directed to file an affidavit of service within 14 days demonstrating that the 2<sup>nd</sup> Respondent had been duly served. The Court expressly warned that failure to comply would result in dismissal of the Petition for non-compliance. A review of the court record confirms that the Petitioner has failed to comply with both directives, while the respondents filed their submissions on 26<sup>th</sup> March 2025.
  5. The Court cannot overlook the Petitioner’s failure to comply with clear and reasonable directions. Where a court has ordered a petition to be disposed of by way of written submissions and no other method of disposal has been provided for, that petition can not be deemed to have been prosecuted unless the submissions are filed. Once issued, court orders are meant to be respected and followed. The Petitioner was given sufficient time and notice to act but failed to do so without offering any explanation. Such non-compliance not only delays the disposal of a suit unnecessarily but also undermines the proper functioning of the judicial process. In the circumstances, the Court finds no justification for the default, and the consequences, as earlier stated, must follow.
  6. In view of the above, the Court finds that the Petition has not been diligently prosecuted. Accordingly, and in line with the warning previously issued, the Petition dated 7/12/2021 is hereby dismissed for non-compliance with court orders.

**RULING DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 27<sup>TH</sup> DAY OF MAY 2025.**

**MWANGI NJOROGE**

**JUDGE, ELC MALINDI.**

