



**Kiraga v Bryant & 7 others (Environment & Land Petition
E009 of 2022) [2025] KEELC 4059 (KLR) (22 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 4059 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND PETITION E009 OF 2022**

YM ANGIMA, J

MAY 22, 2025

BETWEEN

ANDERSON KIRAGA PETITIONER

AND

WENDY BRYANT 1ST RESPONDENT

LEAH BRYANT 2ND RESPONDENT

REGISTRAR OF TITLES, MOMBASA 3RD RESPONDENT

THE HONOURABLE ATTORNEY GENERAL 4TH RESPONDENT

TIMOTHY BRANT 5TH RESPONDENT

AMAM KURJI 6TH RESPONDENT

RISHMA KURJI 7TH RESPONDENT

BARNSBURY INVESTMENT LTD 8TH RESPONDENT

RULING

A. INTRODUCTION

1. By a petition dated 03.03.2022 the petitioner sued the respondents seeking the following reliefs:
 - a. A declaration that Section 70 of the repealed constitution and/or article 40 and 60 (1)(d) of *the Constitution* of Kenya, 2010 was infringed by the 4th and 5th respondents who oversaw the process by which plot 11353/I/MN and/or 11352/I/MN were allocated to the third parties and later subdivided and allocated to the 1st and 2nd respondents without due regard to the existing occupants.



- b. A declaration that Section 77 (9) of the repealed constitution and/or article 47 of *the Constitution* of Kenya, 2010 was infringed by the 3rd and 4th respondents who oversaw the process by which plot 11353/I/MN and/or 11352/I/MN were allocated to the third parties and later subdivided and allocated to the 1st and 2nd respondents without due regard to the existing occupants.
 - c. A permanent injunction restraining the 1st and 2nd respondents from harassing the occupants of the suit properties in any manner including arresting them, evicting them and/or demolishing their dwellings.
 - d. An order of judicial review under Article 23 (3)(f) in the form of mandamus compelling the 3rd and 4th respondents to cancel the already issued titles to the 1st and 2nd respondents and thereafter with respect to the suit properties and do issue titles to the actual occupants of the suit properties.
 - e. An order of judicial review under Article 23 (3)(f) in the form of mandamus compelling the 3rd and 4th respondents to issue titles in the names actual occupants of the suit properties plot 11353/I/MN and/or 11352/I/MN.
 - f. The respondents to bear the costs of this petition.
 - g. Any other orders that this honourable court may deem fit to give.
2. The petitioner pleaded that he had filed the petition in the public interest and for the benefit of over 200 people who were said to be in occupation of the suit properties. It was contended that the suit properties constituted public land before their allocation to the 1st and 2nd respondents through some dubious process which disregarded the right of the local residents who had been in occupation for several decades. What the petitioner sought to achieve by the instant petition was summarized in paragraph 13 thereof as follows:

“The petitioner avers that this petition will in sum total establish the validity of the Titles Deeds in place being held by the 1st and 2nd respondents and also serve to determine the proper title deed in place and/or uphold the process of allocation of the same and whereof the same subjects matter mother land became public land and further establish the validity or otherwise of the process of allocation of the subject matter mother land to nonresidents and without taking into account the residents in actual possession and occupation thereafter being null and void.”

B. 5th Respondent’s Notice of Preliminary Objection

3. The 5th respondent filed a notice of preliminary objection dated 11.10.2024 seeking to dismiss the plaintiffs’ petition and notice of motion dated 16.10.2023 for failing to meet the constitutional threshold.

C. Directions on Submissions

4. The court directed that the notice of preliminary objection be canvassed through written submissions. The parties were consequently granted timelines within which to file and exchange their respective submissions. The 5th respondent and 2nd respondent filed submissions in support of the objection dated 14.12.2024 and 03.12.2024 respectively.



D. Issues for Determination

5. The court has perused the notice of preliminary objection and the material on record. The court is of the view that the main issue for determination is whether the petition meets the constitutional threshold.

E. Analysis and Determination

a. Whether the petition meets the constitutional threshold

6. It is evident from the material on record that the petitioner is aggrieved by alienation of the suit properties to the 1st and 2nd respondents who are now the registered proprietors. The petitioner considered the allocation to have been unfair and in violation of the former and current Constitutions and sought to impeach the titles. The court is of the opinion that once a person is registered as proprietor of an interest in land and issued with a certificate of title, then such certificate is prima facie evidence that the proprietor is the absolute and indefeasible owner and his title can only be impeached on grounds of fraud or misrepresentation to which he was party or on account of illegality or corrupt scheme. That appears to be the plain meaning of Section 26 of the [Land Registration Act](#).
7. In the case of Kenya Bus Services Limited & 2 Others -vs- Attorney General [2005] 1KLR 787 Nyamu J (as he then was) held as follows on the issue seeking to redress a violation of one's legal rights through a constitutional petition:

“In addition, although there is no direct authority on the point, the holding No. 3 in the Trinidad and Tobago Constitutional Case of Re Application by Bahadur [1986] LRC (Const) 297 at page 298 represents our position as well:

‘[The Constitution](#) is not a general substitute for the normal procedures for invoking judicial control of administrative action. Where infringements of rights can found a claim under substantive law, the proper course is to bring the claim under the law and not under [the constitution](#). See Harriksoon -vs- Attorney General of Trinidad and Tobago [1979] 3 WLR applied.”
8. In the case of OAPA (suing as Parents and/or Guardians of Student Minors currently schooling at Oshwal Academy) -vs- Oshwal Education Relief Board & 2 Others [2020] eKLR, it was held, inter alia, that:

- “ 50. The said doctrine was stressed by the Court of Appeal in Gabriel Mutava & 2 Others -vs- Managing Director Kenya Ports Authority [2016] eKLR thus:

Time and again it has been said that where there exists other sufficient and adequate avenue to resolve a dispute, a party ought not to trivialize the jurisdiction of the Constitutional Court by bringing actions that could very well and effectively be dealt with in that other forum. Such party ought to seek redress under such other legal regime rather than trivialize constitutional litigation.

... this Court has severally held that where a fundamental right is regulated by legislation, such legislation, and not the underlying constitutional right, becomes the primary means for giving effect to the constitutional rights....



Of course, violations of constitutional rights may nonetheless be different, and more serious than the violations of statutory or contractual rights. There is no clear demarcation however, where one violation begins and ends, and when one violation should attract desperate remedies. In employment matters, such as was the case here, the contract of employment should have been the entry point. The terms and conditions of employment in the contract, govern the employment relationship, except to the extent that the terms are contrary to the law; or have been superseded by statute. Certainly, invoking the constitutional route in the circumstances of this case was misguided. *The Constitution* should not be turned into a thoroughfare for resolution of every kind of common grievance.

A corollary to the foregoing is the principle of constitutional avoidance. The principle holds that where it is possible to decide a case without reaching a constitutional issue that should be done.”

9. Similarly, in *James Kuria -vs- Attorney General & 3 Others* [2018] eKLR it was held that:

“ 44. Courts abhor the practice of parties converting every issue into a constitutional question where such issues can safely be left to the dispute resolution mechanism established under the statute. The Court of Appeal in *Gabriel Mutava & 2 Others. vs. Managing Director Kenya Ports Authority & Another* [23] underlined the conventional judicial policy as established by the courts over time and now settled that constitutional litigation is not open for every claim which may properly be dealt with under the alternative existing mechanism for redress in civil or criminal law as follows ...’

10. The court is thus of the view that if the petitioners wish to impeach the 1st and 2nd respondents’ title to the suit properties, they ought to file a civil action and accord the respondents a chance to file a defence to the action and enjoy the usual benefits of a civil trial such as discovery and cross examination of witnesses. The petitioner should not be allowed to truncate or short-circuit the judicial process of impeachment of title by filing a petition.

F. Conclusion and Disposal Orders

11. The upshot of the foregoing is that the court finds merit in the 5th respondent’s notice of preliminary objection and the same is hereby upheld. As a consequence, the court makes the following orders for disposal thereof;

- a. The 5th respondent’s notice of preliminary objection dated 11.10.2024 is hereby upheld.
- b. The petition dated 03.02.2022 is hereby struck out in its entirety.
- c. For the avoidance of doubt, any interim orders in place are hereby vacated.
- d. Each party to the petition shall bear its own costs.

Orders accordingly

RULING DATED AND SIGNED AT MOMBASA AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS ON THIS 22ND DAY OF MAY, 2025.

Y. M. ANGIMA



JUDGE

In the presence of:

Gillian - Court assistant

Mr. Kimathi for petitioner

No appearance for the 1st respondent

Ms. Mutheke for 2nd respondent

No appearance for the 3rd and 4th respondent

Mr. Ngonze for 5th respondent

No appearance for 6th, 7th and 8th respondent

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