



**Kiboni v Land Registrar Kilifi & another (Environment & Land Petition  
17 of 2022) [2025] KEELC 332 (KLR) (3 February 2025) (Judgment)**

Neutral citation: [2025] KEELC 332 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ENVIRONMENT & LAND PETITION 17 OF 2022  
FM NJOROGE, J  
FEBRUARY 3, 2025**

**BETWEEN**

**MAURICE KOMBE KIBONI ..... PETITIONER**

**AND**

**LAND REGISTRAR KILIFI ..... 1<sup>ST</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. In the petition dated 11/3/2024, the petitioner seeks the following prayers:
  - a. That a Declaration be and is hereby issued that:
    - i. The Kilifi Land Registrar's refusal to effect registration of the subdivisions resulting from the Petitioner's property Title Number Kilifi/Mtondia/59 for close to seven (7) years without any reasons violates the Petitioner's rights to property and protection thereto including the right to fair administrative action under Article 40 and 47 of the [Constitution](#);
    - ii. The Kilifi Land Registrar's refusal to effect registration of the subdivisions resulting from the Petitioner's property Title Number Kilifi/Mtondia/59 for close to seven (7) years without any reasons violates the Petitioner's rights to legitimate expectation and by extensor, (sic) the rule of law under Article 10 of the [Constitution](#), hence illegal;
  - b. An Order directing the Kilifi Land Registrar to forthwith and unconditionally effect registration of the subdivisions resulting from the Petitioner's property Title Number Kilifi/Mtondia/59 as per the Petitioner's Application made on 19<sup>th</sup> December, 2016 under Booking Number 92;



- c. Upon compliance with prayer (b) above, the Kilifi Land Registrar to forthwith issue to the Petitioner, all the titles for the sub-divisions resulting from property Title Number Kilifi/Mtondia/59 as captured on the Application for registration of sub-divisions made on 19<sup>th</sup> December, 2016 under booking Number 92;
  - d. Costs of the Petition be borne by the Respondents.
2. The petitioner states in his petition that he is the registered proprietor of all that land parcel known as Kilifi/Mtondia /59 hereinafter also referred to as “the suit property.”) He subdivided the suit property into 42 plots using the services of a surveyor and submitted the mutation form to the Land Registrar Kilifi for registration and issuance of titles to the subdivisions. The Land Registrar, apparently satisfied that the petitioner had met all legal statutory and regulatory requirements, assessed the application for payment of registration fees in the sum of Kshs 34,100/=, which was paid on 19/12/2016 and a receipt issued. As required by law the petitioner then surrendered the title document for cancellation and issuance of new titles as per the mutation. Since that date the Land Registrar has never taken any action on the petitioner’s application despite reminders. In the meantime, the members of public to whom the petitioner has sold plots arising from the subdivision have threatened to commence legal action against him for failing to pass legal title to them. He states that Section 22(2) of the Land Registration Act mandates the Land Registrar to effect the subdivision by closing the register relating to the parcel and open new registers in respect of the resultant parcels; however, by refusing to act, the Land Registrar has caused the petitioner’s rights to property under Article 40 and his right to fair administrative action that is expeditious, reasonable and procedurally fair under Article 47, the right to equal protection of the law under Article 27, and the rule of law of the Constitution to be violated. Regarding the rule of law, he states his right to legitimate expectation of registration of the subdivisions under Section 22 of the Land Registration Act has been violated. He now seeks redress from this court on the above set of facts. He has sworn an affidavit dated 2/6/2022 in support of his petition.
3. Catherine Someren, Senior State Counsel working with the Attorney General’s Office filed grounds of opposition on behalf of the respondents as follows:
  - a. The 1<sup>st</sup> defendant is not aware of the petitioner’s application of (sic) subdivision of parcel number Kilifi/Mtondia/59 since there are no correspondences and application forms either at the lands registry or brought to the attention of the 1<sup>st</sup> defendant;
  - b. There is no evidence that the 1<sup>st</sup> defendant has unreasonably refused to comply with any lawful actions as required by law in performing its administrative duties in completing the petitioner/ applicant’s application;
  - c. The petitioner is using the court process to challenge an administrative procedure;
  - d. The petitioner /applicant has failed to demonstrate that he is the absolute and indefeasible proprietor of the suit property;
  - e. The application (sic) is misconceived and lacks basis and (is) an abuse of the court process.
4. On 29/9/2022 the parties consented that the notice of motion dated 2/6/2022 be dispensed with or abandoned and that parties do file submissions for the disposal of the main petition.

### **Submissions.**

5. Submissions were filed by both parties, the petitioner’s submissions being dated 25/10/2024 and the respondents’ being dated 11/11/2024.



## Petitioner's Submissions

6. The submissions of the petitioner, filed through Obaga Muriuki & Co Advocates, substantially rehash what is contained in the petition and the affidavit in support of the petition and the notice of motion in the court record. He then identifies the issues for determination as follows:
  - a. Whether the petitioner's rights under chapter four of the Constitution 2010 have been violated by the respondent's action;
  - b. Whether the prayers are merited.
7. On the first issue, he cites Articles 22, 23 and 165 as entitling him to bring the action. He adds that the 1<sup>st</sup> respondent is a public office and is supposed to offer services to the public in a manner that is expeditious efficient lawful reasonable and procedurally fair as required by Article 47(1), and that was the petitioner's expectation. He states that delaying the transaction for 8 years can not be deemed as "efficiency" within the meaning of that article. Further, the respondents have not filed any document in this court giving reasons for their inaction and delay or as to why his application can not be processed. He avers that the respondents abandoned their grounds of opposition and the petition stands unopposed. He relies on Muigana & 16 Others V County Government of Nyandarua (Petition E007 of 2023 [2024] KEHC 960 ECLR for the proposition that the provision of Article 47 of the Constitution and the Fair Administrative Action Act rather than the common law now gives the court power to review administrative actions. He relies on the Supreme Court decision in John Florence Maritime Services Ltd & Another V Cabinet Secretary Transport & Infrastructure & 3 Others (Petition 17 Of 2015) 2021 KEHC 39 eCLR and Suchan Investment Ltd v Ministry of National Heritage And Culture & 3 Others 2016 eCLR for the proposition that the courts, acting under those same provisions, are mandated to examine certain aspects of merit when considering an application for judicial review. He claims discrimination and right to equal protection and benefit of the law, which is contrary to Article 27(1) on equality of every person under the law.
8. He avers that the respondent lacks any legal right to deny him the title deeds resulting from the subdivision, and he should have been informed if any third party was claiming the land. He reiterated the effect of Section 22 of the Land Registration Act and urged that he having complied fully the Registrar simply ought to have done his duty, but instead he violated his rights. He urges that under Section 42 of the Act, he can not transfer any portion of the land unless the subdivision is registered against the title.

## Respondent's Submissions

9. The respondents on the other hand, through Ms Ruth Lutta, Principal State Counsel, argued that the issues for determination are as follows:
  - a. Whether the petitioner has established proprietary interest in the suit property;
  - b. Whether the petitioner has demonstrated that the 1<sup>st</sup> respondent has unreasonably refused or delayed to perform his administrative duties;
  - c. Whether the applications meritorious. (this issue is superfluous as the application dated 2/6/2022 was consensually dispensed with in favour of disposal of the main petition. However, the court has not seen any proceedings in the file signaling that the respondents abandoned their grounds of opposition as alleged in the Petitioner's submissions.)



10. The respondents cited Section 26 of the [Land Registration Act](#) and the decision in *Ali Wanje Ziro V Abdulbasit Abeid Said & Another 2022 eKLR* and *Nicholas Kioko Muoki & Anor Vs Omar Feizal Mohammed 2021 eKLR*. *Evans Nyakwana V Cleophas Bwana Ongaro* as well as Section 107 (1) of the [Evidence Act](#) and urged that the petitioner's claim of ownership is not supported by the requisite evidence of registration or any formal documentation that would establish indefeasible title, and so he can not claim violation of any rights with respect thereto.
11. On the second issue it is submitted that sufficient evidence has not been provided to establish that there is unreasonable delay or refusal on the part of the 1<sup>st</sup> respondent to perform his administrative duties. Further, it is posited that Section 14 (1) of the [Land Registration Act](#) provides that the Land Registrar may refuse to proceed with the registration if any instrument certificate or other document required to be produced or given is withheld or any Act required to be performed under the Act has not been performed. The respondents blame the petitioner, saying that he has failed to demonstrate that the 1<sup>st</sup> respondent was aware of his application or that the application was properly submitted through the correct administrative channels; there are no correspondences, no application forms and no confirmation of receipt of the application at the land registry. It is stated that the delay, if any, does not constitute an unreasonable refusal or unlawful refusal. It is also averred that the petitioner, while challenging an administrative procedure in this court, has failed to first exhaust the available mechanism before resorting to court and the case of *William Odhiambo Ramogi & 3 Others V Attorney General & 4 Others 2020 eKLR* is cited in that regard.

### **Determination**

12. In this court's view, the real issues arising for determination in the petition are as follows:
  1. Has the petitioner established that he owns the suit land?
  2. Is there evidence that the petitioner submitted his application for registration of mutation and issuance of new titles to the 1<sup>st</sup> respondent?
  3. If so, has the 1<sup>st</sup> respondent unreasonably delayed in acting on that application?
  4. If so, have the constitutional rights of the petitioner been violated?
  5. What orders should issue?
  6. Who should bear the costs of the application?
13. On issue number 1 This court must proceed from the premise that it does not know if the petitioner owns the suit land and that hence evidence to establish that he does is needed to pave the way for the consideration of the other issues. Thus this court needs to enumerate what the petitioner filed as evidence to support his petition and evidence of undisputed ownership of the suit land is crucial for the determination of all the subsequent issues.
14. The petitioner has attached to his supporting affidavit an application form dated 17/12/2016 which bears a stamp of the Kilifi District Land Registry and a date in the middle of that stamp -19/12/2026- is inscribed by hand. The law firm that submitted the form is declared as Kithi & Co Advocates of Postal Address 297 Kilifi. The fee reflected on that form is 34,100/=. The document apparently being lodged is a mutation dated 7/12/2016, in respect of the suit land herein. A copy of a mutation form for the suit land is also exhibited. It is undated, but it appears that the subdivisions had been in the process from as early as 20/7/2016. It bears no day book number (also referred to as the presentation book number). It has no receipt number, or copy of receipt attached, to show that money was paid for



its registration, for survey fees or for RIM amendment. It has nothing to show that it was ever received at the Kilifi Land registry. A copy of a Departments of Lands receipt No 4592064 dated 19/12/16 and issued to Kithi & Co advocates is also exhibited, for Kshs 2100/= (should be 21,000/= if the total at the bottom is correct) for certificate of title issuance and Kshs 500/= for registration and some Kshs 12,600/= under the fee description “Conveying /Preparation”. Those named documents are the only evidence of the petitioner on which his petition is premised.

15. To establish ownership all that was required for the petitioner is to avail an original certificate of official search in respect of the suit land which he did not do. It is grievous for this court that the petitioner’s petition should falter on the basis of failure to execute such a small responsibility as annexing a copy of an original certificate of official search. Not even a copy of the title was attached. If this court went ahead and considered the other issues on a substantive note without satisfying itself as to the genuineness of the claim to ownership by the petitioner, it will be acting in futility.
16. I have considered that this failure to attach a copy of a search or title deed may not be due to the fact that he is not the owner of the suit land, but probably due to an error on the part of his advocate who determined what documents to be attached to the supporting affidavit. That notwithstanding, it would still be irregular and improper to proceed with the determination of any other issue framed for determination herein above without proof of ownership, for they are predicated on proprietorship. It is therefore correct for Ms. Lutta, submitting for the respondents, to say that the petitioner has not demonstrated that he owns the suit land, and that consequently he cannot claim that his rights to the suit property have been violated. I have however considered it too drastic a step to dismiss the petition on such a potential error and I would rather strike it out. For this reason, the petition before me must be struck out.
17. Before issuing the final orders, I must also comment that though the failure to attach the search certificate or copy of title deed was a serious flaw, proof of the lodging of a mutation with the details that I enumerated herein before, i.e. day book number, receipt number, and a copy of a receipt to show money was paid for its registration either for survey fees or Registry Index Map (RIM) amendment, or anything else to show that it was ever received at the Kilifi Land registry is also vital. Those omissions also add to the lack of evidence to support the petition and for the foregoing reasons, the petition dated 11/3/2024 is hereby struck out with no orders as to costs.

**JUDGMENT DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 3<sup>ND</sup> DAY OF FEBRUARY 2025.**

**MWANGI NJOROGE**

**JUDGE, ELC MALINDI.**

