



**Munai v Samoei & 2 others (Environment & Land Petition E001 of 2023) [2025] KEELC 3516 (KLR) (5 May 2025) (Judgment)**

Neutral citation: [2025] KEELC 3516 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT & LAND PETITION E001 OF 2023**

**EM WASHE, J**

**MAY 5, 2025**

**IN THE MATTER OF BREACH OF FUNDAMENTAL RIGHST & FREEDOMS  
CONTRARY TO ARTICLE 40 & CHAPTER 4 OF THE CONSTITUTION OF KENYA, 2010**

**-AND -**

**IN THE MATTER OF CONTRAVENTION OF RIGHTS TO OWN PROPERTY  
CONTRARY TO ARTICLE 40 OF THE CONSTITUTION OF KENYA, 2010**

**-AND-**

**AND IN THE MATTER OF THE REGISTERED LAND ACT, 2012**

**-AND-**

**AND IN THE MATTER OF FAIR ADMINISTRATION ACTION ACT, NO.4 OF 2014**

**BETWEEN**

**OLCHANI MUNAI ..... PETITIONER**

**AND**

**MARY SAMOEI ..... 1<sup>ST</sup> RESPONDENT**

**THE LAND REGISTRAR, UASIN GISHU COUNTY ..... 2<sup>ND</sup> RESPONDENT**

**THE HON ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

1. The Petitioner herein filed a Petition dated 20.02.2023 (hereinafter referred to as “the present Petition”) against the 1<sup>st</sup> to 3<sup>rd</sup> Respondents seeking for the following Orders; -
  - a. A declaration that the entry, sub-division and transfer of the Petitioner’s land was in breach of the Petitioner’s rights under Article 29, 31 and 40 of *the Constitution*.



- b. An Order of the Chief Magistrate’s Court issued on 26.10.2021 and the Decree of the Land Dispute Tribunal dated 05.11.2021 be stayed by this Honourable Court.
  - c. A declaration that the 2<sup>nd</sup> Respondent should not carry out any sub-division and transfer of the land parcel Plateau/Chepkongony Block 3 (Zirwa)/3 which is registered under the Petitioner.
  - d. A declaration that the decision of the Land Dispute Tribunal pronounced in the Award No. 10 of 2021 was illegal, null and void.
2. The facts in support of the above prayers are provided as follows;-
- i. The Petitioner was and is the registered owner of the property known as Plateau/Chepkongony Block 3 (Zirwa)/3 having been issued with a Title Deed on the 21.01.1992 (hereinafter referred to as “the suit property”).
  - ii. The Petitioner upon being registered as the lawful and legitimate owner of the suit property took possession of the same and has been in occupation of the same throughout.
  - iii. However, the 1<sup>st</sup> Respondent lodged a Claim before the Land Dispute Tribunal against the ownership of the Petitioner over the suit property and obtained an Award in the year 2001 through the Award No. 10 of 2001 (hereinafter referred to as “the Tribunal Award”) that the suit property be sub-divided between the two parties.
  - iv. Based on the Award pronounced in the year 2001, the 1<sup>st</sup> Respondent applied to the Chief Magistrate’s Court for the same to be adopted as an Order of the Court which was done on 26.10.2021 (hereinafter referred as “the Adoption Order”)
  - v. The Petitioner’s contention is that both the Tribunal Award and the Adoption Order were unlawful, illegal, fraudulent and/or not procedural hence their implementation infringes on his ownership rights under *the Constitution*.
3. The Petitioner then proceeded to outline the various Illegalities and non-compliance of various statutes that arise against the Tribunal Award and the Adoption Order as follows; -
- a. The proceedings before the Land Dispute Tribunal contravened the provisions of Section 3 (1) of the Land Dispute Tribunal, 1990.
  - b. Consequently therefore, the adoption of the Tribunal Award in the year 2021 by the Chief Magistrate’s Court was illegal and unlawful.
  - c. Similarly, the internal dispute resolution mechanism provided under the Land Dispute Tribunal, 1990 has not been exhausted as there is still a pending Appeal against the Tribunal Award before the Provincial Dispute Tribunal.
  - d. As such, the Adoption Order issued in the year 2021 infringes the Petitioner’s right to Article 40 of *the Constitution*.
4. The present Petition was duly served on the 1<sup>st</sup> to 3<sup>rd</sup> Respondents.
5. The 1<sup>st</sup> Respondent duly entered appearance and opposed the present Petition by filing an Answer to the Petition dated 03.05.2024 on the following grounds;-
- a. The 1<sup>st</sup> Respondent pleaded that the present Petition was misleading and did not give the true facts of the matter.



- b. The 1<sup>st</sup> Respondent stated that he filed a case before the Land Dispute Tribunal known as TRIBUNAL CASE NO. 3 OF 2000 against the Petitioner herein.
  - c. The Petitioner herein was duly served with the proceedings before the Land Dispute Tribunal and participated in the same to the conclusion.
  - d. On the 06.06.2001, the Land Dispute Tribunal pronounced the Award and directed that the suit property be sub-divided into two portions measuring 40 acres in the name of the Petitioner and 37 acres in the name of the 1<sup>st</sup> Respondent.
  - e. The 1<sup>st</sup> Respondent upon receipt of the Tribunal Award proceeded to file the proceedings known as CHIEF MAGISTRATES COURT AWARD NO. 10 OF 2001 and the Court duly adopted the said Award as a Judgement of the Court.
  - f. However, before the execution of the Judgement of the Court issued in Award No. 10 of 2001, the Petitioner herein filed an Application seeking a Stay of Execution pending the hearing and determination of the Appeal before the Provincial Land Dispute Tribunal.
  - g. The Court being faced with this Application proceeded to issue a Stay of Execution of the Judgement adopting the Award No. 10 of 2001 pending the hearing and determination of the Appeal before the Provincial Land Dispute Tribunal.
  - h. Subsequently thereafter, the Appeal before the Provincial Land Dispute Tribunal was dismissed.
  - i. The 1<sup>st</sup> Respondent after the dismissal of the appeal before the Provincial Land Dispute Tribunal proceeded and executed the Award No. 10 of 2001 which was issued in the year 2001.
  - j. In conclusion, the 1<sup>st</sup> Respondent pleaded that the prayers being sought in the present Petition have been overtaken by events and can not be granted as the same were fully implemented.
6. The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents on the other hand entered Appearance on the 23.02.2023 but did not file any response and/or answer to the present Petition.
  7. The Court directed the present Petition to be heard by way of written submissions.
  8. The Petitioner duly filed their submissions dated 07.11.2024 while the 1<sup>st</sup> Respondent filed their submissions dated 05.01.2025.
  9. The Court has duly perused the present Petition, the Answer to the Petition and the submissions by the parties identifies the issues for determination as follows; -
    - Issue No. 1- Did The Land Dispute Tribunal Have Jurisdiction To Hear & Determine The Tribunal Case. No 3 Of 2001?
    - Issue No. 2- Was The Pronouncement Of The Award Pronounced On 06.06.2001 By The Land Dispute Tribunal Lawful & Binding?
    - Issue No. 3- When Is The Date That The Land Dispute Tribunal Award Was Adopted By The Chief Magistrate's Court?
    - Issue No. 4- Is The Present Petition Merited?
    - Issue No.5 – Who Bears The Costs Of The Present Petition?
  10. The Court having identified the above issues for determination, the same will now be discussed below.



**Issue No. 1- Did The Land Dispute Tribunal Have Jurisdiction To Hear & Determine The Tribunal Case. No 3 Of 2001?**

11. The first issue for determination is whether the Land Dispute Tribunal had the jurisdiction to receive, entertain and/or determine the dispute presented before it by the 1<sup>st</sup> Respondent.
12. According to the Petitioner, the suit property was recorded in his name in the year 1992 and issued with the appropriate title deed.
13. Consequently therefore, the suit property was private property which was not under the jurisdiction of the Land Dispute Tribunal and any dispute filed before it was devoid of jurisdiction.
14. The 1<sup>st</sup> Respondent on the other hand pleaded and submitted that the Land Dispute Tribunal had the jurisdiction to receive, entertain and/or determine any dispute that falls within the provisions of Section 3 (1) of the Land Disputes Tribunals, Cap 303A.
15. To resolve the issue of jurisdiction, this Court has taken time to peruse the Land Disputes Tribunals Act, Cap 303 A and takes judicial notice that the said Statute became operational of 1<sup>st</sup> July 1993 and was Repealed by the Environment & Land Act, No. 19 of 2011 which became operational on 30<sup>th</sup> August 2011.
16. Clearly therefore, the Land Disputes Tribunals Act, Cap 303 A was in operation in the year 2001 when the 1<sup>st</sup> Respondent lodged a dispute before the Land Dispute Tribunal against the Petitioner herein.
17. The Petitioners main contention against the Jurisdiction of the Land Dispute Tribunal is that the suit property in issue had been adjudicated and a title deed issued in his favour in the year 1992.
18. The Petitioner in his submissions extensively submitted that the Land Dispute Tribunal did not have jurisdiction to deal with properties that had been registered and title deeds issued.
19. The Petitioner in support of the above submissions presented a number of authorities to this Court.
20. On the other hand, the 1<sup>st</sup> Respondent's response to the above submissions was that if the Petitioner was aggrieved by the proceedings and determination of the Land Dispute Tribunal, the proper recourse was to either Appeal the same or file a Judicial Review Application with a view of Quashing the same.
21. The 1<sup>st</sup> Respondent pleaded and submitted that the Petitioner duly submitted himself to the jurisdiction of the Land Dispute Tribunal and even appealed against the said award and can not now allege that there was no jurisdiction from the very beginning.
22. It is settled law that jurisdiction is the very foundation of any legal and/or lawful action.
23. Section 3 (1) of the Land Disputes Tribunal Act, Cap 303 A provides as follows; -

“ 3.

- (1) Subject to this Act, all cases of a civil nature involving a dispute as to;-
  - a. The division of, or the determination of boundaries to land, including land held in common;
  - b. A claim to occupy or work land; or
  - c. Trespass to land



Shall be heard and determined by a Tribunal established under Section 4.”

24. In the description of the word land under the Land Disputes Tribunals Act, Cap 303 A, the same is provided as follows; -

“Land” means “agricultural land” as defined in Section 2 of the Land Control Act, whether or not registered under the Registered Land Act, but does not include land situated with an adjudication section declared under the Land Adjudication Act or the Land Consolidation Act or land which is the subject of determination by the Land Registration Court under the Land Titles Act.”

25. The clear interpretation of this Court is that the Land Dispute Tribunal had jurisdiction to deal with any agricultural land whether registered and/or not.

26. The Petitioner was the holder of Title Deed issued in the year 1992 under the Registered Land Act, Cap 300 which exclusively dealt with registered agricultural land.

27. As such, the Land Disputes Tribunal established under the Land Disputes Tribunals Act, Cap 303 A had the jurisdiction to receive, entertain and/or determine any dispute lodged before it in line with Section 3 (1).

28. The Court having made the finding that the Land Dispute Tribunal had the relevant jurisdiction to receive, entertain and determine the dispute lodged by the 1<sup>st</sup> Respondent against the Petitioner herein, then there was no Constitutional right that was infringed against the Petitioner in the exercise of receiving, entertaining and/or determining the said Dispute lodged before the Land Dispute Tribunal as the same was simply undertaking its statutory duties as provided by the Act.

**Issue No. 2- Was The Pronouncement Of The Award Pronounced On 06.06.2001 By The Land Dispute Tribunal Lawful & Binding?**

29. The second issue for determination is whether or not the determination of the Dispute lodged by the 1<sup>st</sup> Respondent against the Petitioner before the Land Dispute Tribunal was lawful and binding or not.

30. The Petitioner in the present Petition pleaded that the Land Dispute Tribunal acted outside the provisions of Section 3(1) of the Land Disputes Tribunals Act, Cap 303 A and as such, the Award found in favour of the 1<sup>st</sup> Respondent was unlawful, fraudulent, null and void.

31. As a result of this unlawful Award by the Land Disputes Tribunal in favour of the 1<sup>st</sup> Respondent, the 2<sup>nd</sup> Respondent is about to infringe on the suit property which is registered in the name of the Petitioner in contravention of Article 40 of the Constitution.

32. The 1<sup>st</sup> Respondent on the other hand pleaded and submitted that the Award issued by the Land Dispute Tribunal in the year 2001 is lawful after the Petitioner submitted and accepted the jurisdiction.

33. Further to that, the 1<sup>st</sup> Respondent pleaded and submitted that the Petitioner in recognition of the jurisdiction of the Land Disputes Tribunal accepted the Award pronounced in the year 2001 and even appealed to the Provincial Land Disputes Tribunal.

34. In other words, the dispute that was presented before the Land Disputes Tribunal by the 1<sup>st</sup> Respondent complied of Section 3 (1) of the Land Disputes Tribunals Act, Cap 303 A, a fact duly acknowledged by the Petitioner.



35. Looking at the two conflicting positions as against the pleadings and submissions filed herein, the duty of proving whether the Dispute presented to the Land Disputes Tribunal complied with Section 3 (1) of the Land Disputes Tribunals Act, Cap 303 A falls on the shoulders of the Petitioner.

36. Section 107 of the Evidence Act, Cap 80 provides as follows; -

“ 107

(1) Whoever desires any court to give judgement as to any legal right or liability dependent on the existence of facts which he asserts must prove those facts exist.

(2) when a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person”

37. The Court therefore expected the Petitioner in proving the fact that the 1<sup>st</sup> Respondent’s dispute before the Land Dispute Tribunal was outside the provisions of Section 3(1) of the Land Disputes Tribunals Act, Cap 303 A should have provided both the Certified Copies of the Dispute and the proceedings thereof.

38. Unfortunately, the Petitioner did not provide any certified copies of the Dispute lodged by the 1<sup>st</sup> Respondent before the Land Disputes Tribunal and the proceedings emanating from the said Tribunal.

39. It is also pleaded in the present Petition by the Petitioner that there is a pending Appeal before the Provincial Land Dispute Tribunal that is still pending.

40. The 1<sup>st</sup> Respondent countered this allegation by stating that the Appeal before the Provincial Dispute Tribunal lodged by the Petitioner was dismissed.

41. The Petitioner was once again in law had a duty to prove the pendency of the said Appeal before the Provincial Land Disputes Tribunal by presenting a certified copy of the Memorandum of Appeal and the proceedings that demonstrate the said Appeal is still pending.

42. Lastly, the Petitioner in his final submissions in support of the present Petition did not address the manner in which the Land Dispute Tribunal exceeded its powers provided under Section 3 (1) of the Land Disputes Tribunals Act, Cap 303A.

43. In essence therefore, this Court is of the considered view and finding that the determination by the Land Dispute Tribunal made in the year 2001 was lawful and binding between the Petitioner and the 1<sup>st</sup> Respondent.

### **Issue No. 3- When Is The Date That The Land Dispute Tribunal Award Was Adopted By The Chief Magistrate’s Court?**

44. The third issue is when the decision of the Land Dispute Tribunal was adopted by the Court.

45. The Petitioner herein pleaded in the present Petition that the 1<sup>st</sup> Respondent obtained an Award in the year 2001 but did not have the same adopted until 26.10.2021.

46. The Petitioner further stated that during the period between 2001 when the 1<sup>st</sup> Respondent was issued with the Award until 2021 when the same was adopted, he continued to develop and enjoy quite possession of the entire suit property.



47. The Petitioner averred that the Decree issued on the 26.10.2021 by the Chief Magistrates Court in adoption of the Award No. 10 of 2001 was without being given a fair hearing and therefore infringed on his rights under Article 40 & 50 as well as the Fair Administration of Actions Act.
48. The 1<sup>st</sup> Respondent disputed the Petitioner's allegations by stating that upon the Land Disputes Tribunal pronouncing itself on the dispute over the suit property, an Application for adoption of the decision was made before the Chief Magistrate's Court and recorded as Chief Magistrate's Court Award No. 10 of 2001.
49. Thereafter, the Chief Magistrate's Court adopted the decision of the Land Disputes Tribunal through its Decree dated 05.11.2001.
50. During this proceeding before the Chief Magistrates Court to adopt the decision of the Land Disputes Tribunal, the Petitioner filed an Application for Stay of Execution pending the hearing and determination of the Appeal before the Provincial Land Disputes Tribunal which application was allowed through a Ruling dated 21.03.2002.
51. Subsequently thereafter, the Petitioner's Appeal before the Nakuru Provincial Land Dispute was dismissed and execution of the earlier Decree issued on 05.11.2001 and thereafter reissued on 26.10.2021 was implemented.
52. Indeed, the court has perused the Petitioner's Affidavit in Support of the present Petition and confirms that there are two Decrees dated 05.11.2001 and 26.10.2021.
53. This being the scenario, it is not true that the 1<sup>st</sup> Respondent upon obtaining the decision of the Land Dispute Tribunal in the year 2001 did not act on the same.
54. The first Decree issued on the 05.11.2001 in the proceedings known as Chief Magistrate's Court Award No. 10 OF 2001 confirms that the decision of the Land Disputes Tribunal was adopted as an order of the Court.
55. The Petitioner in the present Petition tactfully failed to disclose that he obtained a Stay of Execution of the Decree issued on the 05.11.2001 pending the hearing and determination of his Appeal before the Nakuru Provincial Disputes Tribunal.
56. However, it is not in doubt that the Petitioner's Appeal was dismissed on a date which is not disclosed.
57. Clearly therefore, the Petitioner herein has not given full disclosure of the facts relating to the dispute with the 1<sup>st</sup> Respondent.
58. Be as it may, the 1<sup>st</sup> Respondent upon discovering that the Petitioner's Appeal before the Nakuru Land Disputes Tribunal was dismissed proceeded renew and obtained a fresh Decree dated 26.10.2021.
59. In the Court's considered view, the issuance of the Decree dated 26.10.2021 was proper as it was based on the initial Decree issued on 05.11.2001 which had been stayed pending the hearing and determination of the Appeal before the Provincial Land Disputes Tribunal in Nakuru.
60. During the existence of the said Stay Orders, time within which the Decree dated 05.11.2001 was to be enforced stopped running until when the said Appeal before the provincial Land Dispute Tribunal was dismissed.
61. The Petitioner has not placed any evidence before this Court to show that a period of 12 years has since passed since the Appeal before the Provincial Land Disputes Tribunal was made and therefore the 1<sup>st</sup> Respondent can not enforce the said Decree.



62. In essence therefore, the Decree first issued on the 05.11.2001 and subsequently issued on the 26.10.2021 are lawful and legal.
63. The allegation that the Petitioner was never given a hearing before the Decree of 26.10.2021 was issued by the Chief Magistrate's Court can not invalidate the proceedings because such proceedings are undertaken under Section 7 (1) and (2) of the Land Disputes Tribunals , Cap 303 A and the same does not provide for a hearing.

**Issue No. 4- Is The Present Petition Merited?**

64. Based on the determinations in Issues 1, 2 and 3, the Petitioner's present Petition does not demonstrate any infringement of the rights provided for under Articles 2,10,19,21,22,23,27,28,29,31,40,47,50,60 and 64 of the Constitution.
65. Similarly, the Petitioner has not demonstrated any infringement of rights under the Fair Administrative Action Act.
66. In essence, the prayers sought in the present Petition are not merited and cannot be granted.

**Issue No.5 – Who Bears The Costs Of The Present Petition?**

67. Costs usually follow the event and in the present Petition, the Petitioner has not been successful in the same.
68. As such, the Petitioner will bear the costs of the present Petition.

**Conclusion**

69. In conclusion, the Court hereby makes the following Orders in determination of the Petition dated 20.02.2023; -
- A. The petition dated 20.02.2023 is not merited and therefore dismissed forthwith.
- B. The petitioner is condemned to pay costs of this petition to the 1<sup>st</sup> respondent only.

**DATED, SIGNED & DELIVERED VIRTUALLY AT ELDORET ELC THIS 5<sup>TH</sup> DAY OF MAY 2025.**

**EMMANUEL.M. WASHE**

**JUDGE**

In The Presence Of:

Court Assistant: Brian

Advocates For The Petitioner: Mr. Kimutai

Advocates For The Respondent: N/a

