



**Kamau v County Government of Trans-Nzoia & another (Environment & Land
Petition E003 of 2020) [2025] KEELC 4328 (KLR) (9 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4328 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT & LAND PETITION E003 OF 2020**

CK NZILI, J

JUNE 9, 2025

BETWEEN

JOSEPH NDUNGU KAMAU PETITIONER

AND

COUNTY GOVERNMENT OF TRANS-NZOIA 1ST RESPONDENT

**MUNICIPAL BOARD OF KITALE (TRANS-NZOIA COUNTY) 2ND
RESPONDENT**

RULING

1. On 8/2/2022, the court was informed that parties were attempting a possible out-of-court settlement of the amended petition. Directions were thereafter taken on 2/5/2023, to hear the matter through viva voce evidence. PW1 took the witness stand on 30/10/2023, only for the court to establish that he was referring to non-parties in the petition. The court referred the matter to Alternative Justice System of the County, spearheaded by the elders who sit at Kitale Museum. A report was eventually filed before the court on 24/1/2024. It elicited comments from the respective parties as per the respondents' submissions dated 11/6/2024, and a letter dated 18/6/2024 by M/S Maragia Ogaro and Co. Advocates, on behalf of the petitioner.
2. When this matter came for mention on 5/2/2025, parties were directed to file written submissions addressing the court on whether or not the Alternative Justice System Report filed on 24/1/2024, should be adopted as an order of the court.
3. The petitioner's complaints through a further amended petition 22/11/2021 and a witness statement dated 3/6/2023 averred that he was a bona fide purchaser of parcel Namanjala Market Block A, Plot 12, that he intends to develop and has been paying land rates to the respondents.



4. The petitioner avers that the market has not been upgraded, lacks street lights, parking, roads, a proper ablution block and has ownership wrangles leading to several court cases; yet he is entitled to those services under Articles 176(2) and 186(1) of the Constitution, to be rendered by the respondents.
5. Again, the petitioner avers that the respondents have neglected the market and left it in a dilapidated state as itemized in paragraph 6, which, as per paragraphs 7, 8 and 9 thereof, amount to infringement of his social, economic, development, and consumer rights under Articles 43, 46, 259, 186 of the Constitution as read together with Sections 3, 4, 17, 19, 20 -23, 51, 45 - 48, 60, of the Physical and Land Use Planning Act, Sections 2, 10 of the Urban Areas and Cities Act, Section 3 of the County Governments Act. The petitioner prays for declaratory reliefs that the respondents should undertake their functions as per the Constitution, which they have now abdicated; hence threatening his enjoyment of rights as a ratepayer, and further, for an order directing the respondents to take up their responsibilities.
6. The respondents have opposed the petition. The 2nd respondent filed an affidavit sworn on 13/3/2023 by Mr. Patrick Mukamo Nyogesa, the Municipal Manager and Board Secretary in-charge. He confirmed that the mandate, functions, and powers of the 2nd respondent are spelled out in Sections 12, 20 and 21 of the Urban Areas and Cities Act 2011, with the participation of the citizens as set out in Section 22 thereof, through citizens fora, where they may make development proposals and recommendations.
7. It is averred that the market falls under the jurisdiction of the 2nd respondent, though the ownership of the plots is private. The respondents aver that the town center was planned in 1997, and its market plan was approved in 2009 as per Annexure LB "1". The respondents aver that a high mast flood lighting system is in place and that there is routine road maintenance on all roads, making access to remote areas possible; hence the claims by the petitioner are unfounded.
8. The respondents concede that the ownership, boundaries, encroachment, and positioning of the plot's cases are before courts and remain unresolved, making it difficult for them to plan for the area effectively.
9. The respondents aver that the only recourse to assume control and maintenance of such plots is upon surrender, which is yet to happen; otherwise, there is a functional public toilet that is well maintained and a bus park, that is adequate for the residents and the vehicles at the moment. The respondents deny the alleged infringement of the petitioner's rights; otherwise, they are ready to execute their mandate in accordance with the law and the development plans in place. The plan and photographs were attached as annexures LB "1-6".
10. In a further affidavit sworn on 20/3/2023, the petitioner generally denies the averments in the respondents' affidavits. He avers that the respondents admitted to overseeing developments in the market and are thus liable. That no fora to engage the residents on developments has been held, yet their obligations are both statutory and constitutional; which they have abdicated.
11. In a report dated 24/1/2024, the Alternative Justice System -Kitale Museums Assessors stated that they held a hearing on 12/1/2024, in the presence of the petitioner's representative, but without any representation for the respondents. They thus recommended that:-
 - a. The market committee cannot resolve allotment issues.
 - b. The County Government, through the physical planning department, should confirm allotment letters and allocations.



- c. The petitioner to be allowed to develop his plot through the intervention of the County Government.
- d. Timelines to be put in place for the resolution of the issues.
12. Subsequently, parties were directed to file a formal consent on the issues resolved and those pending. The said consent is yet to be filled.
13. The respondents' insights on the recommendations are dated 11/6/2024. They state that the Physical Planning Act, now repealed, laid down procedures to be followed in resolving such a dispute, since their mandate is limited to dealing with public utilities and access roads. It is the respondents' view that any aggrieved residents should file civil suits against the trespassers, for the respondents to implement any resultant judgments.
14. Further, the respondents stated that prayers (i-iv) of the further amended petition could not be allowed since there is no recommendation on the same from the AJS Report. In addition, the respondents urged that the petitioner should develop his plot, since it has no disputes and there are no restrictions, prohibitions or freezes on developments.
15. In submissions dated 7/2/2025, the petitioner submits that recommendation numbers 1 and 2 of the AJS Report had settled prayers d, c,(i),(ii),(iii), and (iv) of the further amended petition and that prayers (a), (b) and (c), are settled as far as liability is concerned, to be borne by the respondents, since they collect rates from plot owners. Further, the petitioner submits that prayer e (v) had been settled remotely, in terms of recommendation number 3. On prayers e (vi) – (x) and f, the petitioner submitted that the plots are public amenities.
16. On the respondents' insights to the AJS Report, the petitioner submits that the respondent's discontent with it is misplaced as it is in line with the court in the various decided cases. The petitioner further submits that the respondents are the custodians of ownership records, as they are mandated to provide ownership documents, place beacons and to streamline records. Again, the petitioner submits that the AJS Report should be fully adopted. Reliance was placed on Articles 159(2), 22 & 23 and Part III of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules.
17. Article 2 (4) of *the Constitution* provides that customary law that is inconsistent with *the Constitution* is void to the extent of the inconsistency, and any act or omission in contravention of *the Constitution* is invalid. Article 159 (1) thereof provides that, judicial authority is derived from the people and shall be exercised inter-alia by the courts and tribunals. Further, Sub-Article 2 thereof provides that, in exercising judicial authority, courts shall be guided by the principles that justice shall be done to all irrespective of their status; it shall not be delayed; alternative forms of dispute resolution, including reconciliation, mediation, arbitration, and traditional dispute resolution mechanisms shall be promoted subject to clause (3); justice shall be administered without undue regard to procedural technicalities and the purpose and principles of *the Constitution* shall be protected and promoted.
18. In Sub-Article 3 thereof, traditional dispute resolution mechanisms shall not be used in a way that contravenes the Bill of Rights; is repugnant to justice and morality; or results in outcomes that are repugnant to justice and morality and or are inconsistent with *the Constitution* or any written law.
19. In order to comply with the Constitutional tenets on operationalizing Alternative Justice Systems, an Alternative Justice System Policy to entrench these processes was enacted. See *Kinyanjui & 97 others v Trustees* [2023] KEELC 15966 (KLR) 15th March 2023 (Ruling). In *Republic v Abdullahi Noor Mohamed alias Arab* [2016] eKLR, the court held that the *Judicature Act* envisions the use of



African Customary Law to resolve disputes in civil cases affecting parties who are subject to particular customary law. Further, the court observed that Article 159 of *the Constitution* is the basis of the Alternative Justice System, since culture is the foundation of the nation and a cumulative civilization of the Kenyan people.

20. In *Council of Governors v Senate & another* [2014] eKLR, the Supreme Court of Kenya held that courts ought to facilitate the pursuance of other means of dispute resolution, and barring a party from withdrawing a matter filed in court would be contrary to Article 159 (2) (c) of *the Constitution*. On the resolutions, awards or recommendations from alternative justice mechanisms, courts cannot impose the same on either party as held in *Ananias N. Kiragu v Eric Mugambi and 2 others* [2020] eKLR. Parties are also at liberty to enter into a consent before the court renders its judgment. See *Geoffrey M. Asango & others v Attorney General* [2018] eKLR,
21. In this petition, the petitioner, who has had to amend his petition severally, was directed to call all the necessary parties, sued or not, to a negotiation table, to try and resolve the dispute. Unfortunately, the respondents or their representatives did not attend the hearing where the Alternative Justice System-Kitale Museums Assessors arrived at the recommendations outlined above. Instead, the respondents filed insights in light of the said recommendations. They stated that the recommendations were incapable of being implemented as they overarch statutory processes, which the petitioner and other aggrieved residents should pursue. Parties were further asked to file a consent on matters that had been agreed upon and those still outstanding. Up to date, there is no consent filed.
22. From the provisions of the law and the cases expounded above, the Alternative Justice System is aimed at settling disputes amicably and with finality. Decisions made therein cannot be imposed on any party in case of a disagreement. Bearing this in mind, the respondents have expressed their reservations about implementing the recommendations, and thus, it would be injudicious to impose or adopt the Alternative Justice System-Kitale Museums Assessors resolutions. The court also observes that some of the recommendations touch on the constitutional functions and powers of the 1st respondent.
23. Consequently, in the absence of a consent, the petition shall proceed to a hearing by way of written submissions based on the affidavit evidence already filed.

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 9TH DAY OF JUNE 2025.

In the presence of:

Court Assistant - Laban

No appearance

HON. C.K. NZILI

JUDGE, ELC KITALE.

