



REPUBLIC OF KENYA



**KENYA LAW**  
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**Wachira v Njuguna & 2 others (Environment & Land Petition  
E004 of 2024) [2025] KEELC 4306 (KLR) (9 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4306 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MURANGA  
ENVIRONMENT & LAND PETITION E004 OF 2024**

**MN GICHERU, J**

**JUNE 9, 2025**

**BETWEEN**

**ROBERT DANIEL WACHIRA ..... PETITIONER**

**AND**

**FRANCIS NGUGI NJUGUNA ..... 1<sup>ST</sup> RESPONDENT**

**RUTH NJERI NDUATI ..... 2<sup>ND</sup> RESPONDENT**

**THE LAND REGISTRAR, MURANG'A ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. This ruling is on the preliminary objection by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents dated 27-1-2025. The preliminary objection is premised on the following grounds.
  1. The entire petition is time barred and unmaintainable in light of the provisions of Section 4 of the *Limitation of Actions Act*.
  2. The entire petition does not raise any constitutional issue ripe for litigation as drawn and this Court should avoid it.
  3. Without prejudice to grounds 1 and 2 above, the entire suit is an abuse of the Court process and res judicata, the orders sought have been dealt with conclusively in the following fora without any appeal ever being preferred.
    - i. Kandara Lands Dispute Tribunal Case No. 138 of 2002( Francis Ngugi Njuguna and Peter Nduati v Robert Daniel Wachira) decision was rendered in 2002.
    - ii. Thika CMCC DO case No. 68 of 2002 (Francis Ngugi Njuguna and Peter Nduati Njuguna v Robert Daniel Wachira) decision rendered in 2003.



(iii) Murang'a ELC No. E031 of 2021(Robert Daniel Wachira v Francis Ngugi Njuguna and 2 Others) suit withdrawn in 2021.

2. In the petition dated 19-11-2024 the petitioner seeks the following orders.

- i. Certiorari be and is hereby issued quashing the decision of the 4<sup>th</sup> Respondent, Kandara Land Disputes Tribunal in Kandara case No. 138 of 2022, Francis Ngugi Njuguna & Peter Nduati Njuguna v Robert Daniel Wachira, issued on 27-9-2002 and adopted by the Honourable Court in Thika Chief Magistrates' Court D.O case No. 68 of 2002 and all other orders flowing thereupon.
- ii. A declaration be and is hereby issued that the adoption of the decision of the Kandara Land Disputes Tribunal DO Case No. 68 of 2002 was null and void.
- iii. A declaration be and is hereby made that the 4<sup>th</sup> Respondent's action of adjudicating on a dispute over which it lacked jurisdiction violated the Petitioner's right to fair administrative action as enshrined in Article 47(1) of *the Constitution* and is therefore unconstitutional.
- iv. A declaration be and is hereby made that the 4<sup>th</sup> Respondent's action of adjudicating on a dispute over which it lacked jurisdiction violated the Petitioner's right to fair trial as enshrined in Article 25 (c) of *the constitution* and is therefore unconstitutional.
- v. A declaration be and is hereby made that the 4<sup>th</sup> Respondent's action of adjudicating on a dispute without jurisdiction violated the Petitioner's right to fair hearing as enshrined in Article 50(1) of *the Constitution* and is therefore unconstitutional.
- vi. An order cancelling the subdivision of L.R. No. Loc. 4/Naaro/663 and all other dealings over the resultant parcels.
- vii. Costs of the petition.
- viii. Such other orders or reliefs as this Court shall deem just to grant.

3. Counsel for the parties filed written submissions dated 10-2-2025 and 10-3-2025 respectively. The Petitioner's counsel identified the following issues for determination.

- i. Whether the petition is time barred.
- ii. Whether the petition raises constitutional issues.
- iii. Whether the petition is res judicata.

4. I have carefully considered the preliminary objection in its entirety, including the pleadings, the submissions and the case law cited therein. I find that the petition does not raise any constitutional issue. The bottom line in the petition is the cancellation of the subdivision of L.R. No. Loc.4/Naaro/663. That can easily be done under the *Land Registration Act*. I am persuaded by the submission by the Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents that it is trite law that petitions founded on claims of violations of fundamental rights and freedoms are not subject to limitation of actions. However, this is not a claim based on violation of fundamental rights and freedoms. It is a claim that was subjected to litigation under statute and a decision rendered. There were time limits, again commanded by statute, within which to challenge the decisions made by the tribunal and the lower



court. In the case of Hon. Uhuru Muigai v Nairobi Star Publications Ltd, Petition No. 187 of 2012 [2013] eKLR, it was held, inter alia that:

“It is important to recognize that even if a case does raise a constitutional matter, the assessment of whether the case should be heard by this court rests instead on the additional requirements that access to this court must be in the interests of justice and not every matter will raise a constitutional issue worthy of attention.”

This petition fails the constitutional test.

5. On the issue of whether the petition is time barred, I find that it is not. As can be seen from the 1<sup>st</sup> and 2<sup>nd</sup> Respondents own submissions as per Petition 17(E021) of 2022 Zehrabanu Jan Mohamed v Nathaniel K.lagat And 4 Others, Supreme Court of Kenya, it was held as follows.

“...We reiterate that as a general principle, petitions founded on claims of violations of fundamental rights and freedoms are not subject to limitation of actions...”

Had this petition not failed the constitutional test, it would not have been subject to limitation in terms of time.

6. On the final issue of whether the petition is res judicata, I reiterate that it fails the constitutional test because the reliefs sought can be obtained through statute. If a suit were to be filed seeking the cancellation of the subdivision of L.R. No. Loc.4/Naaro/663 and all other dealings over the resultant parcels, then the issue of res judicata would arise in that suit.
7. Act No. 19 of 2011 repealed The Land Disputes Tribunal At (Act No. 18 of 1990). The commencement date of Act No. 19 of 2011, which is the Environment and Land Court Act, was 30-8-2011. This means that Kandara Land Disputes Tribunal ceased to exist on 30-8-2011. Yet the said Tribunal is a party to this suit as the 4<sup>th</sup> Respondent. I wonder if it has been served with this petition and how service was effected.
8. For the reasons set out hereinbefore, I find that the preliminary objection dated 27-1-2025 has merit. Consequently, I strike out the petition dated 19-11-2024 with costs to the Respondents.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 9TH DAY OF JUNE, 2025.**

**M.N. GICHERU.**

**JUDGE.**

Delivered online in the presence of; -

Court Assistant – Mwangi Njonjo

Petitioner's Counsel – Mr Kimani

1<sup>st</sup> and 2<sup>nd</sup> Respondents' Counsel – Mr Tumu

