



**Andoyi v Constituency Development Fund Board Emuhaya Cosntituency & 3 others
(Constitutional Petition E002 of 2024) [2025] KEELC 5263 (KLR) (10 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5263 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VIHIGA
CONSTITUTIONAL PETITION E002 OF 2024**

E ASATI, J

JULY 10, 2025

**IN THE MATTER OF: ARTICLES 2,3,20,19,21,22,23 (A), (B), (D), (E), (F), 24,
40, 64, 68, 59, 159, 163(3) AND ALL OTHER CONNECTED PROVISIONS OF
THE CONSTITUTION 2010 LAWS OF KENYA**

AND

**IN THE MATTER OF: THE ALLEGED VIOLATION OF RIGHT TO LAND
AND ALL OTHER ATTENDANT RIGHTS AND DENIAL OF RIGHT TO
FAIR ADMINISTRATIVE ACTION**

AND

IN THE MATTER OF THE LAND REGISTRATION ACT, 2012 NO. 3 OF 2012

BETWEEN

VINCENT CHILUKA ANDOYI PETITIONER

AND

**CONSTITUENCY DEVELOPMENT FUND BOARD EMUHAYA
COSNTITUENCY 1ST RESPONDENT**

VIHIGA COUNTY LAND REGISTRAR 2ND RESPONDENT

VIHIGA COUNT LAND SURVEYOR 3RD RESPONDENT

THE HON. ATTORNEY GENERAL 4TH RESPONDENT



JUDGMENT

Petitioner's case

1. Vide the Petition dated 2nd November 2024, Vincent Chiluka Andoyi, the petitioner herein sought for orders that; -
 - a. A declaration be issued that the action of the 2nd Respondent borne of the ruling dated 17/7/2023 purporting to alter and/or amend the map respecting land parcel number West Bunyore/emusire/1726 is in violation of the petitioner's right as envisaged under article 40, 64, 68 and all other related provisions of *the constitution* and therefore unlawful, unconstitutional and invalid ab initio.
 - b. An order of certiorari be issued removing into this court and quashing the impugned ruling dated 17th July 2023 by the 2nd Respondent in favour of the 1st Respondent as heretofore particularized.
 - c. This honourable court be pleased to issue an order for the demolition of the developments made on the land parcel number West Bunyore/emusire/1726 by the 1st Respondent and a permanent eviction of the 1st Respondent, its servants, agents, employees and/or any person (legal or artificial) occupying the portion of land comprised in the aforesaid land.
 - d. The Respondents be directed to bear the costs of the petition jointly and severally in their individual personal and official capacities.
 - e. That the honourable court be pleased to grant such further order or orders as may be just and appropriate.
2. The petitioner's case is that he lodged a boundary dispute relating to land parcel No. West Bunyore/Emusire/1726 with the 2nd Respondent. That the outcome of the dispute after a site visit on 2nd July 2022 was in a ruling dated 17th March 2023 and a report by the Land Registrar (2nd Respondent) dated 17th July 2023. That being aggrieved with the decision of the Land Registrar, (the 2nd Respondent) the petitioner filed the petition herein. The petitioner claims that the 2nd Respondent working in concert with the other Respondents acted in excess of its powers and violated the petitioner's rights to land under articles 40 and 64 (a) and 68 VI and VII of *the Constitution* in cancelling and/or amending the petitioner's title to land parcel number WEST BUNYORE/EMUSIRE/1726.
3. That the 2nd Respondent relied on hearsay evidence that hence there was breach of the fundamental rights and freedoms respecting fair administrative action and article 47, 48 and 51(1) of *the Constitution*. That the 2nd Respondent (Land Registrar) made a ruling in favour of the 1st Respondent, and given that both belong to the national Government of the Republic of Kenya, the decision dated 17th July 2023 contravened the *Fair Administrative Action Act* and particularly the rights contemplated in articles 40, 47, 48 and 51(1) of *the Constitution* as justice was not done hence bias by the 2nd Respondent.

Respondent's case

4. In response to the petition, Grounds of Opposition dated 6th February 2025 were filed by the Senior State Counsel on behalf of the 2nd, 3rd and 4th Respondents as follows;



- a. THAT the Petition is misconceived, incompetent, bad in law, frivolous, vexatious & an abuse of the court process.
- b. THAT the Petitioner has not disclosed a reasonable course of action against the 2nd, 3rd and 4th Respondents.
- c. THAT the Petitioner has not demonstrated how his rights in respect of Land Parcel Number: West Bunyore/Emusire/1726 (the Suit Property) were violated by the 2nd, 3rd and 4th Respondents if at all or as alleged.
- d. THAT the dispute before this Honourable Court is pitting two (2) private individuals/entities and the Petitioner has unnecessarily dragged the public servants in the form of the 2nd, 3rd and 4th Respondents in what is otherwise a private contest.
- e. THAT the Petitioner has not satisfied the conditions for grant of the orders sought as the Petitioner is seeking Judicial Review orders in a Constitutional Petition against both procedural and substantive laws.
- f. THAT the allegations by the Petitioner are misconceived, unsubstantiated, and bad in law thereby the Petitioner is put to strict thereof.
- g. THAT the fundamental rights and freedoms of the Petitioner and/or of the believers under the 2010 Constitution and/or any other statutory, treaty or convention and general rules of international law were not contravened and/or violated in anyway and the Petitioner is put to strict proof thereof.
- h. THAT the Petition contains allegations brought out of conjecture, bath faith and without any tangible and verifiable or substantial evidence against the 2nd Respondent and are intended to injure or damage the 2nd Respondent's reputation.
- i. THAT the Petitioner's Petition in its entirety is full of wild, alarming, fictitious, vexatious and frivolous allegations warranting dismissal.
- j. THAT the strict interpretation of the 2010 Constitution is that the mere allegation that a Petitioner's fundamental rights and freedoms have been contravened is not of itself sufficient to entitle a Petitioner the remedies sought. The Petitioner must demonstrate real danger so imminent and evident, true and actual and not fictitious so as to deserve immediate redress by this Honourable court.
- k. That the Petitioner has not demonstrated with precision how his rights and/or interest in the Suit Property were violated or contravened by the 2nd, 3rd and 4th Respondents, and has not put forth any substantial evidence to prove the alleged violation as espoused in the decision of Mumo Mate nu VS Trusted Society of Human Rights Alliance (2013) eKLR and Annarita Karimi Njeru (1979) KLR 154.
- l. That the Petitioner has not fulfilled the requirements set out in various authorities for the grant of orders sought. It is the 2nd, 3rd and 4th Respondents' position that not each and every alleged violation of the law must be raised as Constitutional issues
- m. That there is no demonstration by the Petitioner with evidence of loss suffered and any prejudice or irreparable harm, damage or injury likely to be suffered if the orders sought are not granted.



- n. That in the unlikely event that it is found that the Petitioner has suffered any loss, prejudice, irreparable harm and/or damage or injury, then the same was solely caused by the 1st Respondent and that the Petitioner be made to seek any reprieve if at all for the said loss from the 1st Respondent only.
5. The 2nd, 3rd and 4th Respondents also filed a Replying Affidavit sworn by Hellen Ojwang, the Land Registrar, Vihiga County on 27th March 2025.
6. The case of the 2nd, 3rd and 4th Respondents as can be gathered from the Grounds of Opposition and the Replying Affidavit is that on 2nd November 2021, the petitioner lodged an application for boundary determination in respect of a land dispute involving parcels West Bunyore/Emusire/ 1938 and 1726 on the grounds that the 1st Respondent, who is the registered owner of land parcel number 1938, had encroached upon the petitioner's land. That pursuant to the petitioner's application the 2nd Respondent issued Summons, visited the site and conducted a hearing on 27th April, 2023 in the presence of the area administration officers, the parties to the dispute, their legal representatives, the surveyor and other attendees.
7. That the surveyor also took ground measurements and made a report dated 13th June 2023. That the surveyor's report concluded that there was no boundary interference by the 1st Respondent, and that the existing boundary remained clearly demarcated by overgrown trees and an access road both of which had existed since the time of adjudication.
8. That the petitioner has not demonstrated how his rights have been violated. That the petitioner has not satisfied the conditions for grant of the orders sought as he is seeking judicial review orders in a Constitutional Petition.
9. The 2nd, 3rd and 4th Respondents prayed that the petition be dismissed with costs.
10. No response was filed on behalf of the 1st Respondent.

Submissions

11. The Petition was, vide directions given on 12th February 2025, heard by way of Affidavit evidence and written submissions. It was submitted on behalf of the petitioner vide the written submissions dated 12th May 2025 filed by the firm of Mukhooli & Associates Advocates that the grounds of opposition dated 6th February 2025 do not elicit any evidence in opposition to the petition and that hence the petition is not opposed. That sufficient cause has been tendered to warrant the grant of the orders sought.
12. On behalf of the 2nd, 3rd and 4th Respondents, written submissions dated 6th May 2025 were filed by Dan Simiyu, Senior State Counsel for the Attorney General. Counsel submitted that the [Land Act](#) empowers the Land Registrar to determine and fix boundaries of any land parcel either on their own motion or upon the application of an interested party.
13. That in the present matter, the petitioner as well as the 1st Respondent lodged a formal complaint seeking the Land Registrar's intervention to determine the boundary line separating the two properties. Counsel relied on the provisions of section 19 of the [Land Registration Act](#), Regulation 40 of Land Registration (General) Regulation 2017 and submitted that the 2nd Respondent strictly adhered to the procedural requirements set out in the [Land Registration Act](#) and fully respected the principles established under article 47(1) of [the Constitution](#) which guarantees every person the right to lawful, reasonable and procedurally fair administrative action. That section 86 of the [Land Registration Act](#)



provides a remedy for any party aggrieved by the decision of the Land Registrar by granting a right of appeal to the Environment and Land Court.

14. That the petitioner having failed to invoke the available appellate procedure is now precluded from invoking the jurisdiction of the court through constitutional petition. That the petitioner cannot be allowed to transform a properly conducted and conclusive process into a constitutional grievance merely on account of dissatisfaction with the outcome.
15. Relying on the case of Anarita Karimi Njeru –vs- Republic (1979) eKLR Counsel submitted that the petition herein fails to meet the essential constitutional threshold for constitutional petitions and urged the court to dismiss it with costs the 2nd, 3rd and 4th Respondents.

Issues for determination

16. From the pleadings filed, the Affidavit evidence and submissions presented, the following emerge as the issues for determination:
 - a. Whether or not the petition meets the threshold for constitutional petitions.
 - b. Whether or not the petition has merit.
 - c. What orders to make.

Analysis

17. The threshold for constitutional petitions was set in the case of Anarita Karimi Njeru relied on by the 2nd, 3rd and 4th Respondents herein namely; that the petitioner must set out with reasonable degree of precision that of which he complains of, the provisions of *the Constitution* said to be infringed and the manner in which they are alleged to have been infringed.
18. The Petitioner stated that he brought the petition because he was dissatisfied with the decision of the 2nd Respondent which according to him was in breach of his constitutional rights under articles 40, 47, 48, 64 and 68 and all other related provisions of *the Constitution* of Kenya. The quoted articles of *the Constitution* deal with the right to property, fair administrative action, access to justice, private land and legislation on land. He also cited articles 10, 19, 21 (1), 22 (1) and 23(1) and (2) of *the Constitution*. It is however not clear from the petition how the Respondents breached these provisions of *the Constitution*. No particulars of breach or evidence thereof was pleaded or exhibited.
19. The petitioner has only listed the provisions of *the constitution* without relating them to his complaint and without proving how the same were breached thereby causing him injustice. The court finds that the petition herein fails to meet the constitutional threshold.
20. What was before the Land Registrar was a boundary dispute lodged by the petitioner. The petitioner only filed the petition because he was not satisfied with the outcome of the boundary dispute determination. However, the law has provided a clear procedure on how a party who is dissatisfied with a boundary determination by the Land Registrar should proceed. The *Land Registration Act* and Regulations thereunder provide for the procedure to be followed by a party who is aggrieved by such determination. This court can only be moved in accordance with the provisions of those provisions of law. Constitutional petition is not one of the ways provided for by those provisions of law.
21. Where the law has provided a procedure to be followed to access the remedy desired, parties should adhere to the procedure. The court finds that petition is improperly before the court.



22. If the court were to consider the merits of the petition, the petitioner claims that the decision of the Land Registrar was based on hearsay evidence and that the land Registrar was bias because both the Land Registrar and the 1st Respondent belong to the National Government.
23. No evidence was exhibited to prove this. On the other hand, the 2nd Respondent demonstrated through the Replying Affidavit and annexures thereto that the procedure for boundary dispute determination was strictly adhered to. The Land Registrar's report shows that evidence of the parties was taken. The Surveyor's report shows that ground measurements were taken and that the same aided in the determination. There was no other evidence availed by the petitioner to challenge the report of the surveyor who is the expert in matters of determining boundary positions.

The court finds no merit in the petition.

24. For the foregoing reasons the court finds that the petition has not been proved and makes the following orders;
- i. The petition is hereby dismissed.
 - ii. Costs are awarded to the 2nd, 3rd and 4th Respondents.

Orders accordingly.

JUDGEMENT DATED AND SIGNED AT VIHIGA AND DELIVERED THIS 10TH DAY OF JULY 2025 VIRTUALLY THROUGH MICROSOFT TEAMS ONLINE APPLICATION.

E. ASATI,

JUDGE.

In the presence of:

Ajevi- Court Assistant.

N/A for the petitioner.

N/A for the 1st Respondent.

Kipkorir h/b for Simiyu for the 2nd, 3rd and 4th Respondents.

