



**Balach v Land Registrar, Trans-Mara Sub-County & 6 others (Environment and Land Petition 302 of 2017) [2025] KEELC 5286 (KLR) (14 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5286 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAROK  
ENVIRONMENT AND LAND PETITION 302 OF 2017**

**MN KULLOW, J  
JULY 14, 2025**

**BETWEEN**

**LABASON ARAP BALACH ..... PETITIONER**

**AND**

**LAND REGISTRAR, TRANS-MARA SUB-COUNTY ..... 1<sup>ST</sup> RESPONDENT**

**SURVEYOR, TRANS-MARA SUB-COUNTY ..... 2<sup>ND</sup> RESPONDENT**

**DIRECTOR OF SURVEY ..... 3<sup>RD</sup> RESPONDENT**

**CHIEF LAND REGISTRAR ..... 4<sup>TH</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 5<sup>TH</sup> RESPONDENT**

**JEREMIAH SAOLI OLE MEGESH ..... 6<sup>TH</sup> RESPONDENT**

**KUNINI OLE KIPAAS ..... 7<sup>TH</sup> RESPONDENT**

**JUDGMENT**

**The Petition**

1. The Petitioner, Labason Arap Balach, filed this Petition dated 31<sup>st</sup> July 2017, alleging that his constitutional rights under Articles 40 and 47 of the *Constitution* were violated by the failure of the 1<sup>st</sup> to 5<sup>th</sup> Respondents to implement the decisions rendered in Objection No. 297 of 2000 and Ministerial Appeal No. 124 of 2001.

**The Petitioner’s Case**

2. The Petitioner avers that in 1990 he purchased a portion of land measuring approximately 37 acres from the 7<sup>th</sup> Respondent, which formed part of what was then Plot No. 447, Kimintet D Adjudication



Section. He immediately took possession, demarcated the land using a sisal fence, planted trees, and even constructed a house on the land.

3. The 7<sup>th</sup> Respondent later resold the entire Plot No. 447 to the 6<sup>th</sup> Respondent, thereby prompting the Petitioner to lodge Objection No. 297 of 2000 before the Land Adjudication Committee. The objection was heard and determined in the Petitioner's favour on 7<sup>th</sup> January 2000. The adjudication officer directed that the Petitioner be awarded the land "along the established boundary on the ground" and be issued a parcel number.
4. Dissatisfied, the 7<sup>th</sup> Respondent appealed to the Minister in Appeal No. 124 of 2001. The appeal was dismissed. The Minister affirmed that the Petitioner's occupation was clear, noting the presence of a sisal fence, blue gum trees, and evidence of previous structures.
5. Following these decisions, a new parcel, Plot No. 1144, was created and registered in the Petitioner's name. However, the Petitioner later discovered in 2011 that the 37 acres were not included in his registered parcel but remained part of LR No. 447, registered jointly in the names of the 6<sup>th</sup> and 7<sup>th</sup> Respondents.
6. The Petitioner argues that the 1<sup>st</sup> to 5<sup>th</sup> Respondents failed or neglected to implement the adjudication decisions faithfully and thereby violated his right to property and fair administrative action.

### **The Respondents' Case**

7. The 6<sup>th</sup> and 7<sup>th</sup> respondents have opposed the petition, arguing that the adjudication and ministerial decisions were fully implemented, the petitioner was issued a title deed for LR No. 1144, and he has never been in possession of LR No. 447. They assert that the petitioner is attempting to expand the scope of land allocated to him beyond what was decided by the competent land adjudication authorities.
8. They further argue that the petition, though presented as a constitutional cause, is essentially a private land dispute and therefore an abuse of court process. They maintain that no constitutional rights have been violated and that the proper course would have been to seek administrative or judicial review relief if any implementation errors were alleged.
9. At the conclusion of the hearing, both parties filed detailed written submissions summarizing their legal positions and the factual bases of their claims and defences. The court has carefully considered those submissions, together with the authorities cited, in arriving at this judgment.

### **Analysis and Determination**

10. Having considered the Petition, the responses from the Respondents, the respective submissions filed by all parties, and the legal issues arising, the Court finds that the following four issues fall for determination:
  - a. Whether the Petition raises valid constitutional issues
  - b. Whether the decisions of the Land Adjudication Officer and the Minister were implemented in accordance with the law;
  - c. Whether the Petitioner has made a case for rectification of the land register under Section 80 of the *Land Registration Act*;
  - d. Whether the Petitioner is entitled to the declaratory and injunctive reliefs sought.



## Whether the petition raises valid constitutional issues

11. The Respondents have challenged the legal basis of the Petition, arguing that the dispute is essentially one concerning land boundaries and implementation of administrative decisions and does not fall within the realm of constitutional interpretation or enforcement of rights.
12. Rule 10 of the Constitution of Kenya (Protection for Rights & Fundamental Freedoms) Practice and Procedure Rules, 2013 (commonly referred to as “the Mutunga Rules”) provides for contents of petitions. It also gives guidance on the form in which a petition may be presented to the court.
13. The specificity and precision take was established by the High Court in the case of *Anarita Karimi Njeru v Republic* (1979) KLR 154. The test was stated thus:

“We would, however, again stress that if a person is seeking redress from the High Court on a matter which involves a reference to the Constitution, it is important (if only to ensure that justice is done to his case) that he should set out with a reasonable degree of precision that of which he complains, the provisions said to be infringed, and the manner in which they are alleged to be infringed.”
14. Similarly, the Supreme Court of Kenya on *Communications Commission for Kenya & 5 others v. Royal Media Services Limited & 5 others* [2014] eKLR on the same element of specificity and precision stated thus:

“Although Article 22(1) of the Constitution gives every person the right to initiate proceedings claiming that a fundamental right or freedom has been denied, violated or infringed or threatened, a party invoking this Article has to show the rights said to be infringed, as well as the basis of his or her grievance.”
15. From the above decisions it is shown that petitions must be clear on what it is they are challenging. First of all there must be a nexus between the Constitution and the alleged violated right. The nexus must be precise, and clear. While the Petition is couched in constitutional language making reference to Articles 40 and 47 of the Constitution the gravamen of the complaint is that the Petitioner was allocated a portion of land through adjudication and appeal processes, but the resulting title (LR No. 1144) does not reflect the full extent of land he claims to have purchased and occupied.
16. In this case, the Petitioner’s grievance arises from a factual dispute regarding the implementation of adjudication outcomes, rather than the interpretation or enforcement of constitutional rights. No direct evidence has been provided to demonstrate arbitrary state action or administrative abuse, beyond the claim that the issued title was smaller than anticipated. The Petitioner had an opportunity to pursue judicial review or rectification under the Land Registration Act or seek a remedy via civil claim. As such, this Court finds that the matter was improperly framed as a constitutional petition.
17. Accordingly, while this Court has jurisdiction under Article 162(2)(b) of the Constitution and Section 13 of the Environment and Land Court Act to entertain constitutional Petitions relating to land and the environment, it must exercise that jurisdiction only where genuine constitutional issues are raised. The Petition herein fails that test.

## Whether the decisions of the adjudication officer and the minister were implemented

18. It is common ground that the Petitioner filed Objection No. 297 of 2000, which was determined in his favour, and that the 7th Respondent appealed this decision in Appeal No. 124 of 2001 to the Minister,



who affirmed the Adjudication Officer's ruling. These decisions are final under Section 29 of the [Land Adjudication Act](#).

19. Following the Minister's decision, the disputed parcel, previously known as Plot No. 447, was subdivided. A portion of land was registered as LR No. 1144 in the Petitioner's name. The Petitioner claims that the 1<sup>st</sup> to 5<sup>th</sup> Respondents failed to include a 37-acre portion that was allegedly fenced and occupied by him at the time of adjudication.
20. However, there is no evidence before the Court demonstrating that the alleged 37 acres were intended to form part of LR No. 1144, nor that they were captured in the adjudication records as forming part of the Petitioner's award.
21. In *Kipkobel Arap Misoi v Proscila Chepkorir* [2016] eKLR, the court emphasized that once the Minister has determined an appeal under Section 29, the role of the Land Registrar and Director of Survey is merely administrative implementation, with no discretion to alter or reinterpret the decision.
22. In the instant case, no evidence has been led to show that the 1<sup>st</sup> to 5<sup>th</sup> Respondents deviated from the Minister's directive or failed to follow due process. The Petitioner's claim is based primarily on occupation, not documented boundaries. Accordingly, the Court finds no merit in the contention that the decisions were not implemented. The evidence instead supports a finding that the decisions were acted upon to the extent of generating and registering LR No. 1144 in the Petitioner's name.

**Whether the petitioner has made a case for rectification under section 80 of the [land registration act](#)**

23. The Petitioner invokes Section 80(1) of the [Land Registration Act](#), which permits the court to order rectification of the land register if satisfied that the registration was obtained through fraud or mistake.
24. The Petitioner alleges a substantive error occurred when the 37-acre portion he occupied was left out of LR No. 1144. He relies on physical occupation and sisal boundary markers.
25. However, no survey maps, ground demarcation reports, or evidence of administrative misdirection has been presented. Neither is there evidence that the registry maps were inconsistent with the adjudication records. Consequently, the Court finds that the Petitioner has not discharged the burden of proof required to invoke the rectification powers under Section 80.

**Whether the Petitioner is entitled to the declaratory and injunctive reliefs sought.**

26. The Petitioner seeks declaratory orders, injunctive relief, and rectification of the land register to incorporate the alleged 37 acres into LR No. 1144. He also seeks a permanent injunction against the 6<sup>th</sup> and 7<sup>th</sup> Respondents.
27. Permanent injunctive relief can only be granted where there is a clear legal right, threatened with imminent violation. The Petitioner does not hold title to the disputed 37 acres, nor has he demonstrated that they were legally awarded to him.
28. In this case, the 6<sup>th</sup> and 7<sup>th</sup> Respondents are the registered proprietors of LR No. 447, from which the disputed land is alleged to have originated. Without evidence of mistake or fraud in their registration, the Court cannot issue orders that would, in effect, deprive them of their legal title.
29. As such, the Court finds that the Petitioner is not entitled to the reliefs sought. The claim lacks evidentiary foundation and the constitutional path adopted to pursue what is essentially a land demarcation dispute is inappropriate.



30. In light of the above findings, the Court is inclined to dismiss the Petition dated 31<sup>st</sup> July 2017 in its entirety. Each party shall bear their own costs, taking into account the protracted history of the dispute and the involvement of state officers acting in their official capacity.

It is so ordered!

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON 14<sup>TH</sup> DAY OF JULY, 2025.**

**MOHAMMED N. KULLOW**

**JUDGE**

Ruling delivered in the presence of: -

..... for the Petitioner

..... for the Respondent

Philomena W. Court Assistant

