



REPUBLIC OF KENYA



**KENYA LAW**  
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**Mukhobi v Mukhobi & another (Environment and Land Petition  
E014 of 2024) [2025] KEELC 5276 (KLR) (10 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5276 (KLR)

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT VIHIGA**

**ENVIRONMENT AND LAND PETITION E014 OF 2024**

**E ASATI, J**

**JULY 10, 2025**

**IN THE MATTER OF ARTICLES 22, 23, AND 50 OF THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF SECTION 7 (D) OF THE LAND ACT**

**AND**

**IN THE MATTER OF SECTION 28 (B, H & J) OF THE LAND REGISTRATION ACT**

**AND**

**IN THE MATTER OF SECTIONS 7, 10 4 (4) AND  
17 OF THE LIMITATION OF ACTIONS ACT**

**AND**

**IN THE MATTER OF SECTION 17 & SECTION 18 (B) OF THE CIVIL PROCEDURE ACT**

**AND**

**IN THE MATTER OF KAKAMEGA HIGH COURT CIVIL CASE NO. 224 OF 1991**

**AND**

**IN THE MATTER OF VIHIGA MAGISTRATE'S COURT CIVIL CASE NO. 63 OF 2000**

**AND**

**IN THE MATTER OF VIHIGA MAGISTRATE'S CIVIL CASE NO 06 OF 2010**

**AND**

**IN THE MATTER OF MALINDI CONSTITUTIONAL PETITION NO. 3 OF 2016**

**AND**

**KAKAMEGA ENVIRONMENT AND LAND CASE NO. 183 OF 2014  
(FORMERLY KAKAMEGA HIGH COURT CIVIL CASE NO. 108 OF 2010)**

**AND**



**IN THE MATTER OF L/R WEST BUNYORE/EBUSAKAMI/1133  
AND LR WEST BUNYORE/EBUSAKAMI/1135**

**BETWEEN**

**JOTHAM AGGREY ANGUKO MUKHOBI ..... PETITIONER**

**AND**

**JAMES OBULI MUKHOBI ..... 1<sup>ST</sup> RESPONDENT**

**HARRISON JAIRO MUKHOBI ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. Vide the Petition dated 6<sup>th</sup> December 2024, Jotham Aggrey Anguko Mukhobi sought for the following relief against the Respondents; -
  - a. That the County Land Registrar Vihiga County be ordered to cancel the Land Certificate held by the 1<sup>st</sup> Respondent herein in respect of all that parcel of land known as L.R W Bunyore/Ebusakami/1133.
  - b. The County Land Registrar of Vihiga County be ordered to rectify the register of L.R West Bunyore/Ebusakami/1133 by removing the name of James Obuli Mukhobi as the proprietor and substituting thereof with the name of Jotham Aggrey Anguko Mukhobi as the absolute proprietor.
  - c. The County Land Registrar of Vihiga County be ordered to rectify the register of L.R West Bunyore/Ebusakami/1135 by removing the name of Harrison Jairo Mukhobi as the proprietor and substituting thereof with the name of Jotham Aggrey Anguko Mukhobi as the absolute proprietor.
  - d. Special and general damages.
  - e. Costs of the suit.

**The Petitioner's case**

2. The case of the petitioner as contained in the Petition and the Supporting Affidavit is that the Respondents are his half-brothers. That the suit lands herein are lands that he bought through his father one Boaz Mukhobi Ayiro. That the Respondents unlawfully and fraudulently caused the said Boaz Mukhobi Ayiro to transfer the suit lands to them while making the said Boaz Mukhobi Ayiro believe that the transfer documents he was signing were in respect of a different parcel of land known as L.R West Bunyore/Ebusakami/1132 which was meant to be transferred to the Respondents and the Petitioner's brother by the name Hezron Omboto Mukhobi. That there have been various litigations regarding the suit lands and land parcel known as L.R West Bunyore/Ebusakami/1132 including Kakamega H.CCC No. 224 of 1991 filed by the petitioner in respect of parcel No. Ebusakami/1132, Vihiga PM CCC No. 06 of 2010 filed by the Respondents seeking for eviction of the petitioner from the suit land, Kakamega HCCC No. 108 of 2010 filed by the petitioner against the Respondents and that an injunction issued earlier be lifted which case was transferred to Kakamega Environment and Land Court as Kakamega ELC Case No. 183 of 2014 which was dismissed for want of prosecution



and an application to the Court of Appeal No. 114 of 2019 for leave to appeal out of time was also dismissed.

3. The petitioner relied on the provisions of Section 7 of the Land Act, Section 28 (b), (h) and (j) of the Land Registration Act, Section 4 of the Limitation of Actions Act and Article 162 of the Constitution.

### **The Respondents case**

4. In response to the Petition, the 1<sup>st</sup> Respondent filed a Replying Affidavit sworn on 29<sup>th</sup> January 2025 and a Supplementary Affidavit sworn on 25<sup>th</sup> February 2025. His case is that he is the absolute registered owner of land parcel known as West Bunyore/Ebusakami/1133 for which he obtained land title on 4/12/1984 after due process of transfer from his father one Boaz Mukobi Ayilo to him.
5. That all the issues raised in the petitions have been litigated and settled with finality in other cases as mentioned in the petition namely; Vihiga CMCC No. 63 of 2000, Vihiga CMCC No. 06 of 2010, Kakamega ELC No. 108 of 2010 and Kakamega ELC No. 183 of 2014.
6. That the petition is frivolous, vexatious and an abuse of the court process. That the petitioner has got land L.R No. West Bunyore/Ebusakami/1651 registered in his names on 15/04/1968 which land initially belonged to the parties' father.
7. That land parcel No. West Bunyore/Ebusakami/1135 was gifted to him (1<sup>st</sup> Respondent) while No. West Bunyore/Ebusakami/1133 was gifted to the 2<sup>nd</sup> Respondent by their father. That there is no basis to award special damages as none has been particularized and proved. That there is also no basis for grant of general damages because the petitioner has not shown how he has been harmed or prejudiced by the actions of the Respondents. That the cases complained of by the petitioner were undertaken lawfully contrary to the assertions of the petitioner.
8. Vide the Supplementary Affidavit, the 1<sup>st</sup> Respondent indicated that he had sworn the affidavit on his own behalf and on behalf of the 2<sup>nd</sup> Respondent. He also averred that the matters raised in the petition were res judicata.

### **Submissions**

9. Pursuant to directions taken on 11/3/2025, the petition was disposed of by way of Affidavit evidence and written submissions.
10. Written submissions were filed on 8<sup>th</sup> April, 2025 by the petitioner while the Respondents filed written submissions dated 30<sup>th</sup> April, 2025.

### **Issues for determination**

11. From the contents of the petition, the Affidavit evidence and the submissions filed, 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. Whether or not the petitioner is entitled to the relief sought.
  - d. Cost of the petition.



## Analysis

12. This court has been approached by way of a constitutional petition under the provisions of articles 22, 23 and 50 of *the Constitution* among other statutory provisions. Article 22 of *the Constitution* deals with enforcement of the Bill of rights. Article 23 deals with the power of the courts to uphold and enforce the Bill of rights and article 50, the right to fair hearing.
13. The threshold for constitutional petitions was set in the case of Anarita karimi Njeru –vs The Republic (1979) eKLR where it was held that constitutional petitions should set out with a reasonable degree of precision the petitioner’s complaint, the provisions of *the constitution* alleged to have been infringed and the manner in which those provisions of *the constitution* have been infringed.
14. Similarly, in the case of Mumo Matemu -vs- Trusted Society of Human Rights Alliance & 5 others (2013) eKLR the Court of Appeal stated that:-

“It is our finding that the petition before the High court was not pleaded with precision as required in Constitutional petitions. Having reviewed the petition and Supporting Affidavit we have concluded that they did not provide adequate particulars of the claims relating to the alleged violation of *the Constitution* of Kenya and the Ethics and Anti- Corruption Commission Act, 2011, accordingly the Petition did not meet the standard annunciated in the Anarita Karimi Njeru Case”
15. The provisions of *the Constitution* of Kenya cited in the petition are article 50 and 162. Article 50 deals with the rights to fair hearing and provides as follows in paragraph (i)

“Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, an impartial Tribunal or body”
16. Article 162 deals with the jurisdiction of this court. It would then appear, by citing article 50 of *the Constitution* that the petitioner’s complaint is that he has not been accorded the right to fair hearing. On the heading of the petition the petitioner lists cases No. Kakamega High Court Civil Case No. 224 of 1991, Vihiga Magistrate’s court Civil Case No. 06 of 2010 and Kakamega ELC Case No. 183 of 2014(Formerly Kakamega HCCC No, 108 of 2010) which in the body of the petition he gives the details thereof and their outcomes. The existence of these cases was not denied by the Respondents. The Respondents’ position was that each of the cases was handled procedurally and the parties accorded a fair hearing and determinations made thereon.
17. A reading through the petition and the very detailed Supporting Affidavit does not show that the petitioner was denied a right to fair hearing. The petitioner has not even pleaded that he was denied the right to fair hearing or that the said right was violated. The petition contains no particulars of violation of the right to fair hearing. The petition does not meet the threshold of constitutional petitions.
18. What emerges from the petition is that the petitioner was not satisfied with the outcomes of the cases listed in the petition. Some of the cases were filed by the petitioner while others were filed by the Respondents. The law has provided a mechanism for ventilating dissatisfaction with outcomes of cases. There is the appellate process that runs right up to the Supreme Court of Kenya which a party who is aggrieved by the outcome of a case may pursue. Such grievances cannot be camouflaged as constitutional petitions whatsoever.



19. Where the law has provided the procedure to be followed to process a given grievance, the parties should pursue it. The decision in *Harrkinson v Attorney General of Trinidad and Tobago* [1980] AC 265, hold true today where the court held that;

“The notion that whenever there is a failure by an organ of Government or a Public authority or public office to comply with the law this necessarily entails the contravention of some human rights or fundamental freedoms guaranteed to individuals by Chapter 1 of *the Constitution* is fallacious. The right to apply to the High Court under Section 6 of *the Constitution* for redress when any human right or fundamental freedoms is or is likely to be contravened, is an important safeguard of those rights and freedoms; but its value will be diminished if it is allowed to be misused as a general substitute for the normal procedures for invoking judicial control of administrative action.”

The Court held further that;

“The mere allegation that a human right has been or is likely to be contravened is not itself sufficient to entitle the applicant to invoke the jurisdiction of the court under the section if it is apparent that the allegation is frivolous, vexatious or abuse of the process of court, as being made solely for the purpose of avoiding the necessity of applying the normal way for appropriate judicial remedy for unlawful administrative action which involves no contravention of any human right or fundamental freedom.”

20. In *Speaker of the National Assembly v Karume* [1992] KECA 42 (KLR) the Court of Appeal held that “where there is a clear procedure for the redress of any particular grievance prescribed by *the Constitution* or an Act of Parliament, that procedure should be strictly followed...”
21. In the instance case, the Respondent deposed in paragraphs 7 and 8 of the Supplementary Affidavit that the Petitioner being dissatisfied with the judgment in Vihiga PMCC No, 06 of 2010 delivered on 8/4/2024 in which the petitioner was ordered to be evicted from the suit lands herein the petitioner filed Vihiga ELC Appeal No. E11 of 2024 vide the Memorandum of Appeal dated 23<sup>rd</sup> April, 2024. That however the petitioner withdrew the Appeal on 15/1/2025 vide the Notice of withdrawal dated 7/1/2025 apparently to pave way for the present petition. These averments were not denied by the petitioner.
22. It is clear that the petitioner is seeking this court exercise appellate jurisdiction through a constitutional petition. Secondly from the prayers sought inter alia a prayer for an order of certiorari to bring to this court and quash the decisions of the court below, the petitioner is seeking the court judicial review jurisdiction.
23. For the foregoing reasons the court finds that the current petition has failed not only to meet the threshold for constitutional petitions but is also not complaint with the doctrine of exhaustion and constitutional avoidance. See Supreme Court decision in *Communications Commission of Kenya & 5 others v Royal Media Services Limited & 5 others* [2014]. The principle of avoidance entails a preference of deciding a case on any other basis other than one that involves a constitutional issue being resolved. that a Court will not determine a constitutional issue, when the dispute may properly be decided on another basis. As held by the South African Constitutional Court in *S vs. Mhlungu* (1995) (3) SA 867 (CC) where it is possible to decide any case, civil or criminal, without reaching a constitutional issue, that is the course which should be followed. Also see *KBB vs SCM & 5 others* (Constitutional Petition 014 of 2020) (2022) KEHL 289(KRR).



24. If the court were to decide the petition on merit, it is common ground that the issues contained in the petition have been decided on by courts of competent jurisdiction which have made determinations including case No. 63 of 2000 which was decided in favour of the Respondents and an order of injunction issued and Vihiga 06/2010 also decided in favour of the Respondents wherein an eviction order was issued against the petitioner. In as much as those decisions have not been varied, the suit lands are property of the Respondents. The petition therefore lacks merit and there is no basis for the court to find that the petitioner is entitled to the relief sought.

#### **Costs**

25. Under S. 27 of the *Civil Procedure Act*, costs follow the event. I have considered that the parties herein are all senior citizens and siblings who need to foster unity and harmony among themselves. For that reason, I consider that it is appropriate to allow each party to bear own costs of the petition.

#### **Determination**

26. For the foregoing reasons the court finds that the petition has not been proved.

- i. The petition is hereby dismissed
- ii. Each party to bear own costs of the petition

Orders accordingly.

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

**E. ASATI,**

**JUDGE.**

In the presence of:

Ajevi- Court Assistant.

Petitioner present in person.

Shihemi for the Respondent.

