



Njeri (Suing as the Legal Personal Representative of the Estate of Njeri Ngugi) v County Land Adjudication & Settlement Officer, Trans Nzoia & 2 others; Chemnjor (Interested Party) (Environment and Land Petition E001 of 2025) [2025] KEELC 5126 (KLR) (9 July 2025) (Judgment)

Neutral citation: [2025] KEELC 5126 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT AND LAND PETITION E001 OF 2025**

**CK NZILI, J
JULY 9, 2025**

BETWEEN

JEFRI MUNGAI NJERI (SUING AS THE LEGAL PERSONAL REPRESENTATIVE OF THE ESTATE OF NJERI NGUGI) PETITIONER

AND

COUNTY LAND ADJUDICATION & SETTLEMENT OFFICER, TRANS NZOIA 1ST RESPONDENT

THE DIRECTOR OF LAND ADJUDICATION & SETTLEMENT 2ND RESPONDENT

THE HON ATTORNEY GENERAL 3RD RESPONDENT

AND

LUKA CHEMNJOR INTERESTED PARTY

JUDGMENT

1. Before the court is a petition dated 3/5/2024, in which the petitioner asks the court to:
 - (a) Declare him the owner of Plot No. 342 in Kapkoi Settlement Scheme.
 - (b) Issue an order of mandamus directed at the 1st and 2nd respondents to rectify their records, enter his name as the allottee and issue a letter of allotment to that effect.
2. The petitioner brings this petition for and on behalf of the estate of Njeri Ngugi, as the son and administrator under the grant of letters of administration issued on 2/3/2016 in Eldoret High Court Succession Cause No. 21 of 1995.



3. According to the petitioner, the deceased was allocated 2 ½ acres of the suit land in 1974 by the Settlement Fund Trustees, then comprised of plot No. 16 Kapkoi Settlement Scheme, took vacant possession and constructed a family home, where she has been living with her family. It is also averred that the allocation was increased to 5 acres in 1984 and the plot became No. 342.
4. The petitioner avers that in contravention of her constitutional rights and the law, the 1st and 2nd respondents unlawfully and illegally purported to allocate plot No. 342 to the interested party and instead moved her to a rocky and rugged plot No. 649 within the same scheme. The petitioner avers that the deceased, however, retained actual possession of her 5 acres until she passed on 3/8/1994, leaving her family in occupation of plot No. 342.
5. Further, the petitioner avers that in 1989, the interested party filed a claim before the Trans Nzoia Panel of Elders, who affirmed that the deceased should retain plot No. 342, which award was filed and adopted in Eldoret Chief Magistrate Land Case No. 213 of 1989, before the Land Disputes Tribunals Act was repealed.
6. Despite the award, the petitioner avers that the 1st and 2nd respondents refused or neglected to effect the decree, in which the interested party continues to retain the suit land under his name, though the possession is by the deceased family.
7. The petitioner urges the court to find the acts of the respondents as contravening Articles 1, 2, 3, 10 2(a), (b), (e), 27, 40, 47, 60(1)(a), 73, 232 and 159 2(a), (d) and (e) of *the Constitution*.
8. The petition is opposed by the respondents on the grounds of opposition dated 19/3/2025. The petition is described as res judicata on account of award in Eldoret CMC Land Case No. 273 of 1989, which the petitioners failed to ensure its adoption before Land Disputes Tribunal Act was repealed, otherwise, he cannot revive a fresh cause of action under *the Constitution* on a matter caught up by Section 7 of the *Civil Procedure Act*. The respondents aver that the petitioner is guilty of the exhaustion doctrine for not invoking the *Land Adjudication Act* and the *Community Land Act* before moving to court as provided under Article 159 of *the Constitution*.
9. The respondents aver that the petitioner has no locus standi, since the grant of letters of administration is not up-to-date. The respondents aver that the petitioner has not met the threshold of a constitutional petition as set out in Anarita Karimi Njeru -vs- Republic [1979] eKLR and only relies on generalized allegations of violation of the cited Articles of *the Constitution* with no supporting evidence or factual basis.
10. Equally, the respondents aver that the petitioner has failed to demonstrate how the acts of the respondents were unlawful, unfair, or in breach of his constitutional right regarding the suit land. The respondents aver that the petitioner and his family have no formal title for the land they claim to occupy or are entitled to and have neither brought a claim based on adverse possession, nor is there evidence of legal ownership. Again, the respondents aver that continued possession does not automatically translate into ownership rights and the Land Adjudication and Settlement process must be followed.
11. Similarly, the respondents aver that the petition is an abuse of court process, as it attempts to bypass statutory dispute resolution mechanisms and to revive an old claim under the guise of a constitutional petition. That the petitioner has had 30 years to address the issue through proper legal channels, yet failed to do so, thereby demonstrating indolence and lack of diligence in pursuing the alleged right. The respondent aver that the reliefs sought are legally untenable, since the petitioner seeks declaratory and mandatory orders compelling rectification of records in his favour, without proof of ownership, which is contrary to the law.



12. Though the interested party was served through substituted service and an affidavit of service sworn by Katama E. Ngeywa on 11/6/2025, no reply has been filed to oppose the petition.
13. The petition was directed to be canvassed by way of written submissions to be filed by 30/5/2025 which was later on, extended to 30/6/2025. The petitioner through written submissions dated 20/6/2025, isolated three issues for determination. On whether his rights under Articles 27, 40, 47, 60, 73 and 232 of *the Constitution* were violated, the petitioner submits that he was allocated the suit land which he paid for and acquired full proprietary rights under Section 75 of the repealed Constitution and Article 40 of *the Constitution*.
14. The petitioner further submits that his allocation of the suit land has never been revoked and has been in actual possession which should have taken precedence in case of reallocation. That the acts of the 1st and 2nd respondents contravene Article 47 of *the Constitution*, since he is entitled to administrative action that is lawful, reasonable and procedurally fair, as provided under Section 4 of the *Fair Administrative Action Act*.
15. Further, that the petitioner submits that the reallocation of the suit land was in contravention of Article 10 of *the Constitution* as well as Section 134 of the *Land Act*. That the petitioner was not given an opportunity to be heard, the allocation was not procedurally cancelled and that he was not given written reasons for the same. Similarly, the petitioner submits that any act or omission in contravention of Articles 2(4) of *the Constitution* is invalid and therefore an order of mandamus should be issued to the 1st and 2nd respondents, to rectify their records and enter his name as the allottee of the suit land and issue a letter of allotment.
16. The respondents filed written submissions and 30/6/2025 and submitted that the petition is res judicata, contrary to Section 7 of the *Limitation of Actions Act*, since it was determined in Trans Nzoia District Panel of Elders in 1989, created under Section 5 of the repealed Land Disputes Tribunal Act; and the award was filed in Eldoret CMCC No.273 of 1989. Reliance is placed on Re Estate of Riungu Nkuuri (deceased) (2021) eKLR.
17. Equally, the respondents submit, relying on Christopher Mutiambu Machimbo & 3 others -vs- County Surveyor Trans-Nzoia & 4 others [2022] eKLR where the court cited with approval Law Society of Kenya -vs- Commissioner of Lands & Others, Nakuru High Court Civil Case No.464 of 2000 and Alfred Njau & Others -vs- City Council of Nairobi [1982-88] 1 KAR 229, that the petitioner lacks locus standi, since he has not produced grant of letters of administration, confirming his authority to act. The letters of 2/3/2006 are out dated and invalid.
18. On the doctrine of constitutional avoidance, the respondents submit that the claim is based on an alleged illegality on the settlement scheme, does not raise a constitutional issue and can be determined as an ordinary suit as held in Communications Commission of Kenya & 5 others -vs- Royal Media Services Limited & 5 others [2014] eKLR and Anthony Miano & others -vs- Attorney General & others [2021] eKLR.
19. Regarding infringement of the rights of the deceased under Articles 10, 27, 40, 47, 60, 73 and 232 of *the Constitution*, the respondents submit that the petitioner has not met the procedural and substantive law under Articles 22, 23, 258 and 260 of *the Constitution* and Rules 4 and 10 of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013, (Mutunga Rules). Reliance is placed on Raila Amolo Odinga & another -vs- Independent Electoral and Boundaries Commission & 2 others [2017] eKLR and Anarita Karimi Njeru -vs- Republic [1979] KEHC 30 (KLR).



20. Again, the respondents submit that the petition is based on speculations and suppositions, since the petitioner stated in the verifying affidavit that the interested party has never taken possession of the suit land and cannot therefore claim violation of the rights of the deceased and denial of his entitlement by the respondents. Again, the respondents, relying on Republic -vs- Jomo Kenyatta University of Agriculture and Technology Ex parte Elijah Kamau Mwangi [2021] KEHC 1162 (KLR), submit that the petitioner has failed to prove ownership and violation of his rights, therefore not entitled to the reliefs sought.
21. The issues calling for my determination are:
 1. If the petitioner can institute this matter.
 2. If the petitioner has exhausted the alternative dispute resolution mechanisms.
 3. If the petition is res judicata.
 4. If the petition meets the tests set in Anarita Karimi Njeru -vs- Republic [1979] eKLR.
 5. If the petitioner has proved a breach of the cited constitutional rights and freedoms, to be entitled to the reliefs sought.
 6. What is the order as to costs?
22. The petitioner brings this matter as the son and a legal representative of the estate of his late mother, according to a grant of letters of administration issued on 1/8/1995 and confirmed on 23/12/1998. Articles 22 and 258 of *the Constitution* are the anchor laws on standing. The petitioner has, in my view, demonstrated sufficient interest in the matter to be entitled to institute the petition.
23. The respondents take the view that the petition is also filed 30 years after the claim accrued and that, because of the failure to cause the award to be adopted before the Land Disputes Tribunal Act was repealed, the petitioner is guilty of laches.
24. In Edward Akongo Oyugi & Others -vs- Attorney General [2019] eKLR, as well as in Chief Land Registrar & Others -vs- Nathan Tirop Koech & Others [2018] eKLR, the court held that there is no limitation concerning constitutional petitioners alleging violation of their fundamental rights and that the respondent has to adduce evidence either by affidavit or orally, explaining how he has been prejudiced as a consequence of the delay.
25. As to res judicata, party invoking the doctrine has to meet the threshold set in Maina Kiai & 2 others -vs- Independent Electoral and Boundaries Commission & another [2016] eKLR, that there is in existence a decree over the subject matter, between the same parties or parties litigating under the same umbrella and the matter has previously been determined over the same issues by a court competent to finality.
26. In John Florence Maritime Services Ltd & Another vs Cabinet Secretary for Transport & Infrastructure & Others [2021] eKLR, the court cited Kenya Commercial Bank Limited -vs- Muiiri Coffee Estate Limited & another Motion No 42 of 2014 [2016] eKLR, that the doctrine of res judicata is based on the principle of finality as a matter of public policy, upon which the judicial system is founded, to prevent multiplicity of suits that clog courts, occasioning unnecessary delays and expenses to the parties, yet litigation must come to an end, with the verdict translating into a fruit for one party and as liability to the other. The court held that the doctrine is applicable in constitutional litigation.
27. In this petition, the commonality of the parties, subject matter, finality of the determination on merits, over the same issues, by a court of competent jurisdiction is what the respondents have to demonstrate. From the court proceedings, in Eldoret CMCC Land Case No. 273 of 1989, the records for 24/4/1990



- shows that B. Olao (SRM), as he then was, now a judge, referred the suit to the D.O. Trans Nzoia for hearing by the panel of elders. After that, the panel handled the dispute and reached a verdict on 31/3/1993. The record of 21/6/1991 shows that R. Mutitu (PM), as he then was, issued summons for the award to be read on 26/7/1991 and again on 23/8/1991.
28. Come 19/3/1993, the record shows that the award was torn, and the conclusion was not clear. The award was returned to the D.C for an explanation. Another reading date for 14/10/1997 was issued by which time the initial defendant had passed on. Records for 22/12/1997 show that the matter was to proceed for a hearing.
 29. As of 28/9/2005, when the matter was stood over generally, there is no indication if the award had been adopted and the suit determined to finality, one way or the other. The pleadings before the trial court have not been availed to this court.
 30. If the issues before this court are similar to the ones before the elders and the trial court is something the respondents have not addressed. A cause of action is an act on the part of the defendant that gives a cause of complaint to the plaintiff. The cause of action herein is on a violation of constitutional rights, where the petitioner alleges denial of land rights in favour of the interested party, yet he was the initial allottee. A panel of elders under the retired Constitution had no jurisdiction to determine violations of constitutional rights and freedoms.
 31. A merit-based decision over the issue of violation of constitutional rights is not captured in the award dated 1993. The doctrine of estoppel prevents a party who previously litigated a claim from taking second bite of the cherry after it has lost. The respondents were not parties to the former suit or the panels case, litigating over the same title, going by the decision of *Karia & Another -vs- Attorney General & Others* [2005] 1 EA 83 and *Omondi -vs- National Bank of Kenya Limited and Others* [2001] EA 177. The objection on res judicata has no merit.
 32. The doctrine of exhaustion in administrative remedies arises when a litigant aggrieved by an administrator's decision seeks redress from a court of law on an action without pursuing the available remedies before the administrator.
 33. It serves the purpose of ensuring that there is postponement of judicial consideration of matters to ensure that a party is first diligent in the protection of their rights or interests within the mechanisms for resolution outside the courts in line with Article 159 of *the Constitution*. See *Republic -vs- Independent Electoral and Boundaries Commission (I.E.B.C.) Ex parte National Super Alliance (NASA) Kenya & 6 others* [2017] KEHC 4663 (KLR).
 34. The respondents take the view that there are mechanisms under the *Land Adjudication Act* and the *Community Land Act*. The doctrine was discussed exhaustively in *Albert Chaurembo Mumba & 7 Others -vs- Maurice Munyao & Others* S.C. Petition No. 3 of 2019 [2019] eKLR, and also in *Nicholas -vs- Attorney General & Others* Petition E007 of 2023 [2023] KESC 113 [KLR] (28th December 2023) (Judgment). The court held that where there is an alternative remedy, only in exceptional circumstances can a party resort to court. The exceptional circumstances include whether the alternative remedy is efficacious or capable of granting the reliefs sought. The court said that an alternative remedy does not necessarily bar a litigant from approaching the court to seek constitutional reliefs.
 35. Sufficiency and the efficacy of the available alternative dispute mechanism under the *Land Adjudication Act* and the *Community Land Act* concerning settlement schemes is what the respondents have not addressed before this court for it to exercise the doctrine of restraint, under the framework set out under the Fair Administrative Actions Act vis a vis the jurisdiction of this court as set out in Article 162(2)(b) of *the Constitution* and Section 13 of the *Environment and Land Court Act*.



36. In *Nicholas -vs- Attorney General* (supra), the court held that Section 9(2) of the *Fair Administrative Action Act* does not preclude the adoption of a nuanced approach to safeguard a litigant's right to access justice, while also recognizing the efficiency and specificity that the established alternative dispute resolution mechanism can offer. I find the objection lacking merit.
37. On whether the petitioner has pleaded the petition with precision, clarity and met the test of *Anarita Karimi Njeru vs Republic* (supra), a party moving to a constitutional court has to meet the provisions of the Mutunga Rules, 2013 and plead the exact issues for litigation, manner, nature and particulars of the violated rights and freedoms and support the same with evidence by way of affidavits or otherwise.
38. In this petition, I think the petitioner has substantially complied with Rules 9 and 10 of the Mutunga Rules, such that the respondents were able to respond to the petition without seeking better particulars.
39. In *Communications Commission of Kenya & Others -vs- Royal Media Services* [2014] eKLR, the court held that the necessity of a link between the aggrieved party, the provisions of *the constitution* alleged to have been contravened and the manifestation of the contravention or infringement is all that matters.
40. The next issue is whether the petition raises a constitutional question or issue. In *Minister of Safety and Security -vs- Hunter* [2007] 28 ILS 133 (CC), the court held that in determining whether an argument raises a constitutional issue, the court is not strictly concerned with whether the argument will be successful, but whether the argument forces the court to consider constitutional rights and values. In *Turkana County Government & Others -vs- Attorney General* [2016] eKLR, the court observed that claims of statutory violation cannot give rise to constitutional violation.
41. The issues raised by the petitioner border on whether or not the process used by the respondents to reallocate the land to the interested party met the constitutional values, principles of governance, public service and fair administrative action as set out in Articles 1, 2, 10, 27, 40, 47, 60, 73 and 232 of *the Constitution*. The answers to these issues or questions, flow from *the Constitution* and not statutory laws. Sections 134 and 135 of the *Land Act* are the primary law in the management, administration and dealings on land falling under settlement schemes.
42. The next issue is whether the petitioner has proved breach of the alleged constitutional rights and freedoms. The burden of proof in a constitutional violation claim is on he who avers, as set out in Sections 107-112 of the *Evidence Act*. In *CCK & Others -vs- Royal Media Services* (supra), the court observed that there must be a manifestation and the basis of a grievance of the alleged constitutional rights violation or infringement, with a clear link between the aggrieved party and the constitutional rights. In *Suleiman Kasuti Murunga -vs- Independent Electoral & Boundaries Commission & 2 others* [2019] eKLR, the court said that the petitioner must adduce sufficient and admissible evidence in proof of any of the allegations in the petition, in the absence of which the allegations fail and the matter ends there. In *Raila Amolo Odinga & Others -vs- Independent Electoral & Boundaries Commission & Others* [2017] eKLR, the applicable standard of proof in ordinary petition was set on a balance of probabilities, proof of allegations is paramount. See *Leonard Otieno -vs- Airtel* [2018] eKLR.
43. The petition is supported by an affidavit sworn by Jefri Mungai Njeri on 3/5/2025, attaching the grant and a confirmed grant as JMN-1(a) and (b), a receipt issued on 8/3/1984 as JMN-2, proceedings in the Trans Nzoia County Panel of Elders as JMN-3, and proceedings in Kitale CMCC No. 273 of 1989 as annexure JMN-4.
44. Though the petitioner states that plot No. 16 was issued to his late mother by the Settlement Fund Trustees in 1974, there are no supporting documents to substantiate that assertion. The procedure



- of allocating plots in settlement schemes before the 2010 Constitution was governed by the repealed Agriculture Act. There will be a letter of offer from the 2nd respondent, acceptance of the offer, payment of premium to the Settlement Fund Trustees, issuance of a certificate of outright purchase, charge, discharge of charge, transfer of the land, payment of stamp duty, registration and issuance of title by the Land Registrar. Until the above processes are met, an allottee would not be considered to have acquired rights over the plot. The plot could be repossessed for non-acceptance of the letter of offer or non-payment of the standard premium. In such a case, the offer may be revoked and the plot may be upon repossession, be available for reallocation to other persons.
45. In *Waterfront Holdings Ltd -vs- Kandie & Others* [2013] KECA 1223 [KLR] (October 2023) (Judgment), the court found that it was not possible to issue a second allotment guided by *Kenya Ihenya Co. Ltd & Another -vs- Njeri Kiribi* [2019] eKLR, that once the first allottee had completed making payments in 1983, the land was not available for reallocation.
 46. In this petition, evidence of the status of the suit land as at the filing of this petition in the records of the Settlement Fund Trustees, where annexure JMN-2 was acquired and the perfection of the offer, if any, was issued and the accompanying documents are missing. How and when the 1st and 2nd respondents declined, neglected, or refused to regularize the status of the petitioner's land vis-à-vis that of the interested party, is not substantiated by the petitioner. Under Section 134(1) of the *Land Act*, the national government has the mandate to implement settlement schemes programmes to provide access to land for shelters and lease holds Administration of settlement schemes falls under Section 134(3) thereof.
 47. The petition does not give facts of how the petitioner has engaged the relevant government agencies to perfect the letter of offer issued to his late mother, if at all, it is still valid. There is no evidence that the late mother had a statement of account with the Settlement Fund Trustees and that the respondents are privy to but have failed to perfect it.
 48. The relief of mandamus is only applicable where there is a public duty owed to an applicant by a public officer who has declined to exercise the duty to the prejudice of the applicant. See *Five Star Agencies Ltd & Another -vs- National Land Commission & Another* [2024] KECA 439 [KLR] (12th April 2024) (Judgment). In *Republic -vs- Settlement Fund Trustees & Others Exparte Wislon Nyinge Maringa & Others* [2015] eKLR, the applicant had invoked Section 134(6) of the *Land Act* and Articles 47 and 61 of *the Constitution* that he was in possession and occupation of the land, after the land had been surrendered for resettlement of the landless.
 49. The court held that, unlike the Agriculture Act, which had no definite formula on how to constitute the committee, the *Land Act* has clear procedures on how the subcounty committee is supposed to be constituted. The court said that as held in *Municipal Council of Kisumu -vs- Madowo* [1986-1989]EA 373, mandamus should not be sought to determine the rights but ought to be issued for the enforcement of existing rights. In my considered view, the issue that the petitioner faces and has brought before this court, would not be here if there was strict compliance with *the Constitution* as regards the role of the National Land Commission in the implementation of settlement schemes programmes post 2010 Constitution, working in tandem with the 1st and 2nd respondents.
 50. In my view, where there is a legal right, there must be a legal remedy. Restoration of the name of the deceased in the register of the settlement scheme is all that the petitioner is seeking. There is no replying affidavit denying the allegations raised that the petitioner who is in occupation of the suit property, courtesy of documents issued by the Settlement Fund Trustees, with whom the 1st and 2nd respondents pre-2010 were working. The petitioner is holding out the land after his mother passed on. He has not been evicted from the land. The respondents aver that he has not filed a claim of adverse possession.



Section 41 of the *Limitation of Actions Act* does not allow him that overriding interest if the land is a settlement scheme, or government land.

51. The award dated 1993 remains valid in terms of its recommendation to settle the dispute. Article 60 of *the Constitution* relates to traditionally recognized land disputes mechanisms. Article 47 of *the Constitution* grants the petitioner the right to an administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair. Asking the court to order that the verdict be implemented by the 1st and 2nd respondents is not opposed by the respondents on account of being overtaken by events, being impossible or illegal. Legitimate expectation of having his legal right to the land registered, is what this court should not deny the applicant. Such right to property should not be taken away without an explanation.
52. Courts cannot act in vain. JMN-4 is a matter before the lower court where the petitioner sought to have the award implemented, but was overtaken by the repeal of the law. The upshot is that I find the petitioner deserving of the reliefs sought. There will be no orders as to costs.

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

In the presence of:

Court Assistant - Dennis

Serebe for Ngeywa for Petitioner present

Chelagat for Rop for Respondents present

HON. C.K. NZILI

JUDGE, ELC KITALE.

