



**M’mweti v District Land Adjudication & Settlement Officer, Igembe District
& 2 others; M’mweti & 19 others (Interested Parties) (Environment and Land
Constitutional Petition 7 of 2010) [2024] KEHC 3236 (KLR) (4 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 3236 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND CONSTITUTIONAL PETITION 7 OF 2010**

CK YANO, J

APRIL 4, 2024

**IN THE MATTER OF ARTICLES 22(1) & (4), 23 (1) & 3 AND IN THE MATTER
OF ALLEGED VIOLATION OR INFRINGEMENT OF THE RIGHT TO
PROPERTY GUARANTEED UNDER ARTICLE 40 OF THE CONSTITUTION**

BETWEEN

SILAS KINYUA M’MWETI PETITIONER

AND

**THE DISTRICT LAND ADJUDICATION & SETTLEMENT OFFICER, IGEMBE
DISTRICT 1ST RESPONDENT**

**THE DIRECTOR, LAND ADJUDICATION AND SETTLEMENT 2ND
RESPONDENT**

**THE DEMARCATION OFFICER, AKIRANG’ONDU “A” ADJUDICATION
SECTION 3RD RESPONDENT**

AND

CONSOLATA KABUTIA M’MWETI INTERESTED PARTY

M’MUJURI THILANGE INTERESTED PARTY

SILAS MURIUKI KARITHO INTERESTED PARTY

THIAURI M’MUKARIA INTERESTED PARTY

GEOFFREY MIRITI M’ETHANGATHA INTERESTED PARTY

JULIUS M’IMPWI M’MWETI INTERESTED PARTY

SILAS MUROUKI M’IMANGI INTERESTED PARTY

HENRY KIBAARA M’MWETI INTERESTED PARTY



DIOCESE OF MERU TRUSTEES REGISTERED (THROUGH FATHER BERNARD MUTHOMI)	INTERESTED PARTY
JOSEPH MUTUMA M'MWETI	INTERESTED PARTY
IRUKI M'KAIRIMA	INTERESTED PARTY
GEOFFREY MANYORE KOOME	INTERESTED PARTY
MBAABU M'MWERERIA	INTERESTED PARTY
MITHIKA MWENDA	INTERESTED PARTY
KIAMBA MUTUMA	INTERESTED PARTY
STEPHEN UNGU	INTERESTED PARTY
KINYUA KARIITHO	INTERESTED PARTY
TIMOTHY MPEKETHU	INTERESTED PARTY
JOYCE KANANU PAUL	INTERESTED PARTY
STANLEY NCURE	INTERESTED PARTY

JUDGMENT

1. By a petition dated 18th November, 2010, the petitioner is seeking the following orders;-
 - 1) An order of declaration that the action of the 1st respondent effecting the sub-division and transfer of portions of the original land parcel No. 1541 Akirang'onde Adjudication Section to the interested parties herein are unconstitutional, unlawful, irregular and therefore null and void.
 - 2) An order of declaration that the petitioner is the lawful heir of M'Mweti Mwenda and is constitutionally entitled to the subject land herein to inherit, occupy, develop and user without interference from the respondents or the interested parties herein and/or their agents or anybody else purporting to act on their behalf.
 - 3) An order of mandamus to compel the respondents to rectify and amend their records in order to reflect the person(s) lawfully entitled to be recorded as the legal beneficiaries of the late M'Mweti Mwenda's original land parcel S/No. 1541 Akirangonde "A" Adjudication Section as it was at the time of gathering prior to the illegal divisions and transfer of portion thereof to the interested parties herein and any other third parties.
 - 4) An order of injunction restraining the interested parties either by themselves or by their agents from interfering with the petitioner's peaceful occupation, enjoyment and user of the subject land parcel.
 - 5) an order directing all the interested parties and other third parties who are in occupation of the subject land to give vacant possession thereof to the petitioner.
 - 6) An order that the petitioner be compensated for the conversion, loss and damage occasioned to his property by the interested parties particularly the 3rd, 9th and 12th interested parties herein.
 - 7) Any other order that this Honourable Court may deem fit and just to grant in the interests of justice.



- 8) Costs be provided for.
2. The petition is supported by the affidavit of the petitioner dated 18th November, 2010. The petitioner states that he is the lawful and sole heir of parcel No. 1541 Akirangondu “A” Adjudication Section which was originally gathered and demarcated in the name of his deceased father M’Mweti Mwenda and which initially measured approximately 7.84 acres at the time of gathering which was done by Geoffrey M’Amanja M’Mwenda sometime in the 1970s. That his late father died sometime in 1954 and had lived on the subject parcel of land all his lifetime together with his family.
 3. The petitioner avers that the 1st interested party who is his mother has unlawfully and irregularly shared out and caused the 1st respondent to subdivide and transfer portions of the suit land to *inter alia*, the 2nd to 12th interested parties who have no valid, legal, beneficial, equitable or customary right or interest in the said land to the detriment of the petitioner who has been left with only 0.60 acres of the land.
 4. The petitioner avers that he has been deprived of the suit land which he is entitled to inherit in a manner that is unconstitutional, illegal, uncustomary and irregular in total disregard of the relevant provisions of the constitution of Kenya, the Land Consolidation Act, the Rules of Natural Justice and Meru customary law of inheritance. He states that he has developed the suit land where he has built his home and planted assorted trees and crops.
 5. The petitioner avers that his efforts to use the respondents and the provincial administration to address his complaints have not borne any fruits and that the petitioner’s objection to the adjudication register (AR objection) No. 2975 in respect of the subject land was heard and dismissed on 2nd September, 2010. That the interested parties, particularly the 9th and 12th interested parties have continuously harassed the petitioner and his family by assaulting them and destroying their property and threatening to evict them from their home.
 6. The petitioner states that on 18th April 2000 the 2nd respondent sent a representative, one Mr. Ndobi who was then the Provincial Land Settlement Officer, Eastern Province to investigate the petitioner’s complaint, who established *inter alia* that the subject land was gathered by M’Amanja M’Mwenda who recorded it in the name of M’Mweti Mwenda who was deceased at the time, and that the 1st interested party had illegally and uncustomarily shared out 3.04 acres of the land to the 2nd interested party and illegally transferred the remaining portion to people who did not qualify to inherit according to Meru customary law. That it was unlawful for the 3rd interested party to receive 4.54 acres of the land inclusive of the developments thereon from the interested party whereas he knew that the property belonged to the family of the late M’Mweti Mwenda and not the 2nd interested party. The petitioner further states that the 2nd respondent has failed and/or refused to avail the report of the said investigation to the petitioner despite several requests to do so. That the 2nd respondent has also failed to act in accordance with the applicable law to reinstate the subject land to the petitioner. The petitioner claims that his constitutional right to protection to property under Article 40 of the *Constitution of Kenya* has been denied, violated or infringed by the respondents and the interested parties who have acted contrary to the provisions of the Land Consolidation Act and the Meru customary law of inheritance and have subjected the petitioner to untold suffering, harassment, mental anguish, damage and loss of property without compensation, and therefore seeks to be protected and his rights to be enforced by this Honourable court under the provisions cited.
 7. The petitioner testified as PW 1 and called one witness. The petitioner testified that the land parcel No. 1541 belonged to his late father, M’Mweti Mwenda. That the land has been subdivided into two parcels whereof one half is owned by the petitioner’s deceased father while the other half is owned by the petitioner’s mother (the 1st interested party). The petitioner stated that his mother has been selling



- out the land to the interested parties some of whom claim they purchased the land from the petitioner's siblings. He wants the court to order that the land reverts to the petitioner's deceased father so that they can file succession proceedings for lawful distribution. The petitioner produced copies of various correspondences and charge sheet as exhibits. He was cross-examined and re-examined.
8. Geoffrey M'Amanja testified as PW 2. He is a cousin to the petitioner. He adopted his further supporting affidavit sworn on 7th February 2011 as his evidence in chief and was cross examined and re-examined.
 9. In opposing the petition, the respondents filed a replying affidavit sworn on 10th February, 2011 by George Owour, the Deputy Land Adjudication Officer, Igembe District. He averred that it was the 1st interested party who requested that land parcel No. 1541 be subdivided into two portions. That the 1st interested party retained land parcel No. 1541 Akirangondu "A" Adjudication section which was later sub-divided and shared out among her children, including the petitioner herein who received 0.60 acres out of 3.04 acres. That the subdivision was carried out by the respondents in good faith as they had no interest in the said parcel of land.
 10. The petition is also opposed by the 1st, 2nd, 3rd, 5th, 8th, 9th, 11th to 20th interested parties. The 1st interested party filed a replying affidavit sworn on 8th December, 2010 and a further affidavit dated 17th February, 2011. The 8th interested party filed a replying affidavit dated 22nd November, 2018. It is their contention that the petition is frivolous and defamatory of the 1st interested party and her family. It is the 1st interested party's contention that the land was not ancestral land as it did not originate directly from the lineage of her husband's family, but was from M'Mujuri Thilange who owned it and gave the 1st interested party and her late husband 3.04 acres to settle in when they got married as he was obligated to under the Meru Customary Laws. That in the 1970's long after the death of the 1st interested party husband Mujuri Thilange told the 1st interested party to gather a portion of the land they had been given so that it could be registered in her name. The 1st interested party states that she did the gathering but caused the land to be registered in her late husband's name out of respect for him and which was appropriate under the Kimeru customary laws.
 11. The 1st interested party avers that she was given parcel No. 1541 while M'Mujuri Thilange's land was registered as land parcel no. 166 and subsequently renumbered No. 422 Akirangondu "A" Adjudication Section. The 1st interested party states that each of her children lived on their said portion and when she decided to subdivide to them, she summoned them and all agreed on the distribution, wherein the petitioner got 0.60 acres which he occupies and farms with his family. She accused the petitioner for disrespecting her by claiming that he is the only heir of her deceased husband and for seeking to disinherit his other siblings. The 1st interested party denies that her actions were unlawful, irregular or in contravention of any Kimeru customary laws. That the other children had their rights to sell their portions. The 1st interested party avers that the petitioner has continuously harassed and threatened her, till she fled from her home to go and live with one of her sons. That the petitioner is only entitled to his share of 0.60 acres i.e land parcel No. 3122, and not any other portion. The interested parties deny that the petitioner's constitutional rights have been breached and/or contravened. They accused the petitioner for abusing the rights of his brothers and sisters, and that of their mother.
 12. The 10th interested party filed a replying affidavit dated 14th December, 2010 wherein he supports the petitioner's case.
 13. Henry Kibaara M'Mweti, the 8th interested party testified as DW 1 while DW 2 was Regina Mwonjaru M'maroo, the 5th child of the 1st interested party and wife of the 4th interested party.



14. DW 1 testified that the petitioner is their elder brother while the 1st interested party is their mother. He relied on his replying affidavit dated 22nd November, 2018 wherein he stated that their father died in 1954 leaving behind his mother and two children being Benedict Muthee and Lawrence Muoki who are all deceased. That after the demise of their father, their mother gave birth to eight more children including the petitioner herein.
15. DW 1 testified that their mother gathered the suit property but demarcated it in the name of her deceased husband. He stated that their mother subdivided the land amongst all her children, including the petitioner who never objected to the subdivision, until he filed this petition. He produced proceedings dated 1st September, 2010, sale agreements dated 20th November, 1999, sale agreement dated 15th March 1999, transfer of land No. 166, transfer request dated 16th December, 1994, sale agreement dated 18th April, 1998, death certificate of 1st interested party, transfer request No. 3121 and other adjudication documents as D exhibits 1-9 respectively. He stated that some of the interested parties are purchasers of portions of the suit land. DW 1 stated that he sold his portion to the 12th, 14th, 15th and 16th interested parties. That the petitioner harassed the said purchasers and his siblings and is using the whole land. He was cross examined and re-examined.
16. DW 2 adopted the contents of her replying affidavit dated 22nd November, 2018 which basically mirrored the evidence of DW 1. She was cross examined and re-examined.
17. By consent of the parties, the evidence of Consolata Kabutia the 1st interested party allegedly given earlier was adopted as part of the evidence and treated as DW 3. However, I have perused the court record and I have not seen such evidence. The respondents did not call any witness.
18. At the close of the case on 21st November, 2023, the parties were granted 30 days each to file and exchange written submissions. Only the respondents and the interested parties filed their respective submissions dated 13th February, 2024. I have read and considered the said submissions and I need not reproduce the same in this judgment.

Analysis And Determination

19. I have perused the petition, the responses and the submissions filed and authorities relied on. The issues that I can deduce for determination are -:
 - i. Whether the petition meets the threshold of a constitutional petition.
 - ii. Whether the petitioner is entitled to the reliefs sought
 - iii. Who bears the cost of the petition?

Whether the petition meets the threshold of a constitutional petition

20. I must make it clear that a constitutional petition is litigation initiated to either challenge breach of constitutional provisions or violation or infringement of rights and fundamental freedoms granted or recognized by the constitution. I echo the words of Mwita J in *Godfrey Paul Okutoyi (Suing on his own behalf and on behalf of and representing and for the benefit of all past and present customers of Banking Institution in Kenya) v Habil Olaka – The Executive Director (secretary) of Kenya Bankers and Central Bank of Kenya* where he stated that these rights

“... must expressly or impliedly recognized and protected rights and fundamental freedoms under the bill of rights. They must be the sort of rights and fundamental freedoms that belong to each individual, that are not granted or grantable by the state, and belong to



individuals by virtue of their being human. These are rights and fundamental freedoms enjoyed by each individual and not collectively.”

21. Article 22 (1) of the Constitution clearly provides that every person has the right to institute court proceedings claiming that a right or fundamental freedom in the bill of rights has been denied, violated or infringed or is threatened.

22. The ingredients of a constitutional petition were clearly formulated in the case of Anarita Karimi Njeru v Republic (1979) eKLR where it was partly stated as follows-;

“We would have 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.”

23. Similarly, in the case of Mumo Matemo v Trusted Society of Human Rights Alliance & 5 others [2013] eKLR it was stated that -;

“(42) However, our analysis cannot end at that level of generality. It was the High Court’s observation that the petition before it was not the epitome of precise, comprehensive, or elegant drafting.” Yet the principle in *anarita Karimi Njeru (supra)* underscores the importance of defining the dispute to be decided by the court. In our view, it is a misconception to claim as it has been in recent times with increased frequency that compliance with rules of procedure is antithetical to Article 159 of the Constitution and the overriding objective principle under Section 1A and 1B of the Civil Procedure Act (Cap 21) and Section 3A and 3B of the Appellate Jurisdiction Act (Cap 9). Procedure is also a handmaiden of just determination of cases. Cases cannot be dealt with justly unless the parties and the court know the issues in controversy. Pleadings assist in that regard and are a tenet of substantive justice, as they give fair notice to the other party. The principle in *Anarita Karimi Njeru (supra)* that established the rule that requires reasonable precision in framing of issues in constitutional petitions is an extension of this principle. What Jessel, M.R said in 1876 in the case of *Thorp v Holdsworth* (1876) 3 Ch. D. 637 at 639 holds true today-;

“The whole object of pleadings is to bring the parties to an issue, and the meaning of the rules... was to prevent the issues being enlarged which would prevent either party from knowing when the cause came on for trial, what the real point to be discussed and decided was. In fact, the whole meaning of the system is to narrow the parties to define issues, and thereby diminish expense and delay, especially as regards to the amount of testimony required on either side at the hearing.”

(43) The petition before the High Court referred to Articles 1,2,3,4,10,19,20 and 73 of the Constitution in its title. However, the petition provided little or no particulars as to the allegations and the manner of the alleged infringements. For example, in paragraph 2 of the petition, the 1st respondent averred that the appointing organs ignored concerns touching on the integrity of the appellant.



No particulars were enumerated. Further, paragraph 4 of the petition alleged that the Government of Kenya had overthrown the constitution, again, without any particulars. At paragraph 5 of the amended petition, it was alleged that the respondents have no respect for the spirit of the constitution and the rule of law, without any particulars.

(44) We wish to reaffirm the principle holding on this question in *Anarita Karimi Njeru (supra)*. In view of this, we find that the petition before the High court did not meet the threshold established in that case. At the very least the 1st respondent should have seen the need to amend the petition so as to provide sufficient particulars to which the respondents could reply. Viewed thus, the petition fell short of the very substantive test to which the high court made reference to. In view of the substantive nature of these shortcomings, it was not enough for the superior court below to lament that the petition before it was not the “epitome of precise, comprehensive, or elegant drafting,” Without requiring remedy by the 1st respondent.”

24. It should be noted the case of *Anarita Karimi Njeru (supra)* has been relied upon from time and time again to demonstrate the threshold of a successful constitutional petition. It should be appreciated that the requirements for a successful constitutional petition are simple and are thus –; the petitioner should set out the constitutional provisions which he believes has been violated or threatened, and the manner in which the respondent(s) have violated those provisions. It is not enough for the petitioner to just list the constitutional provisions without demonstrating how they were infringed upon.

25. In the case of *John Mining Temoi & another v Governor of Bungoma County & 17 others* Mabeya J, opined-;

“ ... as a basic minimum, the petitioner are required to show not only the provisions of the constitution which have been violated but also the manner in which they have been violated with regard to them in demonstrating the manner in which there has been a violation of their rights or of the constitution, the petitioner should present before the court evidence or a factual basis on which the court can make a determination whether or not there has been a violation.”

26. Similarly, Hon. Lenaola J (as he then was) in the case of *Stephen Nyarangi Onsoma & another v George Magota & 7 others* [2014] eKLR in revisiting the principles in *Anarita Karimi’s case* stated as follows-;

“ ... this court has in the past expressed its concern about the manner in which parties coming before the court and alleging a violation of constitutional rights have prescribed their cases. As a basic minimum a petitioner is required to cite the provisions of the *constitution* which have allegedly been violated and the remedy which he seeks for the violation. In demonstration the manner in which they have been violated, a petitioner should present before the court evidence of the actual basis upon which the court can make a determination whether or not there has been a violation.

27. I have perused the petition herein. Save for citing the constitutional provisions in the title of the petition, the petitioner has not stated how the interested parties and the respondents have violated Articles 22 (1) & 4, 23 (1) & 3 and Article 40 of the *Constitution*. The petitioner has not provided particulars of the allegations of which the constitution has been violated. Moreover, the petitioner has not specified how each of the respondents and interested parties have violated any of the petitioner’s



constitutional rights. What has come out from the facts and evidence is that this is a dispute over the suit land. I am of the view that the petitioner should have instituted this case elsewhere as provided by law and not approach the court by way of constitutional petition.

28. I place my guidance in the case of *Kenya Agricultural and Livestock Research Organization (KALRO) v Edison Sonje Taura & 3 others* [2021] where the court held that-;

“There is no escaping that what the petitioner is seeking has no constitutional underpin at all. That is an apparently simple case of trespass and permanent injunction. It appears to me a clear civil dispute alleging the tort of trespass. It should have been commenced through a plaint and not a constitutional petition. It has been said time without number that the constitutional procedure process should not be subjected to abuse, where persons file all sort of mundane civil disputes under the constitutional procedure process.”

29. Further in the case of *Gabriel Mutava & 2 others v Managing Director, Kenya Ports Authority* [2016] eKLR the court of appeal stated as follows-;

“Constitutional litigation is a serious matter that should not be sacrificed on the alter of all manner of frivolous litigation christened constitutional when they are not and would otherwise be adequately handled in other legally constituted forums. Constitutional litigation is not a panacea for all manner of litigation, we reiterate that the first port of call should always be suitable statutory underpinned forums for the resolution of such disputes.”

30. In the result, I hereby dismiss the petition dated 18th November, 2010 with costs to the interested parties and the respondents.

DATED, SIGNED AND DELIVERED AT MERU THIS 4TH DAY OF APRIL 2024

In the presence of:-

Court assistant – Tuppet.

M/S Kiyuki for interested parties

No appearance for M/s Mwilaria for petitioner

No appearance for A.G for respondents.

C.K YANO

JUDGE

