



**Likimbirithia v Land Registrar – Uruu & 4 others (Environment & Land
Petition E005 of 2023) [2024] KEELC 3809 (KLR) (8 May 2024) (Judgment)**

Neutral citation: [2024] KEELC 3809 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND PETITION E005 OF 2023**

**CK NZILI, J
MAY 8, 2024**

BETWEEN

JAMES LIKIMBIRITHIA PETITIONER

AND

THE LAND REGISTRAR – URUU 1ST RESPONDENT

THE DISTRICT SURVEYOR – MERU NORTH 2ND RESPONDENT

DIRECTOR OF SURVEYS KENYA 3RD RESPONDENT

THE CHIEF LAND REGISTRAR 4TH RESPONDENT

THE ATTORNEY GENERAL 5TH RESPONDENT

JUDGMENT

1. The petition before the court is one dated 31.10.2023, in which the petitioner describes himself as the legal owner of L.R Meru North/Athinga/Athanja/6181. His complaint against the respondents is that his acreage and the boundaries, as surveyed on the ground at the adjudication stage, measuring 0.140 ha, were illegally altered to read 0.03 ha and or shifted from their location. As a consequence he averred that a portion of his land was missing in the registry index map.
2. The petitioner sought;- an order requiring the respondents to amend the registry index map and correctly place his L.R No. Meru North Athinga/Athanja 6181 where it belongs, and or the same be removed from any other registry index map sheet in their possession; an order requiring the respondents to amend the Registry Index Sheet No. Meru North Athinga/Athanja/Sheet 108/4/1/12, so that it conforms to the correct acreage on the title deed as 0.140 ha instead of 0.03 ha. Lastly, the petitioner prayed for an order requiring the respondents to amend the registry index map sheet in their possession and to reinstate the boundary so that it conforms to and reflects the correct boundary of his land.



3. The petition was duly served upon the respondent, and a return of service was filed on 21.11.2023 and 5.12.2023, sworn by Japhet M'Mukiira. By an order dated 7.12.2023, the Land Registrar Tigania West District and the Land Surveyor Meru North were directed to visit the locus in quo and furnish the court with a report on the status of L.R No. Meru North Athinga/Athanja/6181, regarding its acreage and boundaries on the ground *vis a vis* the record. Further, by an order made on 29.1.2024, the summons was issued to the two neighbors as interested parties. Similarly, the respondents were directed to respond to the petition by 19.3.2024. The interested parties, namely Tharamba Itumbiri and Lithira Richore, were duly served with the summons and a return of service sworn by Japhet M'Mukira filed on 15.2.2024.
4. Meantime, a joint land registrar and a land surveyors report dated 24.1.2024 was filed on 13.2.2024. In the said report, it was indicated that the petitioner's parcel of land was adjudicated as 0.03 ha as per the adjudication records, while on the ground position, it occupied and utilized two other parcels of land, namely part of L.R No. Athinga/Athanja/6121 and the whole of L.R No. Athinga/Athanja/875. The report recommended that there be an agreement between the owners of the two other parcels of land in order to endorse a mutation form for the amendments of the area registry index map so that the petitioner's land could be placed in its rightful position. The report indicated that the petitioner had put up structures, planted trees, and was under cultivation of the disputed portion as per the attached copies of map sheet no. Athinga/Athanja 1/12. Despite the expert report on the way forward, the petitioner insisted he was ready to proceed with this petition, to which the court directed parties to canvass the same by way of written submissions due by 19.4.2024.
5. A party seeking constitutional relief must comply with the constitution of Kenya (Protection of Fundamental Rights and Freedoms Protection) Rules, 2013 and Articles 22, 23 & 260 of the constitution by giving the particulars of the fundamental rights and freedoms infringed, violated, or threatened, the nature of the infringements, details of pending, or previous disputes over the matter and the evidence of the loss or damage occasioned by the infringement.
6. A petition must also raise constitutional issues or questions. In Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others [2013] eKLR, the court observed that a constitutional petitioner must plead with specificity and clearly indicate the alleged constitutional rights or freedoms infringed, violated, or threatened, its manner and nature thereon.
7. In Gitobu Imanyara & 2 others v A.G. & others [2016] eKLR, the court cited Siewchand Ramanoop v the A.G. of T & J P.C. Appeal No. 73 of 2004, that when exercising constitutional jurisdiction, the court is concerned with upholding or vindicating the Constitutional right that has been contravened by articulating the fact of the violation.
8. In Godfrey Paul Okutoyi v Habil Olaka [2018] eKLR, the court said that a constitutional petition is a litigation initiated to either challenge a breach of constitutional provisions or violation or infringement of rights and fundamental freedoms granted or recognized by the constitution. The court said that a general pleading on breach of statutory provisions capable of redress in an ordinary suit is not a constitutional petition matter. The court said that failure to enforce a statutory provision is only a failure but is not unconstitutional or amounts to unconstitutional acts or conduct, violative of acts or constitutional rights and freedoms. Further, the court said the rights conferred by statute are not fundamental rights under the Bill of Rights; the breach of such statutory rights is redressed through a court of law in the manner allowed by the particular statute or in an ordinary suit as provided for by procedure.
9. The court went on to state that it is not every failure to act in accordance with a statutory provision or where an act is taken in breach of a statutory provision that should give rise to a constitutional



petition. The court said a party should only file a constitutional petition for redress of a breach of a constitutional or denial, violation or infringement of or a threat to a right or fundamental freedom and that any other claim should be filed in the appropriate form and the manner allowed by the applicable law and procedure. The court cited the words of Lord Diplock in *Harrikissoon v A.G. of Trinidad & Tobago* [1980] AC 265, where he decried the tendency of people rushing to institute constitutional petitions alleging violation of fundamental freedoms where there was none.

10. In *Bernard Murage v Fine Serve African Ltd & others* [2015] eKLR, the court said that not every violation of the law must be raised as a constitutional petition.
11. The petition before this court lacks citation of the alleged constitutional rights and freedoms violated, infringed, or threatened with breach, the manner, nature, and particulars of the breach. In *International Cases for Policy and Conflict and 5 others v A.G. & another* [2013] eKLR, the court said that mere citation or invocation of the constitution does not elevate a matter to a constitutional petition. In *Council of Governors & Another v Nairobi City Water & Sewerage Co. Ltd* [2015] eKLR, the court said a constitutional court should not be used as a substitute for everything.
12. The petitioner has not cited when and whether he invoked the internal mechanism under the Land Registration Act on boundaries establishment and the rectification of a title or boundaries. The report by the land surveyor and land registrar is clear on what the statute requires to be done to resolve the issues. How the issue raised by the petitioner mutates into a constitutional petition is not clear. The petitioner, while aware of the report, insisted that he was ready to proceed with the matter.
13. A constitutional court should not be trivialized by parties who have failed to invoke alternative dispute resolution under Article 159 of the constitution and the relevant statutes. Evidence of the alleged breach or violation of the petitioner's constitutional rights or freedoms, if any, is not contained in the verifying affidavit to the petition.
14. Even the letter dated 1.12.2022 by Mr. Kibet County Surveyor Tigania to the land registrar was clear on the intervention required under the relevant statute. The petitioner ought to have exhausted the internal dispute mechanism process as suggested in the letter or gone through the ordinary manner in following up on the issue.
15. The upshot is that I find the petition an abuse of the court process. The same is dismissed with no orders as to costs.

DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU

ON THIS 8TH DAY OF MAY, 2024

In presence of

C.A Kananu

Gatwiri for Wambulwa for the petitioner

HON. C K NZILI

JUDGE

