



Thumatia (suing as the legal representative of the Estate of M'Thumatia Karunya alias Thumatia Karunya - Deceased) v Linguya & 32 others (Environment & Land Petition E005 of 2021) [2024] KEELC 6818 (KLR) (17 October 2024) (Judgment)

Neutral citation: [2024] KEELC 6818 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND PETITION E005 OF 2021**

CK YANO, J

OCTOBER 17, 2024

IN THE MATTER OF THREATENED CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS UNDER ARTICLE 49 OF CONSTITUTION OF KENYA, 2019

BETWEEN

**PATRICK MWETI THUMATIA PETITIONER
SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF
M'THUMATIA KARUNYA ALIAS THUMATIA KARUNYA - DECEASED**

AND

**KAILIKIA LINGUYA 1ST RESPONDENT
KUBANIA LURUNG'A 2ND RESPONDENT
MWONGELA M'TITHAI MACHOKI 3RD RESPONDENT
PATRICK MUNORU MICHIRA 4TH RESPONDENT
MURAO IMANYARA NDERI 5TH RESPONDENT
MABURUBUA IKIYU 6TH RESPONDENT
DAVID MUBWIKI LURUNG'A 7TH RESPONDENT
CHARLES MUNORU ARAYA 8TH RESPONDENT
HENRY MITHIKA NKUBITU 9TH RESPONDENT
JEREMIAH IKUNYUA 10TH RESPONDENT
PETER LINJURI THIRUAINI 11TH RESPONDENT
ANN KIREMA SOLOMON 12TH RESPONDENT
MONICA KAIMURI ETHIRIA 13TH RESPONDENT**



MWAMBIA ARAYA	14 TH RESPONDENT
BUANTAI LUCIANO MUKARIA	15 TH RESPONDENT
STANLEY KIUGU	16 TH RESPONDENT
THIRINGA ANAMPIU	17 TH RESPONDENT
ACHINGIRI LITHIRA ITUI	18 TH RESPONDENT
KAMBURA TUAMWARI ARAYA	19 TH RESPONDENT
MULUMPA ARITHO MBATIA	20 TH RESPONDENT
MUNG'ATHIA THIRINGI ANAMPIU	21 ST RESPONDENT
KALOTIA M'MWENDA IMATHIU	22 ND RESPONDENT
MOSES GITONGA ITHICU	23 RD RESPONDENT
MAINURI MUTIRITHIA	24 TH RESPONDENT
CIOMANYARA KARUNYU	25 TH RESPONDENT
SARAH RIIRI IBRAHIMU	26 TH RESPONDENT
JONAH NARANGWI THITURA	27 TH RESPONDENT
MUGAMBI LITHARA	28 TH RESPONDENT
KAMUNURIU JOSHUA	29 TH RESPONDENT
PANCRAS KAITAKULIA AMURU	30 TH RESPONDENT
DAVID KAIRI NCHEBERE	31 ST RESPONDENT
DISTRICT LAND ADJUDICATION AND SETTLEMENT OFFICER – TIGANIA DISTRICT	32 ND RESPONDENT
THE HON ATTORNEY GENERAL	33 RD RESPONDENT

JUDGMENT

1. The petitioner herein instituted the suit vide the petition dated 24th January, 2021 and filed in court and 2nd February 2021 seeking the following reliefs-;
 - a. A declaration that the deceased herein M'Thumatia Karunya alias Thumatia Karunya is the legitimate and *bonafide* legal owner of that original land parcel known as parcel number 1633 karama adjudication section measuring 39.6 Acres to the exclusion of all others and for an order for cancellation of all the subdivisions undertaken on the said land parcel and for reinstatement of the original land parcel number 1633 karama adjudication section measuring 39.6 acres and for the registration to be restored in the name of the deceased.
 - b. A declaration that the 1st to 31st respondents claim for land against the deceased has presented to the 32nd respondent were invalid and improper and that the 32nd respondent's decision and award made on 20th April 2017 regarding the 1st to 31st respondents' claim were improper in



law, illegal, unjustified, inequitable, and a violation of the petitioner's right to property hence unconstitutional, null and *void ab initio*.

- c. An Order for a permanent injunction be issued to the applicant restraining the 1st to 31st respondents by themselves, their agents, servants, relatives and/employees or whomsoever else acting on their behalf or instructions from entering into, cultivating, occupying, taking possession, trespassing, constructing, fencing, invading or moving into or in any other manner whatsoever or however dealing with the petitioner's possession, ownership, occupation, development and/or use of the said original land parcel number 1633 Karama Adjudication Section measuring 30 acres.
 - d. Costs of the petition plus interest thereon at court rates.
 - e. Any other or further order or reliefs the court may deem fair and just to grant.
2. The petition is supported by an affidavit sworn by Patrick Mwetli Thumatia, the petitioner herein, on 26th January, 2021 and the annexures thereto.
 3. The 1st to 31st respondents filed a replying affidavit sworn by Charles Munoru Araya, the 8th respondent herein, on 12th July, 2021.
 4. The 32nd and 33rd respondents filed a replying affidavit dated 12th June, 2024 sworn by Anthony David Mureithi, the Land Adjudication and Settlement Officer Tigania East/Central sub -counties.

Petitioner's Case

5. The petitioner brings the petition in his capacity as the legal administrator of the estate of the late M^rThumatia Karunya alias Thumatia Karunya (deceased) who was his father and who died on 26th June 1974. The petitioner has annexed copies of the death certificate, chief's letter and grant of letters of administration marked "PMT I (a) b (c)". The petitioner avers that the deceased was the legitimate recorded legal owner of parcel of land known as parcel number 1633 Karama Adjudication Section which originally comprised of 39.6 acres but which is presently indicated as measuring only 7 acres as shown in the copy of confirmation of ownership annexed and marked 'PMFT 2'. The petitioner states that it is within his knowledge that apart from those 7 acres, his deceased father's original land parcel has since been sub – divided into various other portions and more specifically those land parcels described as parcel numbers 5243 to 5273, and also plot numbers 1378, 1369, 570, 428, 4994, 386, 4548, 4086, 4928, 4799, 3670, 4457, 4783, and 156 all within Karama Adjudication Section and all which are as a result of subdivision of the original land parcel number 1633 Karama Adjudication Section. The petitioner avers that prior to his death, the deceased was the legitimate recorded owner and was in actual possession, occupation and use of the said land exclusively, and that upon his demise, he left the petitioner together with his other children namely Martha Thikuyu, Peter Kailemia, Joseph Kiunga, Sabina Kayuyu, Geoffrey Koome and John Mungathia in actual possession, occupation, enjoyment and use thereof.
6. The petitioner states that sometime in the year 1993 or thereabout, the 1st to 31st respondents raised several fictitious claims for land against the petitioner's deceased father which led to committee case number 315/93 which was heard by the committee members and who in their verdict or decision made on 16th August 1995 awarded the respondents various portions of land from the deceased's land, thus taking approximately 32.6 acres of the deceased's land parcel number 1633. Copies of the proceedings and verdict/decision are annexed and marked "PMT3". The petitioner states that he was aggrieved by that decision and award of the said committee members, but it took a lot of time and several correspondences between the petitioner and the Land Adjudication and Settlement Officer before



the petitioner was allowed to proceed to the Arbitration Board. Copies of the correspondences are annexed and marked “PMT 4(A) to PMT 4M”. That after the long exchange of those correspondences, the claims were presented before the arbitration vide AB case No. 19/97, and upon deliberation and hearing by the Arbitration Board members, they too made an award in favour of the respondents and upheld the decision of the committee. A copy of the proceedings and award has also been annexed and marked “PMT 5”.

7. The Petitioner further avers that he was again dissatisfied with the decision and award of the Arbitration Board members and raised his protest immediately the verdict was delivered but it also took a lot of time and several correspondences until 2001 for him to be allowed a re-hearing before the Arbitration Board. That the dispute was re-heard by the Arbitration Board members on 23rd April 2001, but again they upheld the decision of its predecessor. Copies of the correspondences and proceedings and award are annexed and marked “PMT a to PMT 6m” and “PMT 7” respectively. The petitioner states that he protested against that decision and award and sought for a review of the same, but was advised to wait until the final register is published so that he could raise an objection over the said parcels. That once the final register had been published, the petitioner lodged an objection against all the portions which had been hived out of the deceased’s land which had been given to the 1st to 31st respondents herein, but the objection was dismissed by the 32nd respondent on 23rd April 2017. The petitioner has annexed a copy of his letters of protest and review dated 4th May 2005 and 31st January, 2023 marked “PMT 8a” and PMT 8b” respectively. He also annexed copies of the proceedings and decision/ verdict marked “PMT 9”.
8. It is the petitioner’s contention that the decision and award made by the 32nd respondent is against the weight of the evidence tendered and that the 32nd respondent failed to arbitrate, adjudicate, and determine all the issues placed before him properly, thus making a decision and award that is obviously biased, erroneous and against the law. That the decision and award made by the 32nd respondent is illegal, unlawful, unprocedural and against the law and thus has infringed on the petitioner’s proprietary right as enshrined in Article 40 of *the Constitution* of Kenya, 2010 on the right to own property. That the 32nd respondent adopted a pattern applied and used by the previous sittings of the committee and the Arbitration Board and in so doing, failed to accord the petitioner a fair hearing and determination of the issues in dispute as required of him under Article 50 (1) of *the Constitution* of Kenya. That the decision or award of the 32nd respondent has illegally deprived the estate of the petitioner’s deceased father a portion of land measuring approximately 27.19 acres and that that decision ought to be declared a nullity. The petitioner therefore prays for the grant of the reliefs sought in the petition herein.

1st to 31st Respondents’ Case

9. It is the 1st to 31st respondents’ contention that the petition and the supporting affidavit are full of concoctions of falsehood deluded to grant the petitioner undeserved orders. The 1st to 31st respondents denied that land parcel No. 1633 Karama Adjudication Section belongs to the petitioner’s late father as alleged, and that the same belong to them as members of Libuu clan after it was left to Tharanja. The 1st to 31st respondents aver that the said land has had a long standing dispute between them and the deceased’s children after the same was awarded to the said respondents after several cases were conducted by the relevant land officers as well as the Njuri Ncheke council of elders. That since then, the land has had no dispute until recently when the petitioner started claiming ownership of the same.
10. The 1st to 31st respondents aver that the said land that measures 39.60 acres was gathered by M’Riyaya as a family land in 1978. That sometime, the petitioner’s father, and his brother M’Larama Karunya came to the 8th respondent’s father and said that they wanted a piece of the said land. That the



8th respondent's brother M'Linguanga M'Araya gave the petitioner and his brother somewhere to establish their homestead and that they all became 33 members and each member got 1.20 acres. That thereafter, they lived peacefully until the year 1993 when the petitioner started claiming that the whole land belonged to his grandfather.

11. The 1st to 31st respondents stated that they had a case before the lands committee and that 30 members of their clan were represented by M'Linguya, and when the committee went on the ground it established and found who the land belongs. That in 1993, they took a Nthenge Oath so that they could take back the land they had given the petitioner and the oath was to be administered by M'Mutia, but the petitioner's father failed to turn up. That in 1997, they attended the land committee board case and the ruling was made in the 1st to 31st respondents' favour.
12. The 1st to 31st respondents state that in 2001, the petitioner came up with another committee and he was awarded 12 acres from the respondents said land and after questioning, the respondents were told that there cannot be two boards in one land. That in the year 2011 the 1st to 31st respondents had an objection that ruled in their favour, but the petitioner influenced the land officials. That it was ruled that they maintain *status quo* whereby the respondents remained with 27 acres. The 1st to 31st respondents contend that the petitioner is a greedy man and that explains why he is the only child of the deceased who is claiming ownership of the suit land, and not the other children.
13. The 1st to 31st respondents aver that they have been living on the suit land for many years and have extensively developed it and even interred some of their relatives thereon. That the decision arrived at through arbitration objection No. 5243 – 5273 was decided in the 1st to 31st respondent's favour. They denied that there was bias as alleged by the petitioner since every party was given a chance to be heard and granted an opportunity to present his case. That it is clear from the averments in paragraphs 6, 7 and 8 of the supporting affidavit that the petitioner has been losing each and every case that he has filed against the respondents as far as the ownership of the suit land is concerned. That the petitioner should be contented with the portion of land given to him. That it would be absurd for the petitioner to be allowed to solely own the vast land that is already occupied by the respondents who comprise a whole clan. The respondents further contend that the suit is an afterthought since it is brought nearly 4 years after the decision was reached as to who owns the suit land, and after the same had been subdivided and new numbers given to the respondents.

32nd and 33rd Respondents' Case

14. The 32nd and 33rd respondents state that according to their records, parcel number 1633 in Karama Adjudication Section was at the time of fragment gathering recorded in the name of one Thumatia Karunya and measured 1.92 acres. A copy of the Record Existing Rights is annexed and marked 'ADMI'. That 0.12 acres being 6% contribution meant to cater for public utilities was deducted from his acreage, leaving his account at 0.180 acres.
15. It is averred that through an award by the arbitration Board case No. 19/97, Mr. Thumatia received 9.24 acres bringing his total acreage for parcel number 1633 to 11.04 acres. That P/No. 9212 was created under his name bearing 4.04 acres leaving P/No. 1633 with 7.00 acres. A copy of Records of Existing Rights for P/No. 8212 is annexed and marked "ADM 2".
16. The 32nd and 33rd respondents aver that the petitioner filed Land Committee case No. 315/93 which he lost and the land was awarded to the respondents herein. That the committee's decision was confirmed by the Land Adjudication Officer as contained in decision dated 16th August 1995 which is annexed and marked "ADM 3". That the petitioner filed an appeal case No. 19/97 before the Arbitration Board



and the Board upheld the land committee's decision. A copy of the Board's proceedings dated 9th May 1997 is annexed and marked "ADM 4".

17. It is further stated that the Arbitration Board's case was re-heard and the petitioner was awarded 12.23 acres, which decision was confirmed by the Land Adjudication Officer on 26th April 2001. A copy of the proceedings marked 'ADM 5' has been annexed.
18. It is the 32nd and 33rd respondents' contention that the decision, confirmation or determination of a matter before the Land Adjudication Officer is final and rights or interests in land at this stage are deemed to have been concluded/finalized as provided for under Section 19 of the [Land Consolidation Act](#) Cap 283 Laws of Kenya. That upon publication of the adjudication register for Karama Adjudication Section under Section 26 of the [Land Consolidation Act](#), the petitioner lodged objections Nos. 5243 to 5273 against P/Nos. 1387, 1369, 570, 482, 4994, 386, 4548, 4086, 4928, 4799, 3670, 4457, 4783, 156, 3855, 4546, 4777, 41, 4774, 1171, 4436, 650, 2367, 4569, 3077, 4493, 1078, 34, 1643, 1508 and 4469. A copy of the objection case proceedings is annexed and marked "ADM 6". That that objection case was dismissed vide a decision delivered on 23rd April, 2017. A copy of the objection proceedings is annexed and marked "ADM 7".
19. It is stated that the petitioner's assertion that P/No. 1633 was sub-divided to create P/Nos. 5243 – 5273 among others is a misrepresentation of facts, erroneous, misleading and unfounded. That the Land Adjudication Officer clearly listed numbers 5243 – 5277 as objection numbers and not as parcel numbers between the petitioner and the respondents.
20. It is the 32nd and 33rd respondent's contention that due process and procedure was duly followed by the various panels established under the [Land Consolidation Act](#) and every person named in or affected by the adjudication register accorded an opportunity to lodge their complaint. That the claims by the petitioner of fraud, collusion and a flawed process by any of the panels before arriving at their decision are false and unfounded. That the inconsistencies on acreage by the petitioner in his petition where he described the original acreage of P/No 1633 as 39.6 acres and subsequently as 30 acres is evidence that the petitioner is on a fishing expedition and his petition ought to be dismissed in the first instance. That this petition lacks merit and is an abuse of the court process and does not meet the threshold of a petition and ought to be dismissed.
21. The petition was canvassed by way of written submissions. The petitioner filed his submissions dated 26th September, 2024 through the firm of Joshua Mwiti Law Advocates while the 1st to 31st respondents filed theirs dated 10th September, 2024 through the firm of M.G Kaume & Co. advocates. The 32nd and 33rd respondents did not file submissions either within the time granted by the court or at all.

Petitioner's Submissions

22. The petitioner's advocates gave an introduction and brief facts of the case and identified the issues for determination to be whether the petition has merits and who pays the costs of the petition.
23. It was submitted on behalf of the petitioner that the issue in this matter concerns the application of Article 40 of [the Constitution](#) which was cited. That the thrust of the said Article is to protect proprietary rights under the law. That such rights are governed by statutes. It is submitted that the petitioner's case is grounded on the fact that the deceased is the registered owner of parcel 1633 Karma Adjudication Section and has been in occupation thereof. That upon his death, he left the petitioner on the suit land. It was submitted that Article 40 of [the Constitution](#) protects the right to property and that this requirement is an extension of the fact that [the constitution](#) protects higher values which are



to be found in the preamble of the Constitution and Article 10 such as Human rights and Social Justice which should be upheld by every Public Officer.

24. The petitioner relied on the case of Anarita Karimi Njeru vs Attorney General (1979) eKLR wherein it was established that a petitioner who seeks redress under the constitution must state his claim with precision by reference to the provisions of the constitution that have been violated. That this principle was restated in the case of Mumo Matemu vs Trusted Society of Human Rights Alliance and others Nairobi CA Civil Appeal No. 290 of 2013.
25. It is further submitted that the petitioner's case is anchored under Articles 20, 22 (1) and 23(1) as read with Article 162(2) 40 and 47(2) of the Constitution of Kenya. It is the petitioner's submissions that his right to own property has been infringed. That the 32nd respondent issued a confirmation letter confirming that indeed the deceased is the registered owner of the suit land but proceeded to order subdivision of the same to the 1st to 31st respondents without justifiable reasons or at all. That the 32nd respondent did not give the petitioner a chance to be heard or cross-examine the 1st to 31st respondents. That he also awarded the 1st to 31st respondents without offering any evidence before the committee.
26. It is submitted on behalf of the petitioner that the actions of the 32nd respondent are malicious and wrongful with intent to oppress and discriminate the petitioner and amounts to breach of his Constitutional Rights to own property as enshrined in Article 40 of the Constitution of Kenya, 2010. It is further submitted that the 32nd respondent's decision to award the 1st – 31st respondents the suit land was ultra vires and illegal. The petitioner's counsel cited Section 4 of the Fair Administrative Actions Act No. 4 of 2015 Article 47 and 50 of the Constitution and submitted that the 32nd respondent ought to have given the petitioner a chance to cross -examine the 1st to 31st respondents before reaching the decision that had such far-reaching ramifications. That the 33rd respondent was not supposed to award the 1st – 31st respondents the suit land when there was no evidence tendered before him convincing him to do so.
27. It is submitted that the question of which party bears the burden of proof is well settled under the law, and the petitioner's counsel cited the provisions of Section 107, 108 and 109 of the Evidence Act and relied on the case of North End Tradign Company Limited (carrying on the Business under the Registered Name of Kenya Refuse Handlers Limited vs City Council of Nairobi [2019] eKLR and Motex Knitwear Limited vs Gopitex Knitwear Mills Limited Nairobi (Milimani HCC No. 834 of 2002).
28. The petitioner's counsel further submitted that the impugned decision by the 32nd respondent not only violated the petitioner's constitutional rights but was also unreasonable and contrary to his legitimate expectation. They relied on the holding of Lord Simon Brown in R vs Devon County Council Ex-parte P Baker (1995), All ER and Council of Civil Service vs Minister for Civil Service (1984) 3 All ER 935 and submitted that in light of the above decisions and the evidence the decision by the 32nd respondent, whichever way one looks at it, was unilateral, ultra vires, illegal and unconstitutional. The court was urged to grant the orders sought herein and award costs to the petitioner.

1st to 31rd Respondents' Submissions

29. The 1st – 31st respondents also gave a background of the case and identified the issues for determination to be whether or not the petitioner is the owner of Land Parcel No. 1633 Karama Adjudication Section measuring 39.6 acres and therefore there be cancellation of all subdivisions thereof, whether or not the decision by the 32nd respondent was invalid and improper and therefore in violation of the petitioner's right to own the property, whether or not the petitioner is entitled to an order of injunction and who should bear the costs of the petition.



30. The 1st to 31st respondents pointed out that the suit land has had long disputes between them and the children of the petitioner's deceased father. That the said land was gathered by M'Rayaya in the 1970's. The 1st to 31st respondents reiterated the averments contained in their replying affidavit and submitted that the petitioner has been losing each and every case that he filed against them. That it was after the petitioner and their mother were chased away from the land they were previously occupying and given elsewhere to establish a homestead, the petitioner has now returned to claim ownership of the suit land. That the petitioner is unable to establish whether he is claiming 30 acres or 39.6 acres and has not explained where his late father got the land and when they settled thereon as alleged. That it was the duty of the petitioner to prove that the adjudication process was flawed but not the respondents. The 1st to 31st respondent's counsel submitted that as a general proposition, the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmation of the issue. That that is the purport of Section 107 (1) of the Evidence Act which was cited. They relied on the case of Isca Adhiambo Okayo vs Kenya Women's Finance Trust Ksm CA Civil Appeal No. 19 of 2015 [2016] eKLR and also cited Sections 108, 109 and 112 of the Evidence Act. They also relied on the case of Jennifer Nyambura Kamau vs Humprey Mbaka Nandi [2013] eKLR.
31. It is submitted that the petitioner never appealed to the minister against the decision of the 32nd respondent and therefore he is not entitled to the prayers sought. The 1st to 31st respondents stated that there are proper laid down procedures that ought to be followed where one is aggrieved by the decision of Land Adjudication and Settlement Officers and there must be a reason where that procedure ought not to be followed before one rushes to court. The 1st – 31st respondents' counsel cited Section 29 of the Land Adjudication Act and urged the court to find and hold that the petitioner failed to follow the established procedure even after losing in his numerous cases handled by the land officers who were applying the relevant laws.
32. Regarding the prayer for injunction, learned counsel for the 1st – 31st respondents submitted that in deciding whether to grant injunction orders as sought by the petitioner, the conditions set out in the case of Giella vs Cassman Brown (1973) EA 358 must be met. That he must show a *prima facie* case with a probability of success, that an interlocutory injunction will not normally be granted unless the applicant might suffer irreparable injury which would not adequately be compensated by award of damages, and if the court is in doubt, it would decide the application on a balance of convenience. On whether the petitioner has established a *prima facie* case with a probability of success the respondents' counsel relied on the case of Mrao vs First American Bank of Kenya Limited & 2 others [2003] eKLR and Dr. Simon Waibaro Chege vs Paramount Bank of Kenya Ltd Nairobi (Milimani)HCCC No. 360 of 2001 and submitted that the petitioner has failed to establish a *prima facie* case with a probability of success. That the respondents have clearly demonstrated that land parcel No. 1633 Karama Adjudication Section measuring 39.6 acres is registered in their names. It is submitted that there are reasonable grounds for not granting the petitioner the orders sought. The respondents also relied on the case of Geoffrey Muthinja Kabiru & 2 others vs Samuel Muriga Henry & 1756 others [2015] eKLR and Zoa Limited vs Arrid Mani & 2 others [2020] eKLR and submitted that the petition is unmerited and ought to be dismissed with costs.

Determination

33. I have considered the petition, the responses and the submissions filed. The court has also taken into account the authorities relied on. The issues I find call for determination are-;
- i. Whether the matter meets the constitutional threshold.
 - ii. Whether the petitioner is entitled to the reliefs sought.



iii. Who bears the costs?

34. From the material on record, it is not in dispute that the subject matter of this petition was the subject of proceedings in objections before the land committee, the Arbitration Board and the Land Adjudication and Settlement Officer. In his own pleadings, documents and submissions, the petitioner confirms that in the year 1993, the 1st – 31st respondents raised some claims over the suit land following which they were awarded 32.6 acres out of the whole land. That being aggrieved, the petitioner moved to the Arbitration Board who upheld the earlier decision. The petitioner further confirms that he also raised objection against the registration of the suit land in the 1st – 31st respondents' names. However, his objection was dismissed by the 32nd respondent on 23rd April 2017. The petitioner now accuses the 32nd respondent of being biased. He also alleges that he was not accorded a fair hearing. In addition, the petitioner alleges that the decision made by the 32nd respondent was against the weight of the evidence presented. It is on that basis that the petitioner concludes that the said decision was illegal, unconstitutional and has infringed his right to own property.
35. In this petition, it is not in dispute that there were disputes in the form of objections and appeals which were decided by the land committee, the Arbitration Board and the 32nd respondent. Those proceedings were pursuant to provisions of the [Land Adjudication Act](#) or the [Land consolidation Act](#). It is also apparent that the petitioner was a party to and participated in those proceedings, either as an objector, claimant or appellant. It is also apparent that all the decisions that were made by the land committee, the Arbitration Board and the 32nd respondent herein were not in favour of the petitioner. Section 29 of the [Land Adjudication Act](#) expressly provides that any person who is aggrieved by the determination of an objection under Section 26 of that [Act](#) may, within sixty days after the date of determination appeal to the minister whose decision shall be final. In this case although he was aggrieved by the decision of the 32nd respondent, the petitioner did not appeal to the minister as required by Section 29 of the said [Act](#). Instead, the petitioner filed this present petition.
36. It is not in dispute that the [Land Adjudication Act](#) and the [Land Consolidation Act](#) have an elaborate procedure under which disputes such as the current one can be resolved. Indeed, the petitioner admits that he invoked the provisions of those Acts and even filed objections. However, the petitioner did not deem it fit to lodge an appeal to the minister as provided for in Section 29 of the [Land Adjudication Act](#). The doctrine of exhaustion requires that a party exhausts any alternative dispute resolution mechanism provided by statute and/or law before resorting to the courts. The principle has been expressed and upheld in several decisions. These include [Secretary, County Public Service Board & another vs Hulbbhai Gedi Abdille](#) [2017] eKLR where the Court of Appeal stated as follows;
- “Time and again it has been said that where there exists other sufficient and adequate avenue or forum to resolve a dispute, a party ought to pursue that avenue or forum and not invoke the court process if the disputes could very well and effectively be dealt with in that other forum. Such a party ought to seek redress under the other regime.”
37. In [Geoffrey Muthinja Kabiru & 2 others v Samuel Munga Henry & 1756 others](#) [2015] eKLR, the Court of Appeal stated:
- “It is imperative that where a dispute resolution mechanism exists outside courts, the same be exhausted before the jurisdiction of the courts is invoked. Courts ought to be a fora of last resort and not the first port of call the moment a storm brews The exhaustion doctrine is a sound one and serves the purpose of ensuring that there is a postponement of judicial



consideration of matters to ensure that a party is first of all diligent in the protection of his own interest within the mechanisms in place for resolution outside the courts.”

38. Under Cap 283 and 284, a dispute goes to the land committee, followed by the Arbitration Board, then objections (A/R), then lastly, appeal to the minister. Therefore, considering that the *Land Adjudication Act*, the *land consolidation Act* have elaborate procedure on how disputes under those Acts may be dealt with, including appeals to the minister which the petitioner overlooked, it is my view that this petition is prematurely filed before this court and must fail.
39. The next issue to consider is whether the petition meets the constitutional threshold. In the case of *Anarita Karimi Njeru (supra)* the following precise principles in dealing with constitutional petitions are required of a petitioner-;
- i. He must specifically set out the provisions in *the constitution* that have been allegedly violated.
 - ii. He must provide the particulars of the alleged violations.
 - iii. Provide particulars in which the respondents have purportedly infringed his/her rights.
40. Further, in the case of *Trusted Society of Human Rights Alliance vs Attorney General & 2 others* [2013] eKLR, the Court of Appeal stated that:

“We do not purport to overrule *Anarita Karimi Njeru* as we think it lays down an important rule of constitutional Adjudication; a person claiming constitutional infringement must give sufficient notice of the violation to allow her adversary to adequately prepare her case and save the court from the embarrassment of adjudicating an issue that are not appropriately phrased as justiciable controversies. However, we are of the opinion that the proper test under the new constitution is whether a petition as stated raised issues which are so insubstantial and so attenuated that a court of law properly directing itself to the issue cannot fashion an appropriate remedy due to the inability to concretely fathom the constitutional violation alleged. The test does not demand mathematical precision in drawing constitutional petitions. Neither does it demand talismanic formalism in identifying the specific constitutional provisions which are alleged to have been violated. The test is a substantive one and inquires whether the complainant against respondents in a constitutional petition are fashioned in a way that gives proper notice to the respondents about the nature of the claims being made so that they can adequately prepare”

41. In the instant case, the petitioner has raised the issue of ownership of the suit land. In my view the dispute could still be resolved in a civil claim, but not through a constitutional petition. A reading of the petition clearly does not show any infringement of provisions of *the constitution*. All that the petitioner is aggrieved with is that a decision was made against him. No doubt the petitioner has a right to appeal to the minister as provided under the relevant Law. He however chose not to. Instead, he filed this petition. I do not see how the decision made by the 32nd respondent in the exercise of powers conferred him by statute can be said to be unconstitutional and illegal. There is nothing unlawful where one simply does what the law permits.



42. Having gone through the petition herein, I am of the view that the same has not raised a constitutional issue. In the case of *Benard Murage – vs Fine Serve Africa Ltd & 3 others* [2015] eKLR, the Supreme Court held that;

“Not each and every violation of the law must be raised before the High Court as a constitutional issue. Where there exists an alternative remedy through statutory law, then it is desirable that such a statutory remedy should be pursued first.”

43. In this case, the issues raised in the petition are disputes that were subject to adjudication and if the petitioner was dissatisfied with the outcome of objection, then he could have appealed to the minister as provided for in Section 29 of the *Land Adjudication Act* or brought the subject matter to court as a judicial review matter.

44. Having carefully considered the petition before me and the submissions, I find that the petition does not raise any constitutional issues at all. Secondly, the petitioner has failed to prove the alleged infringement of constitutional right to the required standards. I am therefore not persuaded that the petitioner is entitled to the orders sought in the petition.

45. I find that the petition has no merit and I dismiss it with costs to the respondents.

DATED, SIGNED AND DELIVERED AT MERU THIS 17TH DAY OF OCTOBER 2024

C.K YANO

ELC JUDGE

In the presence of

Court Assistant – Tupet

Petitioner

