



**Teeka & others v Cabinet Secretary Ministry of Interior and Co-ordination & 44 others (Environment & Land Petition 1 of 2020)
[2024] KEELC 6538 (KLR) (7 October 2024) (Judgment)**

Neutral citation: [2024] KEELC 6538 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND PETITION 1 OF 2020**

MN GICHERU, J

OCTOBER 7, 2024

**IN THE MATTER OF ARTICLES 3 (1), 10 (1), (A, B AND C) (2) (B AND D),
19 (1, 2, 3 AND 4), 21 (1), 22 (1), 23 (1 AND 3), 27 (1 AND 2), 40 (1), 64 AND
159 OF THE CONSTITUTION OF KENYA (2010) AND IN THE MATTER OF
THE CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS
UNDER ARTICLES 40 AND 64 OF THE CONSTITUTION OF KENYA (2010)**

AND

**IN THE MATTER OF THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS AND
FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES 2013 AND IN THE
MATTER OF THE REGISTERED LANDS ACT (CAP 300 LAWS OF KENYA REPEALED)
AND IN THE MATTER OF LAND REGISTRATION ACT, 2012 SECTIONS 24, 25 AND 26**

BETWEEN

JOSIAH OLE TEEKA AND OTHERS PETITIONER

AND

**THE CABINET SECRETARY MINISTRY OF INTERIOR AND CO-
ORDINATION & 44 OTHERS & 44 OTHERS RESPONDENT**

JUDGMENT

1. The Petitioners seek the following reliefs against the respondents.
 - a. A declaration that the 6th – 45th respondents have violated the Petitioners' right of private property by invading the Petitioners private parcels of land which include Kajiado/Ewaso-Kedong/5563, 63, 73, 1638, 59, 1592, 1044, 330, 311 and 253, 307, 304, 190, 252, 206, 171, 167, 157, 144, 143, 93, 102, 103, 90, 313, 1050 and 1051, 290, 341, 1573, 1064 and 1065, 1608, 221, 222, 295, 1090, 256, 272, 5213, 5214 and 5199, 5108, 5146, 5139 and 5201, 5270



and 5280, 5125 and 5269, 1604, 1610, 93, 148, 1568, 1660, 88, 1600, 219, 5086, 5029, 1878, 237, 336, 338 and 420 and 305 belonging to the 61 Petitioners respectively.

- b. An order of this court directing the 1st -5th Respondents to protect the Petitioners' right to property by ejecting the 6th and 45th respondents, their families and livestock from the Petitioners' private property.
 - c. The 6th – 45th respondents be ordered to pay the costs of this petition.
 - d. Any other order or better relief as this court deems fit to grant.
2. The Petition is supported by an affidavit sworn by Josiah Ole Teeka dated 18/7/2020 which has 73 annexures. The gist of the petition is as follows. Firstly, the petitioners are the registered owners of the suit parcels as per the 73 title deeds annexed to the affidavit. Secondly, the 6th to the 45th respondents have invaded the Petitioners' property and occupied it. Thirdly, this unlawful occupation has greatly prejudiced the Petitioners who continue to suffer huge and irreparable loss and damage. Fourthly, it is the duty of the 1st to 5th respondents to protect the Petitioners' right to property under Articles 40 and 64 of *the Constitution*.

For the above and other reasons, the Petitioners pray for the orders in the petition.

3. The motion is opposed by the 1st and 5th respondents and to this end, the Attorney General has filed five (5) grounds of opposition as follows. Firstly, the petition does not meet the test of a constitutional petition laid down in the case of Anarita Karimi –versus- Republic (No. 1) (1979) KLR 159 for,
- a. failing to set out with a reasonable degree of precision the Petitioners' complaint because of not indicating which particular land parcel has been invaded by which respondent,
 - b. failing to set out the provisions of law which have been infringed.

Secondly, failing to disclose any cause of action against the 1st to 5th respondents. Thirdly, the prayer for eviction is permanent in nature and ought not to be granted at an interlocutory stage before the ownership of the suit property has been determined. Fourthly, the responsibility of the 1st to 5th defendants is only to aid in the implementation of a court order. Finally, the entire petition is devoid of merit, an abuse of the court process and ought to be dismissed with costs to the 1st to 5th respondents.

4. The 6th to 45th respondents filed a notice of preliminary objection to the petition dated 16/8/2021 on two grounds. Firstly, the petition is incompetent and fatally defective for failure to disclose a violation of the Petitioners' constitutional rights as alleged or at all. Secondly, the principal prayer, ejection of the 6th to 45th respondents from the suit land, can neither be sought nor granted by way of a constitutional petition.
5. In addition to the grounds of opposition, the 6th, 20th and 41st respondents have filed replying affidavits dated 30/12/2021 in which they reply as follows. Firstly, Josiah Ole Teeka was the Chief of Ewaso Kedong Location which ceased to exist when it was elevated to Ewaso Kedong Division comprising the current Mosiro Location. Secondly, the land claimed by the Petitioners cannot be the same land occupied by the 6th to 45th respondents because the respondents occupy the land upon which they were born and resided all their lives. Thirdly, it is the Petitioners who are violating the rights of the 6th and 45th respondents by seeking to evict them from their ancestral land. Fourthly, the Petitioners have not demonstrated how they acquired title to land owned and occupied by the 6th to 45th respondents without their knowledge and consent. Fifthly, some of the Petitioner's are known to the 6th to 45th respondents and their land is on the Keekonyokie side of the area while the respondents are in the Purko side of the area. Sixthly, the administration, led by Josiah Ole Teeka (former Senior Chief) took



advantage of the respondents' illiteracy to grab their land acquire title thereto fraudulently. Seventhly, there exists a trench dug by tractors many years ago that separates the Purko and Keekonyokie clans in the area. On the Purko side of the trench there are three primary schools, a health centre and other amenities all on community land and some of which have been put up by the County Government of Kajiado and they cannot be private land owned by the Petitioners. Eighthly, the area claimed by the Petitioners is occupied by over 3000 people with many homesteads in two villages called Noonkirgir and Oldepe Plains. Ninthly, none of the Petitioners can identify the land that they claim on the ground.

For the above and other reasons, the 6th to 45th respondents pray for the dismissal of the petition.

6. The interested party through its County Executive Committee Member for Lands, Physical Planning and Urban Development, Hamilton Parseina has filed a replying affidavit dated 10/8/2023 in which it deposed as follows. Firstly, the suit land was vested under the defunct Olkejuado County Council until 2010 and it currently vests in the County Government of Kajiado. Secondly, the suit land is now classified as community land and it is ancestral to the Purko clan. Thirdly, through a process unknown to the residents who occupy it, the petitioners procured title deeds to the suit land. Finally, the interested party supports the respondents in their case with the petitioners.
7. On 27/5/2022, the 1st Petitioner swore a supplementary affidavit in which he deposes that the suit land is situated in Oenkorika Sublocation of Najile Location at Oldepe and the petitioners are not within Mosiro Location. Secondly, it is members of Purko Clan who have crossed over from their communal land in Oldepe Sublocation in Mosiro Location and invaded the Petitioners private land. Finally, the Petitioners have no interest in the land in Oldepe Sub-Location and Nkakuon village. He therefore prays that the petition be allowed.
8. The Attorney General for the 1st to 5th respondents filed written submissions dated 19/12/2022 and identified two issues for determination as follows.
 - i. Whether the petition raises any cause of action against the 1st – 5th respondents.
 - ii. Whether the petition as drafted contravenes the principles espoused in the case of Anarita Karimi Njeru.
9. Counsel for the Petitioners had filed his submissions earlier on 22/11/2022 and he did not file any further submissions, if only to reply to the issues raised on behalf of the 1st and 5th respondents. The counsel for the 6th to 45th respondents as well as the one for the interested party did not file any written submissions by the set timeline of 31/7/2024 or even by 19/9/2024.
10. I have carefully considered the petition in its entirety including the affidavits, the annexures, the written submissions and the law cited therein. I find that the two issues identified by the Attorney General will determine the dispute.
11. On the 1st issue, I find that the Petition does not raise any cause of action against the 1st to 5th respondents. In this case it is not the 1st to 5th respondents who are accused of violating the Petitioners constitutional rights. It is the 6th to 5th respondents who are accused of this violation. Yet none of these respondents is the state or a state organ. It is trite law that Constitutional Petitions are actions against the state and state organs. See *Vitalis Lumiti and 55 others –versus-The Reverend Olat Konnerup and 2 others*. A suit such as this should not be brought against a private individual. For such an individual, an ordinary suit is the proper way to proceed. This is more so because in such a forum, the parties will be in a position to plead in a detailed manner, file evidence which can be tested by way of rebuttal and cross-examination. In a petition such latitude is not available to the parties who are limited to filing affidavits and annexures. This suit raises an issue of whether or to the respondents occupy land beyond a trench



dug to separate two subtribes of Purko and Keekonyokie. Such a dispute would best be resolved by the Land Registrar for the area in which the land is situated. This court does not have original jurisdiction to entertain boundary disputes of registered land by dint of Section 18(2) of the [Land Registration Act](#). Moreover, the Petitioners need to prove how they came to be registered as owners of land said to have been occupied by the respondents since time immemorial, if this contention by the respondents is to be believed.

Finally, as correctly stated by the Attorney General, there is no allegation that the 1st to 5th respondents have been served with any court order which they failed or neglected to implement. There is therefore no cause of action against the 1st to 5th defendants. As for the other respondents, there may be a cause of action but it is not properly brought by way of a petition.

12. on the second issue, I find that the petition as presented does not meet the test set in the case of the Annarita Karimi Njeru –versus- The Republic (1979) KLR 154 because the Petitioners have not stated with precision the real complaint properly aligned to [the Constitution](#). In the submissions dated 21/11/2022, the Petitioners’ counsel has cited the [Trespass Act](#) (Cap 294). A suit on trespass should not be brought as a constitutional petition.

For the above stated reasons, I find that the petition is not properly before the court. I strike it out in its entirety. There will be no order as to costs because the Petitioners may still file an ordinary suit against the respondents.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 7TH DAY OF OCTOBER 2024.

M.N. GICHERU

JUDGE

