



**Muli v Cabinet Secretary for Lands, Housing & Urban Development
& 2 others (Environment and Land Constitutional Petition 3 of 2018)
[2024] KEELC 7412 (KLR) (6 November 2024) (Judgment)**

Neutral citation: [2024] KEELC 7412 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT AND LAND CONSTITUTIONAL PETITION 3 OF 2018
A NYUKURI, J
NOVEMBER 6, 2024**

BETWEEN

CHARLES MUTUA MULI PETITIONER

AND

**THE CABINET SECRETARY FOR LANDS, HOUSING & URBAN
DEVELOPMENT 1ST RESPONDENT**

THE HON ATTORNEY GENERAL 2ND RESPONDENT

NTHENGE UVYU 3RD RESPONDENT

JUDGMENT

Introduction

1. The petitioner herein, Charles Mutua Muli instituted this suit against the respondents by way of a Constitutional petition dated 12th January 2018, supported by his affidavit of even date seeking the following orders;
 - a. An order of certiorari to quash the decision and/or judgment of the Cabinet Secretary of Lands and Housing.
 - b. An order of permanent injunction restraining the 3rd respondent from interfering, trespassing either through himself and/or his agents with the portion occupied by the petitioner.
 - c. A declaration that the petitioner’s Constitutional right to fair administrative action and right to property have been violated and infringed and are threatened with further infringement, violation and denial by the respondents.
 - d. The respondents be condemned to pay costs of the petition to the petitioner.



- e. Any other orders and/or directions this Honourable Court deems fit to grant.
2. The petitioner's case is that he purchased a portion of the parcel of land known as number 1279 Kaewa Adjudication Section, in 1974 from Muli Kaloki, Mutisya Kaloki, Nzau Maungu and Mueki Kavyeu. He stated that Parcel No 1279 Kaewa Adjudication Section (suit property) belonged to one Ngove who had three wives who were occupying the land together with their children. Further that the petitioner purchased the suit property from one of the three families of Ngove, before the property was subdivided among the three families and after Ngove's death and that, the sellers were representatives and beneficiaries of Ngove's estate.
 3. He stated that the purchase was done openly and without objection from the 3rd respondent or any other family member and that it was witnessed by village elders and the area chief. He also averred that upon purchase, he took possession of the suit property and planted several crops including arrowroots, coffee, sugarcane, fruits and nappier grass. That he enjoyed peaceful possession of the suit property until 1982 when the 3rd respondent entered the suit property and began destroying the petitioner's crops and evicted the petitioner claiming that the latter should not have purchased the suit property.
 4. The petitioner averred that he reported the intrusion to the Divisional Officer who made a finding that it was true that the petitioner purchased the suit property from Ngove's family and that he be given another parcel of land by the family of Ngove. He added that during demarcation of the suit property, the demarcation officer refused to record the petitioner's interest in the suit property, although the petitioner had occupied it for 8 years. That this prompted the petitioner to file a case before the committee established under the [Land Adjudication Act](#) which found that indeed the petitioner purchased the suit property from Ngove's family, but that it failed to determine the question as to who between the petitioner and the 3rd respondent owned the suit property.
 5. He averred that the committee then referred the dispute to the Arbitration Board which found that the petitioner purchased the suit property from Ngove's family but that he should be compensated with another portion by Ngove's family. That in an objection filed by the petitioner, it was found that the petitioner purchased the suit property from Ngove's family but failed to decide in favor of the petitioner. He added that having been dissatisfied with the decision of the Land Adjudication Officer, the petitioner filed Appeal No 215 of 2002 before the "Minister". That the "Minister" found that he purchased the suit property from Ngove's family before subdivision to the deceased three families. That it also found that third parties who purchased portions of land No 1279 Kaewa Adjudication Section from Ngove's family to retain the land purchased but that the petitioner lost interest in his portion because the family fraudulently refused to include him as a third party and that the petitioner's interest was not mentioned during demarcation hence his claim was defeated.
 6. The petitioner argued that the 1st respondent violated Article 10 of the [Constitution](#) by failing to appreciate that he was the rightful owner of the suit property by virtue of purchase. He also faulted the findings of the 1st respondent on grounds that the latter failed to appreciate findings of the committee and the Arbitration Board to the effect that he purchased the suit property from Ngove's family. He also complained that the 1st respondent failed to take into consideration the judgment of the court that prior to subdivision, third parties who had purchased land from Ngove's family had rights over their portions of land. The petitioner stated that the 1st respondent failed to observe, respect, protect and promote the petitioner's right to property provided in Article 21 of the [Constitution](#). He accused the 3rd respondent of holding on to land which the petitioner lawfully purchased. He stated that the 1st respondent failed to uphold tenets of human dignity, social justice and respect for human rights contrary to Article 232 of the [Constitution](#). He stated that the respondents violated Article 40 of the [Constitution](#).



7. The petition was opposed. The 1st and 2nd respondents filed grounds of opposition dated 29th March 2018. They contended that the issues raised in the petition revolve around ownership of the suit property and that the proper way of determining the issue would be by evaluating evidence in a full hearing as opposed to disposal by affidavit. They further stated that prayer (a) in the petition contravenes mandatory provisions of Order 53 Rule 1(1) and 2 of the Civil Procedure Rules and Sections 8 and 9 of the Law Reform Act Cap 26; and that the petitioner's claim was statute barred contrary to Section 7 of the Limitation of Actions Act Cap 22 Laws of Kenya.
8. The 3rd respondent filed a notice of preliminary objection dated 25th March 2019. He argued that these proceedings are res judicata in view of this court's ruling dated 29th September 2017 in Miscellaneous Application No 1 of 2007. He further urged that the petition herein cannot be entertained in view of the mandatory provisions of Section 29 of the Land Adjudication Act.
9. On 3rd July 2019, the court dismissed the preliminary objection for want of prosecution.
10. The application was canvassed by written submissions. On record are petitioner's submissions filed on 20th January 2022 and the 1st and 2nd respondents' submissions filed on 2nd March 2023.

Petitioner's submissions

11. Counsel for the petitioner submitted that the question of judicial review is mainly concerned with the question of fairness to the applicant. Citing the case of Republic v National Water Conservation & Pipeline Corporation & 11 others counsel argued that judicial review interrogates the illegality, irrationality and procedural impropriety of the impugned decision. Counsel further relied on the cases of Bato Star Fishing (pty) Ltd v Minister of Environmental Affairs & others and Judicial Service Commission v Mbalu Mutava & another [2015] eKLR in arguing that an administrative decision must comply with Article 47 of the Constitution and must be lawful, reasonable, expeditious and procedurally fair.
12. It was contended for the petitioner that the 1st respondent denied him his right to a fair administrative procedure by subjecting him to unmerited, irrational, and biased decisions. Counsel maintained that the 1st respondent's decision was not founded on pertinent facts as the Minister failed to appreciate that the petitioner was the rightful owner of the suit property having purchased the same for value and in good faith. Further, counsel submitted that the 1st respondent failed to appreciate the findings of the committee and the Arbitration Board that the petitioner purchased the suit property for valuable consideration. Counsel contended that the 1st respondent's decision violated the petitioner's right to property, which was unjust and against the rules of natural justice. Further, that the 1st respondent's decision deprived the petitioner of his proprietary rights over the suit property and hence the said decision was unwarranted, illegal, unprocedural, against rules of natural justice and driven by bad faith.
13. Reliance was placed on the decisions made in the cases of Republic v National Water Conservation & Pipeline Corporation & 11 others and Machakos ELC Misc. Application No 19 of 2018 Republic v Machakos Deputy County Commissioner, Ex parte Maingwa Makome Mutie for the proposition that judicial review intervenes where persons act in bad faith and abuse of power.
14. Counsel submitted that the petitioner purchased the suit property in the presence of the 3rd respondent who did not raise an objection to the sale. Counsel argued that the 1st respondent's decision offends principles of equitable access to land and security of land rights and that by the irrational and unmerited decision of the 1st respondent, the petitioner has been deprived of his land. Counsel contended that there were illegalities in the decision by the 1st respondent. Further reference was made of Articles 21, 22 and 23 of the Constitution of Kenya and the cases of Sabina Nyambura Gitihina & another v Land



Registrar, Thika Land Registry & 3 others; Real Capital Ltd (Interested Party) [2021] eKLR which the court has considered.

The 1st and 2nd respondents' submissions

15. Counsel for the 1st and 2nd respondents submitted that the petitioner herein is disputing the merits of the decision of the Minister in that the Minister failed to appreciate that he is the rightful owner of the suit property having purchased it from Ngove's family. Counsel argued that the issue before this court is that of proprietary rights over the suit property, which issue was exhaustively and conclusively dealt with during the adjudication process, and that therefore this court lacks jurisdiction to hear and determine the dispute herein.
16. The court was referred to the case of *Johnson Mithika M'ikiao v Rose Mukiri Thaitumu & 2 others* [2018] eKLR for the proposition that this court has no jurisdiction to interrogate the merits of decisions made in the adjudication process. Counsel argued that the process leading to the Minister's decision was not flawed as the petitioner was duly heard as demonstrated by proceedings attached to the petition. Counsel also submitted that the "Minister" had jurisdiction to hear the appeal emanating from the objection proceedings as provided for in Section 29 of the *Land Adjudication Act*.
17. Counsel submitted that the "Minister's" decision is final and any party not satisfied with the same can only file a judicial review application to quash the Minister's decision. It was further contended for the 1st and 2nd respondents that the petitioner had already exhausted all available avenues provided under the *Land Adjudication Act* and ought not be allowed to hide behind a petition to agitate for rights that are not available to him.
18. Counsel relied on Order 53 Rule 2 of the *Civil Procedure Rules* and Section 9 of the *Law Reform Act* and argued that before seeking judicial review orders, leave must first be obtained from court and the application for leave must be made within six months from the date of the impugned decision. Counsel submitted that the petitioner seeks to quash a decision made on 3rd May 2005 through a petition filed on 23rd January 2018. Counsel cited the cases of *Re an Application by Gideon Waweru Githunguri* [1962] 1 EA 520 and *Raila Odinga & 6 others v Nairobi City Council* Nairobi HCCC No 899 of 1993 for the proposition that the provisions of Section 9(3) of the *Law Reforms Act* imposed absolute period of limitation which period must be adhered to. Counsel argued that the petition was barred by *Limitation of Actions Act* and referred the court to the cases of *Bosire Ongero v Royal Media Services* [2015] eKLR and *Mukuru Munge v Florence Shingi Mwawana & 2 others* [2016] eKLR.

Analysis and determination

19. The court has carefully considered the petition, response thereto and parties' rival submissions. The following three issues arise for the court's determination;
 - a. Whether this court has jurisdiction to determine this petition in view of provisions of Section 29 of the *Land Adjudication Act*.
 - b. Whether the petition is time barred.
 - c. Whether the petitioner is entitled to the orders sought.
20. Jurisdiction is the power or authority of the court to hear and determine a dispute. Jurisdiction is everything. Before a court embarks on determining a dispute, it must first be satisfied that it has jurisdiction to hear and determine the case before it. Once a court makes a finding that it has no jurisdiction to hear and determine a matter, it ought to down its tools forthwith, as a decision made without jurisdiction is a nullity.



21. In the case of *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* [1989] KLR 1, the court held as follows;

Jurisdiction is everything. Without it a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.

22. Jurisdiction of a court emanates from the *Constitution* or statute or both and a court cannot arrogate itself the jurisdiction it does not have or which is not provided for in law. In the case of *Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others* [2012] eKLR, the Supreme Court held as follows;

A court's jurisdiction flows from either the *Constitution* or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by the *Constitution* or other written law. It cannot arrogate itself jurisdiction exceeding that which is conferred upon it by law.

23. The suit herein is a challenge on the decision of the "Minister" dated 3rd May 2006 delivered by S.O. Warfa, the District Commissioner Machakos. The basis of the challenge is that the Minister ignored evidence of purchase of the suit property by the petitioner which evidence was confirmed by the committee and the adjudication officer, and thereby deprived the petitioner of his property thus violating his right to property under Article 40 of the *Constitution*.

24. The question of jurisdiction arose in this matter because the petitioner challenges the "Minister's" decision yet Section 29 of the *Land Adjudication Act* provides that the "Minister's" decision is final and states as follows;

1. Any person who is aggrieved by the determination of an objection under section 26 of this Act may, within sixty days after the date of the determination, appeal against the determination to the Minister by—
 - a. delivering to the Minister an appeal in writing specifying the grounds of appeal; and
 - b. sending a copy of the appeal to the Director of Land Adjudication, and the Minister shall determine the appeal and make such order thereon as he thinks just and the order shall be final.
2. The Minister shall cause copies of the order to be sent to the Director of Land Adjudication and to the Chief Land Registrar.
3. When the appeals have been determined, the Director of Land Adjudication shall—
 - a. alter the duplicate adjudication register to conform with the determinations; and
 - b. certify on the duplicate adjudication register that it has become final in all respects, and send details of the alterations and a copy of the certificate to the Chief Land Registrar, who shall alter the adjudication register accordingly.
4. Notwithstanding the provisions of section 38(2) of the *Interpretation and General Provisions Act* (Cap. 2) or any other written law, the Minister may delegate, by notice in the Gazette, his powers to hear appeals and his duties and functions under this section to any public office by name, or to the person for the time being holding any public office specified in such notice, and the determination, order and acts of any such public officer shall be deemed for all purposes to be that of the Minister.



25. Therefore the decision of the Minister upon hearing and determining an appeal emanating from objection proceedings, is final, so that the merits of that decision cannot be challenged before the courts. The only avenue for a party aggrieved with the “Minister’s” decision is to seek orders of judicial review, for the court to interrogate the decision making process and determine the legality, rationality, and procedural propriety of the decision.
26. Can a decision of the “Minister” be challenged before this court as a Constitutional petition? Section 29 of the [Land Adjudication Act](#) is very clear that the “Minister’s” decision shall be final. It is my view that unless it is clear that what is raised in a Constitutional petition as against the “Minister’s” decision is clearly a Constitutional question requiring Constitutional interpretation and not a mere challenge on the merits of the “Minister’s” decision, this court should not interfere with the “Minister’s” decision. Where a party merely camouflages questions regarding the merits of the “Minister’s” decision and frames them as a Constitutional petition, where no substantive Constitutional questions are raised merely to evade the import of Section 29 of the [Land Adjudication Act](#), this court will not countenance such circumvention of the clear provisions of Section 29 of the [Land Adjudication Act](#). However, where a party aggrieved with the “Minister’s” decision files a Constitutional claim raising Constitutional questions which require Constitutional interpretation, then that will not be in contravention as Section 29, and this court will have jurisdiction to determine the matter.
27. In view of the above position, I therefore proceed to interrogate the Constitutional petition now before me, to determine whether it is a proper Constitutional petition raising Constitutional questions requiring Constitutional interpretation or is just a civil claim camouflaged and clothed in Constitutional attire. A proper Constitutional petition must state with specificity the Constitutional provisions violated or threatened to be violated and the manner in which the Constitutional provisions have been violated by the respondents’ actions. In the case of [Anarita Karimi v Republic](#) [1979] KLR, 154, the court held 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.
28. The requirement that a Constitutional petition must specify with a degree or precision the provisions of the [Constitution](#) that have been violated or threatened to be violated and the manner in which they have been violated was restated by the Court of Appeal in the case of [Mumo Matemu v Trusted Society of Human Rights Alliance](#) [2014] eKLR.
29. Therefore mere allegations or mention of various Constitutional provisions without clear juxtaposition of how those Constitutional provisions have been infringed upon, cannot suffice for a suit to be termed as a Constitutional petition even where it is christened as such.
30. I have considered the petition herein. The petitioner has cited Articles 2, 10, 20, 21, 22, 23, 28, 40, 42, 48, 323 and 259 of the [Constitution](#) as basis of his claim in the title of his petition. While the petitioner has cited Articles 10, 21, 40 and 47 of the [Constitution](#) in what he refers to as Constitutional provisions violated by the respondents, he has merely restated those provisions without specifying how, through the respondents’ actions of commissions and commissions his rights based on those provisions have been infringed upon.
31. I have read the petition and according to the petitioner, his only complaint as particularized in part D of his petition which, state the nature of injury caused or likely to be caused to the petitioner; is that he lawfully purchased the suit property but that the “Minister” failed to award him the same, which is now



held by the 3rd respondent. The only Constitutional Article cited by petitioner therein and relevant to his complaint is Article 40 of the Constitution on his right to property which he alleges was violated as a result of the “Minister’s” decision as he will lose his land and become destitute if the “Minister’s” decision is not overturned. The petitioner stated what is provided for in the Constitution in Articles 10, 21, 47 and 232 but did not create any nexus between those articles and the respondent’s actions.

32. Is the mere citation of Article 40 on the right to property in the circumstance of this case sufficient to transform the petitioner’s claim here into a Constitutional claim requiring Constitutional interpretation? I do not think so. This court is an Environment and Land Court, therefore, regarding civil claims on land, all claims are invariably anchored on Article 40 of the Constitution on the right to own and acquire property. As the petitioner’s claim herein is that he lawfully purchased the suit property but the “Minister” was wrong in not awarding him the same, I find and hold that the same does not raise Constitutional questions requiring Constitutional interpretation, but is merely a challenge on the merits of the “Minister’s” decision. Since Section 29 of the Land Adjudication Act states that the “Minister’s” decision is final, I find and hold that the Constitutional petition herein does not meet the threshold of a Constitutional petition, and as the question raised in this claim being a challenge on the merits of the “Minister’s” decision, I find and hold that by dint of Section 29 of the Land Adjudication Act, this court has no jurisdiction to hear and determine the petitioner’s claim which has failed to meet threshold of a Constitutional petition.

33. In the premises, I strike out the suit herein, with costs to the respondents.

34. It is so ordered.

DATED, SIGNED AND DELIVERED AT MACHAKOS VIRTUALLY THIS 6TH DAY OF NOVEMBER 2024 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM

A. NYUKURI

JUDGE

In the presence of;

Ms. Nyawira for 1st and 2nd respondents

Mr. Sibika for petitioner

No appearance for 3rd respondent

Court assistant – Abdisalam

