



Langat & 87 others v Deputy County Commissioner, Narok South & 11 others; District Land Registrar, Narok (Interested Party) (Environment & Land Petition E005 of 2021) [2023] KEELC 17119 (KLR) (4 May 2023) (Judgment)

Neutral citation: [2023] KEELC 17119 (KLR)

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

CG MBOGO, J

MAY 4, 2023

BETWEEN

CHARLES KIPROTICH LANGAT 1ST PETITIONER
JOHN KIPKORIR MING'IN 2ND PETITIONER
NOONKIPA SENA 3RD PETITIONER
KIPKORIR ARAP LANGAT 4TH PETITIONER
ZAKAYO KIPKOECH TAMOO 5TH PETITIONER
JOHN RATIKA KIROREI 6TH PETITIONER
SOIPEI OLE CHEPKULEL 7TH PETITIONER
NASERIAN ENE SULUNYE 8TH PETITIONER
CHRISTOPHER TULAKAN LASENWA 9TH PETITIONER
JONATAN KIMUTAI 10TH PETITIONER
CHEPKONTOL ARAP TUEI 11TH PETITIONER
RANTANE ENOLE SHANKAROI 12TH PETITIONER
RARLI CHEPKORIR NYOLE 13TH PETITIONER
SIMON KIBET 14TH PETITIONER
CHEBO TIBIIK 15TH PETITIONER
JOHN KIPKOECH CHEPKWONY 16TH PETITIONER
LABOSO KIPKEMOI NGOCOECH 17TH PETITIONER
JOHN K. OLE SENA 18TH PETITIONER



JONATHAN RANA	19 TH PETITIONER
JOSEA BETT	20 TH PETITIONER
JOSEPH SINEI	21 ST PETITIONER
JOEL KIPKORIR SIGEI	22 ND PETITIONER
DANIEL SULUNYE	23 RD PETITIONER
WILSON SITONY	24 TH PETITIONER
TIMKOI OLE LULUNYE	25 TH PETITIONER
WILLIAM KIPKEMOI CHERUIYOT	26 TH PETITIONER
JULIUS RANA	27 TH PETITIONER
MARY NGOMA	28 TH PETITIONER
CHRISTOPHER SINEI	29 TH PETITIONER
ISAAC RONO	30 TH PETITIONER
SAIGOR OLE SHANGAROI	31 ST PETITIONER
MARINDANY JANE CHEROTICH	32 ND PETITIONER
JOSEPH KIPKORIR MARINDANY	33 RD PETITIONER
CHARLES SHANGAROI	34 TH PETITIONER
SAMWEL CHERUIYOT	35 TH PETITIONER
JOSEPH KIMUTAI KEBENEI	36 TH PETITIONER
LEONARD CHERES	37 TH PETITIONER
ANDREW KIPKORIR SANG	38 TH PETITIONER
KIPNGENO KURGAT	39 TH PETITIONER
JOSEPH K. KEPENEI	40 TH PETITIONER
RICHARD KIPKIRUI LANG'AT	41 ST PETITIONER
BARSIRON ARAP CHELOGOI	42 ND PETITIONER
JOSEPH KIPKEMOI KEBENEI	43 RD PETITIONER
MARITA	44 TH PETITIONER
SAMWEL KIPKEMOI LANGAT	45 TH PETITIONER
BETTY KOECH	46 TH PETITIONER
PHILIP KIPNGETICH	47 TH PETITIONER
CHRISTINE CHEPKIRUI SOI	48 TH PETITIONER
JOHN KIROREY	49 TH PETITIONER
TOGO ARAP SIGIRA	50 TH PETITIONER



RICHARD BETT	51 ST PETITIONER
JOSEPH CHERUIYOT	52 ND PETITIONER
JOSEPH OLE SHANGAROI	53 RD PETITIONER
KORKOREN WORTAGEN	54 TH PETITIONER
SAMUEL K CHIRCHIR	55 TH PETITIONER
GILISHO OLE LEBOO	56 TH PETITIONER
RHODA RANA	57 TH PETITIONER
GEOFFREY KORIR	58 TH PETITIONER
DAVID KIPKIRUI TONUI	59 TH PETITIONER
STANLEY SIRMA	60 TH PETITIONER
DAVID KIBET KIRUI	61 ST PETITIONER
JOSEPH SIGEI	62 ND PETITIONER
MERCY RANA	63 RD PETITIONER
JOSEPH RONO	64 TH PETITIONER
TOLOWO TUIMISSING	65 TH PETITIONER
MATHEW RONO	66 TH PETITIONER
SIMON LEBO	67 TH PETITIONER
AUGUSTINE ARAP SIGEY	68 TH PETITIONER
WILSON KIMUTAI	69 TH PETITIONER
KIPKEMOI ARAP BARGERO	70 TH PETITIONER
HASSAN KAUSAI OLE SENA	71 ST PETITIONER
JACK NAIMODU	72 ND PETITIONER
JOSEPH KIBII ARAP NGENO	73 RD PETITIONER
NICHOLAS OLE SENA	74 TH PETITIONER
MARTIN LANGAT	75 TH PETITIONER
RAELI CHEPKOECH NYOLE	76 TH PETITIONER
SAMWEL KIPKOECH MARITIM	77 TH PETITIONER
WILSON KITUR	78 TH PETITIONER
JOHN SUKUMA	79 TH PETITIONER
SERONEI ARAP NGENY	80 TH PETITIONER
STANLEY KIPROTICH CHEPKWONY	81 ST PETITIONER
RICHARD KIPTONUI ARAP LANGAT	82 ND PETITIONER



ROSE CHERONO CHEMARER	83 RD PETITIONER
PAULINA CHEPKIRUI LANGAT	84 TH PETITIONER
BII KIPKOECH	85 TH PETITIONER
ALICE CHEPNGENOH SEGERGER	86 TH PETITIONER
JOSEPH KIPKEMOI KOSKEI	87 TH PETITIONER
JULIUS M YEGON	88 TH PETITIONER

AND

DEPUTY COUNTY COMMISSIONER, NAROK SOUTH	1 ST RESPONDENT
ASSISTANT COUNTY COMMISSIONER, NAROK SOUTH	2 ND RESPONDENT
MICHAEL OLE LEMEIN	3 RD RESPONDENT
EDWARD PAESINTEI PERTET	4 TH RESPONDENT
MUSE OLE KURIAI	5 TH RESPONDENT
KIPTERKESH OLE KURIAI	6 TH RESPONDENT
JACKSON WUANTAI MARIKA	7 TH RESPONDENT
SIMON KIRRIKAI	8 TH RESPONDENT
DAVID SOI	9 TH RESPONDENT
MICHAEL PERTET	10 TH RESPONDENT
MAMBOLEO WOMEN GROUP CO-OPERATIVE SOCIETY LIMITED	11 TH RESPONDENT
ATTORNEY GENERAL	12 TH RESPONDENT

AND

THE DISTRICT LAND REGISTRAR, NAROK INTERESTED PARTY

JUDGMENT

1. 108 (sic) petitioners filed the instant petition and on perusal of the petition, this court noted glaring errors of names that were repeated more than once which is an error on the part of the drafter. The petitioners whose names appear more than once are the 2nd, 20th, 23rd, 30th, 32nd, 37th, 38th, 42nd, 43rd, 47th, 52nd, 60th, 62nd, 63rd, 64th, 66th, 68th, 70th, 71st, 73rd, 75th, 77th, 82nd, 84th, 85th, 87th, 97th, 100th, 107th and 108th petitioners. This court, on its own motion, removed the names of the petitioners whose names appear more than once and as it, there are 88 petitioners. For record purposes there is no petitioner number 26.
2. The petitioners filed a petition dated 30th June, 2021 seeking the following orders: -
 1. A declaration that the petitioners are the lawful proprietors and owners of land parcels Cis Mara/Ololulunga/7231, 7075, 6898, 7028, 6655, 6404, 7058, 6901, 7132, 6907, 6411, 6880,



7153, 7022, 7105, 7124, 5292, 7010, 6402, 7264, 7057, 6856, 7159, 6933, 7229, 7007, 6951, 6894, 6861, 7110, 6921, 7108, 7076, 6892, 7083, 7133, 6347, 6989, 6705, 6689 and 6891.

2. A declaration that the respondents are trespassers of land parcels Cis Mara/Ololulunga/7231, 7075, 6898, 7028, 6655, 6404, 7058, 6901, 7132, 6907, 6411, 6880, 7153, 7022, 7105, 7124, 5292, 7010, 6402, 7264, 7057, 6856, 7159, 6933, 7229, 7007, 6951, 6894, 6861, 7110, 6921, 7108, 7076, 6892, 7083, 7133, 6347, 6989, 6705, 6689 and 6891.
 3. A declaration that the actions of the respondents are in violation of constitutional rights of the petitioners and specifically in violation of Articles 10,22,23,26,27,28,29 (d) and (f),40 and 47 of the Constitution of Kenya.
 4. An order of permanent injunction against the respondents, whether acting by themselves or through their agents, servants, hoodlums, employees or through anybody acting on their authority from forceful and unlawful eviction, harassment, intimidation, threatening, provocation, incitement, detention, arrest, trespass into, demolition, burning of properties of the petitioners, demolishing the petitioners' homes, developing and/or cultivating, selling, charging, leasing, interfering with the boundaries, or in any way dealing and/or interfering with the petitioners' use and quiet enjoyment, of the suit parcels, Cis Mara/Ololulunga/ 7231, 7075, 6898, 7028, 6655, 6404, 7058, 6901, 7132, 6907, 6411, 6880, 7153, 7022, 7105, 7124, 5292, 7010, 6402, 7264, 7057, 6856, 7159, 6933, 7229, 7007, 6951, 6894, 6861, 7110, 6921, 7108, 7076, 6892, 7083, 7133, 6347, 6989, 6705, 6689 and 6891.
 5. An order that the petitioners be compensated by the respondents for their illegal actions of threat to life, mass destruction of property and forceful evictions.
 6. An order for costs of the petition.
3. The petition is premised on the grounds inter alia that the petitioners were and are the lawful registered owners of the suit properties which are claimed and have been invaded by the respondents.
 4. In the petition, the petitioners stated that they were allocated land by virtue of being members of Cis-Mara/Ololulunga (Enakishomi Group Ranch)/115 and have title deeds while others have purchased from the original owners.
 5. That sometime in the year 2021, the respondents commenced an eviction exercise of Cis-Mara/Ololulunga/115 which comprises the petitioners' land parcels illegally and in violation of their rights to property. That the respondents are coordinating the operation to annihilate certain people through its (sic) agents or servants while driven by ill intentions and forces in government.
 6. The petitioners pleaded particulars of wrongful acts of the respondents as follows:-
 - a. Sending/allowing the police to the houses of the petitioners to arrest and harass them.
 - b. Razing down houses of the petitioners.
 - c. Allowing abuse of office rather than maintaining peace and order.
 - d. Engaging in acts that are psychologically torturous to the petitioners' minds and exposing them to abject poverty.
 - e. Discriminating the petitioners in their land parcels and causing disturbance of those who have settled and even have titles.
 - f. Using the police officers on false accusations of the petitioners.



- g. Causing discrimination to be done to the petitioners by not being accorded equal benefit of protection and benefit of the law by the law enforcers.
 - h. Using law enforcers to harass and mistreat the petitioners and treating them in undignified manner.
 - i. Failing to ensure that title deeds were issued to the petitioners who have been allocated land.
 - j. Disregarding title deeds.
 - k. Ostracising the petitioners on the basis of their origin.
 - l. Institutionalising persecution of the poor without regard to the law.
7. The petitioners laid basis of their petition on Articles 1 (1),2(1),2(4),3,10,19,20,26,27,28,47 (1) and Article 165 (3)(d) of *the Constitution*.
8. The petitioners stated the legal arguments on the need for intervention as follows:-
- i. The targeted residents have nowhere to go hence their lives are threatened and they stand to lose homes, houses, animals, crops, food and settlement and all life investments.
 - ii. To the extent that the respondents have blatantly singled out the residents of Cis-Mara/Ololulunga (Enakishomi Group Ranch)/115 in their actions to forcefully evict them from their land, the respondents are in violation of Article 27 of *the Constitution* on equality and freedom from discrimination.
 - iii. To the extent that the respondents have and continue to torch houses of the residents of Cis-Mara/Ololulunga (Enakishomi Group Ranch)/115 rendering them homeless, the respondents have violated their right to human dignity as enshrined under Article 28 of *the Constitution*.
 - iv. To the extent that the respondents have and continue to torch houses of the residents of Cis-Mara/Ololulunga (Enakishomi Group Ranch)/115 rendering them homeless and mass destruction of their property, the respondents have subjected them to psychological torture and being treated in a cruel, inhuman or degrading (sic) contrary to Article 29 (d) and (f) of *the Constitution*.
 - v. To the extent that the respondents have threatened to forcefully evict and threaten to displace the residents of Cis-Mara/Ololulunga (Enakishomi Group Ranch)/115, the respondents have violated their right to property contrary to Article 40 of *the Constitution*.
 - vi. To the extent that the respondents did not issue any notice to the residents of their intended actions, and to the extent that they were not given a right to be heard before the illegal actions of the respondents were commenced, their right to fair administrative action has been violated contrary to Article 47 of *the Constitution*.
 - vii. Playing parochial politics of convenience at the expense of the law.
9. The petition is supported by the affidavit of one Charles Adams Kiprotich who contended that he is one of the petitioners. The said supporting affidavit was sworn on 30th June, 2021 at Nakuru by Richard Kiptonui Langat.
10. In the affidavit, the petitioners contended that the respondents through their agents have taken upon themselves to forcefully evict and displace the residents of Cis-Mara/Ololulunga (Enakishomi Group



Ranch)/115 and the operation includes torching of houses and property, mass eviction of persons and destruction of property. Further, that the respondents have disregarded the titles in possession of the residents which are valid titles issued to them pursuant to the adjudication process that began in the year 1997.

11. The petitioners further deposed that there is no evidence on the ground of surveys or proper inquiry and other process that the respondents may have used to lay basis for the threatened eviction of 2nd July, 2021. Further, that there is a real and serious threat to life, peace and stability of the area if the forceful evictions, malicious destruction of property proceeds.
12. The petitioners further deposed that the respondents did not issue any formal notice and that they have failed in their duty to promote, protect and uphold the rule of law. Further, that the 12th respondents ought to have advised the government on the legal and constitutional manner in which the inquisition of who has a good title should have been undertaken but have failed to do so.
13. The petitioners contended that the respondents have violated their rights under Articles 27, 28, 29 (d) and (f), 40 and 47 of *the Constitution*. Further, that their children and the children of the residents of the area have been denied the right to basic education as schools within the area have closed due to security concerns.
14. In conclusion, the petitioners contended that the actions of the respondents indicate that they have no respect for the spirit of *the Constitution* and the rule of law.
15. The 1st, 2nd and 12th respondents filed grounds of opposition dated 16th May, 2022 challenging the petition on the following grounds:-
 1. That the petitioners have failed to appreciate the principles set out in *Anarita Karimi Njeru v Republic (No.1) [1979] KLR 154* and reiterated in *Mumo Matemu v Trusted Society of Human Rights Alliance & Others [2013] eKLR (Civil Appeal No. 290 of 2012)* in which the court set out the considerations which should guide parties as they seek to file a constitutional reference in the High Court. The principle in this decision is that a party who alleges that his or her rights under *the Constitution* have been violated must demonstrate, with a reasonable degree of precision, the articles of *the Constitution* that have been violated, and the manner of violation with respect to him.
 2. That the petitioners' rights under Article 40 of *the Constitution* are not absolute but are limited by Article 24 of *the Constitution*; petitioners' rights must be balanced with the public interest and the rights claimed herein are not absolute.
 3. That the petitioners have not demonstrated to court any breach of either *the Constitution* or any law on the part of the respondents nor that the respondents acted illegally, irrationally and without complying with the law.
 4. That the petition is full of speculation as no evidence has been adduced in support of the allegations raised by the petitioners.
 5. That the issues raised in the petition are not peculiar to warrant determination by uneven number of judges.
 6. That the petition does not raise substantial points of law that are novel, that have never been raised before and does not raise moot questions to warrant the empanelment of a bench to hear the same.



7. That the prayer for compensation should not be granted as no evidence has been adduced to prove that the properties have been acquired by the government or that the issue of ownership has been determined by a court of competent jurisdiction.
8. That the petition is misconceived, incompetent, misplaced and an abuse of the process of this honourable court as the petitioners' rights and fundamental freedoms have not been breached and the same ought to be dismissed.
16. The 4th, 8th, 9th and 10th respondents filed a replying affidavit sworn on 7th October, 2022 by Michael Pertet, the 10th respondent herein.
17. The 10th respondent deposed that he is the registered owner of parcel known as Narok/Cis-Mara/Ololulunga/196, the 4th respondent is the owner of parcel known as Narok/Cis-Mara/Ololulunga/195 and the 8th respondent together with others are registered owners of Narok/Cis-Mara/Ololulunga/189. The 10th respondent further deposed that his parcel of land and that of the 4th respondent do not border Enakishomi Group Ranch which was subdivided into the petitioners' parcel and as such, they are separate and distinct which means that the petitioners' allegations of intrusion are unsubstantiated, farfetched and malicious. Further, that he is aware that the 6th and 7th respondents are deceased which makes the suit against them as incompetent.
18. The 10th respondent further deposed that the present petition is a mischievous mutation of the suits earlier filed and which are still pending in court, a fact which the petitioners have deliberately failed to disclose to this court. That in addition to this petition, there is Narok MC ELC No. 76 of 2020 and Narok ELC No. 6 of 2019.
19. In conclusion, the 10th respondent deposed that they have valid title deeds of ownership of the land where they reside and that they cannot be limited, deprived or enjoined from using or dealing with their land where there is proof of ownership. Also, that it should be noted that the petitioners have not sought an order of revocation of the respondents' title deeds.
20. The petitioner filed a supplementary affidavit sworn on 23rd January, 2023 by Charles Kiprotich Langat. In the supplementary affidavit, the said Charles Kiprotich Langat deposed that Enakishomi Group Ranch was formed in the year 1980 during which period, the group ranch elected its officials. That following dissolution, Land Control Board consents were issued on 10th June, 1997 and subsequently, certificates of titles were issued to individual members.
21. He further deposed that the petitioners being the registered proprietors of their parcels of land, peacefully settled on their respective parcels as early as the year 1998 and have continued to utilise the same in excess of over 20 years.
22. Again, there is a supplementary affidavit sworn by Charles Adams Kiprotich sworn on 3rd February, 2023 and which is a copy paste of the supporting affidavit sworn on 30th June, 2021.
23. On 20th February, 2023, all the parties by consent agreed to dispose the petition by way of written submissions. None of them had filed their written submissions by the time of writing this judgement.
24. Be that as it may, I have considered the petition and the responses thereto and the issue for determination is whether the petitioners are entitled to the orders sought.
25. The Bill of Rights under 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.



26. The ingredients of a constitutional petition was clearly formulated in the case of Anarita Karimi Njeru v Republic [1979] eKLR where it was partly stated as follows: -

“We would, however, 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.”

27. Similarly, in the case of Mumo Matemo v Trusted Society of Human Rights Alliance & 5 others [2013] eKLR the court 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.

28. It should be noted that the case of Anarita Karimi Njeru (supra) has been relied upon from time to time 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 have 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.

29. The petitioners in this case raised issues of violation of their rights to property. It was their case that the respondents have commenced an exercise of evicting the petitioners and other residents which actions are illegal. In support thereof, the petitioners annexed copies of title deeds, sale agreements and photographs which this court is unable to tell when and where they were taken. The documents so far relied upon by the petitioners in my view are not sufficient to merit consideration by this court. The petitioners alleged an eviction exercising that was to take place on 2nd July, 2021 in paragraph 21 of the petition. No evidence has been provided to substantiate this claim whatsoever.

30. Upon consideration of the petition, it is clear to me that the petitioners have laid out the actions by the respondents which they believe were wrong and unconstitutional as well as the provisions of *the Constitution* which the petitioners believe were violated. However, the petitioners have not provided the “who” “what” and “why” to this court and as such I find that the petition as drawn does not meet the threshold for a constitutional petition as clearly enumerated in the Anarita Karimi Njeru case (supra).



31. The petitioners in my view have failed to provide a comprehensive account of the actions of the respondents whether individually, severally or jointly. In any case, what the petitioners have done is to throw a blanket condemnation over the respondents.

32. Arising from the above, I find that the petition dated 30th June, 2021 lacks merit and the same is hereby dismissed. Each party to bear its own costs. It is so ordered.

DATED, SIGNED & DELIVERED VIA EMAIL ON THIS 4TH DAY OF MAY, 2023.

MBOGO C.G.

JUDGE

4/5/2023

In the presence of:

CA:T.Chuma

