



**Morijo-Loita Residents Associations & 558 others v Narok South Land
Adjudication & Settlement Officer & 2 others (Environment & Land
Petition E002 of 2021) [2023] KEELC 17974 (KLR) (6 June 2023) (Ruling)**

Neutral citation: [2023] KEELC 17974 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

ENVIRONMENT & LAND PETITION E002 OF 2021

CG MBOGO, J

JUNE 6, 2023

**IN THE MATTER OF PETITION UNDER ARTICLES
20, 21, 22 & 23 OF THE CONSTITUTION OF KENYA**

AND

**IN THE MATTER OF INFRINGEMENT OF FUNDAMENTAL
FREEDOMS AND RIGHTS OF THE PETITIONERS UNDER ARTICLES
10,11,27,28,35,40,43,44,47, 50 & 56 OF THE CONSTITUTION OF KENYA**

AND

IN THE MATTER OF LAND ADJUDICATION ACT (CAP. 284)

BETWEEN

MORIJO-LOITA RESIDENTS ASSOCIATIONS 1ST PETITIONER
SHADRACK KIOK 2ND PETITIONER
JACKSON MANCHA 3RD PETITIONER
TAIKO OLE NTIBANY 4TH PETITIONER
ALEX OLE KULUO 5TH PETITIONER
JULIUS TUARARI 6TH PETITIONER
SEKETO SUMPATI 7TH PETITIONER
TAMPUA KISAICA 8TH PETITIONER
NTASIKOI OLARUSAI 9TH PETITIONER
NOLTERITOI ENOLE NKURRUNA 10TH PETITIONER
NOLTERITOI ENOLE NKURRUNA 11TH PETITIONER



DAVIS LESHAN OLOLOOTORONKEN & 547 OTHERS 12TH PETITIONER

AND

NAROK SOUTH LAND ADJUDICATION & SETTLEMENT

OFFICER 1ST RESPONDENT

CHAIRPERSON LOITA-MORIJO LAND ADJUDICATION COMMITTEE 2ND
RESPONDENT

THE HON ATTORNEY GENERAL 3RD RESPONDENT

RULING

1. Before this court for determination is a notice of motion application dated 15th December, 2021 filed by the 2nd respondent and which is expressed to be brought under Rule 19 of the *Constitution of Kenya (Protection of Fundamental rights and freedoms) Practice and Procedure Rules 2013*, Section 3A and 80 of the *Civil Procedure Act*, Order 2 Rule 15 and Order 45 Rule 1 & 2 of the *Civil Procedure Rules* seeking the following orders:-
 1. spent
 2. spent
 3. This honourable court be pleased to strike out this matter and submit the dispute herein for redress by arbitration board established under Section 7 of the *Land Adjudication Act*, Cap 284 Laws of Kenya.
 4. Costs of this application be provided for.
2. The application is premised on the grounds on the face of it and more particularly as contained in the supporting affidavit.
3. The application is supported by the affidavit of Malano Saiguran, the 2nd respondent sworn on even date. The 2nd respondent deposed that there has been a dispute regarding the membership of Morijo Adjudication Section even before the election of the land adjudication committee with the minority group having filed a case demanding for their own cluster. Further, that after the court cases, the adjudication process resumed and the land owners nominated persons from each village in the section to represent them in the adjudication committee. It followed that public participation was carried out extensively and that formal appointment of 24 members of the committee was conducted on 15th November, 2019 where he was elected chairman.
4. The 2nd respondent further deposed that the committee embarked on the registration exercise and after which members were invited to vet the register of members. The said register was displayed for 14 days and the exercise took 21 days. Further, that all the concerns raised by the petitioners were addressed by the Land Adjudication and Settlement Officer and the chairperson of the committee.
5. The 2nd respondent deposed that some of the petitioners are not members of the adjudication section and they used tricks to obtain names for members. Also, the petition is premature before this court as it is not in line with the *Land Adjudication Act* which provides an avenue for redress of the issues raised in the petition as it was held in the case of *David Ntiyani & 15 Others v Attorney General & Another; Charles Panin Parkisua & 15 Others (Interested Parties)* [2019] eKLR.



6. The 2nd respondent further deposed that the respondents have been denied their constitutional power of hearing the objections raised owing to orders of status quo issued by this court dated 1st March, 2021. Further, that the petitioners must give the respondents' room to hear and determine the disputes as provided under Section 29 of the Act. The 2nd respondent cited the case of *Geoffrey Muthinja & another versus Samuel Muguna Henry & 1756 others* [2015] eKLR and deposed that the arbitration exercise is very broad and it covers all the issues including those raised in the petition herein.
7. The application was opposed by the replying affidavit of the 2nd petitioner sworn on 31st January, 2023. The 2nd petitioner deposed that this is a constitutional petition that seeks various interpretation of various articles of the Constitution particularly the alleged breach of specific provisions of the Constitution by the respondents and enforcement of the petitioners' constitutional rights and freedoms.
8. The 2nd petitioner further deposed that only a constitutional court such as this court has authority to hear and determine disputes relating to interpretation and application of the Constitution and the enforcement of rights and fundamental freedoms. Further, that the manner and particulars of breach of the petitioners constitutional rights as set out in the petition have been clearly set out and that Article 22 and 23 of the Constitution gives the petitioners the right to institute the proceedings herein.
9. The 2nd petitioner further deposed that the arbitration board referred to by the 2nd respondent does not have the jurisdiction and powers to interpret the Constitution nor adjudicate an alleged breach of rights and fundamental freedoms in the bill of rights as these are matters reserved exclusively for this court. Also, that under Section 7 of the Land Adjudication Act, a panel can only be appointed by the County Commissioner and the said County Commissioner has not appointed a panel from which the arbitration board may be appointed. That the purported arbitration board that the 2nd respondent wants this suit to be referred to is non-existent and to grant the orders herein would amount to a summary dismissal of the petition without the benefit of a hearing and without any recourse known in law.
10. The 2nd petitioner further deposed that they filed this petition for the sole purpose of protecting their constitutional rights and fundamental freedoms as set out in the petition and that the several factual allegations and matters stated out in the application are matters to be canvassed at the hearing of the petition and not in the instant application.
11. The application was canvassed by way of written submissions. The 2nd respondent filed written submissions dated 20th March, 2023 and raised one issue for determination which is whether the petitioners exhausted dispute resolution mechanisms provided in the Land Adjudication Act, Chapter 284 of the Laws of Kenya before seeking redress in this court.
12. The 2nd respondent submitted that the petition as filed is premature as the petitioners have not exhausted the elaborate dispute resolution mechanisms provided in the Land Adjudication Act. The 2nd respondent relied on the case of *Mohamed Ahmed Khalid (Chairman) & 10 Others v Director of Land Adjudication & 2 Others* [2013] eKLR.
13. The 2nd respondent further submitted that it is trite law that where there is a clear procedure for the redress of any particular grievance prescribed by the Constitution or an Act of Parliament, that procedure should strictly be followed as was decided in Mombasa High Court Petition No. 18 of 2013: *Anne Warnuda & 3 others v Kenya Railways Corporation & another* [2015] eKLR and *Mutanga Tea & Coffee Company Limited versus Shikara Limited & another* [2015] eKLR.



14. In conclusion, the 2nd respondent submitted that the petitioners dispute is one that should be submitted to the arbitration board which will be constituted as per Section 7 of the [Land Adjudication Act](#) and there is nothing to show that the provisions of the [Land Adjudication Act](#) which deal with dispute resolution mechanism have been declared unconstitutional.
15. The petitioners filed their written submissions dated 3rd May, 2023. The petitioners submitted that what is before this court is a constitutional petition that is alleging violation of and or threatened violation of the petitioners rights and fundamental freedoms and this court has jurisdiction to hear and determine disputes relating to infringement of fundamental rights and freedoms. Further, that the arbitration board referred to by the 2nd respondent does not have the jurisdiction to hear and determine disputes relating to infringement of rights or fundamental freedoms and that the said arbitration board does not have the jurisdiction to grant any of the orders or prayers sought in the petition. The petitioners relied on the case of [Royal Media Services Limited versus Attorney General & 6 Others](#) [2015] eKLR.
16. The petitioners further submitted that the purported arbitration board referred to by the 2nd respondent is non-existent and to grant an order striking out the petition would amount to summary dismissal of the petition and it is trite law that a court should not grant an order in vain or orders not capable of being implemented. They relied on the case of [Trusted Society of Human Rights Alliance v Cabinet Secretary for Devolution and Planning & 3 Others](#) [2017] eKLR.
17. The petitioners further submitted that there are several correspondences on record demonstrating that the petitioners submitted the dispute and grievances to the 1st respondent on several occasions but the same was ignored or dismissed outright. These letters are dated 20th July, 2020, 14th August, 2020, 21st October, 2020 and 25th November, 2020.
18. The petitioners also submitted that it is imperative to note that the 1st respondent is a party to the dispute herein and therefore could not be an impartial arbiter in the dispute and issues raised by the petitioners.
19. I have carefully analysed and considered the application, replying affidavit and the written submissions filed by the petitioners and the 2nd respondent and the issue for determination is whether this court ought to strike out the petition and refer the dispute to the arbitration board established under Section 7 of the [Land Adjudication Act](#).
20. The adjudication process is well provided for in the Land Adjudication Cap 284. The Act outlines procedure to be followed up until issuing of title deeds. In the event that a person is aggrieved by the decision or is challenging the process thereof, he or she may file an objection with the adjudication officer in writing as is provided for under Section 26 of the [Land Adjudication Act](#).
21. The procedure for acquisition of land under Adjudication is clearly set out in the [Land Adjudication Act](#). Section 5 of the Act provides that: -
 - “(1) The adjudication officer shall by notice either—
 - (a) establish adjudication sections within the adjudication area;
 - (b) establish the whole adjudication area as an adjudication section.
 - (2) A separate notice shall be published in respect of each adjudication section, and in each such notice the adjudication officer—



- (a) shall define as clearly as possible the area of the adjudication section;
- (b) shall declare that interests in land within the adjudication section will be ascertained and recorded in accordance with this Act;
- (c) shall fix a period within which a person claiming an interest in land within the adjudication section must make his claim to the recording officer, either in writing or in person or by his agent duly authorized according to law (including recognized customary law); and
- (d) may require any person making a claim to point out to the demarcation officer or to demarcate or assist in the demarcation of the boundaries of the land in which he claims to be interested or to clear any such boundaries or any other line in the manner and before a date fixed by the demarcation officer.”

22. Section 26 of the Act provides for objection to adjudication register as follows: -

- “(1) Any person named in or affected by the adjudication register who considers it to be incorrect or incomplete in any respect may, within sixty days of the date upon which the notice of completion of the adjudication register is published, object to the adjudication officer in writing, saying in what respect he considers the adjudication register to be incorrect or incomplete. (2) The adjudication officer shall consider any objection made to him under subsection (1) of this section, and after such further consultation and inquiries as he thinks fit he shall determine the objection.”

23. Further, Section 29 (1) on Appeal provides that: -

- “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.”

24. Section 30 (1) of the Act provides: -

- “(1) Except with the consent in writing of the adjudication officer, no person shall institute, and no court shall entertain, any civil proceedings concerning an interest in land in an adjudication section until the adjudication register for that adjudication section has become final in all respects under section 29 (3) of this Act.
- (2) Where any such proceedings were begun before the publication of the notice under section 5 of this Act, they shall be discontinued, unless the adjudication officer, having regard to the stage which the proceedings have reached, otherwise directs.



- (3) Any person who is aggrieved by the refusal of the adjudication officer to give consent or make a direction under subsection (1) or (2) of this section may, within twenty-eight days after the refusal, appeal in writing to the Minister whose decision shall be final.” (Emphasis mine)

25. The above cited provisions of the law provide elaborate procedure for acquisition of land and disputes resolution mechanisms that may arise from land that has been declared an Adjudication Section. It is the petitioners’ case that they are the lawful residents of Morijo-Loita adjudication section and the beneficiaries of the land in the adjudication section which is among the 5 adjudication sections that were earmarked for adjudication, subdivision and issuance of individual title deeds. Further, that on or about the year 2019, the 1st respondent commenced the adjudication exercise by appointing members and operationalizing the 2nd respondent who would be in charge of developing the by-laws to guide the adjudication process.
26. It was the petitioners’ case that the respondents are undertaking the adjudication process in Morijo-Loita adjudication section in blatant disregard, contravention and breach of the petitioners’ constitutional rights and fundamental freedoms as they were not involved in the process of the creation of the by-laws. That instead of providing the petitioners with the documents and information sought, the respondents termed their claims as baseless allegations as they had not been appointed to the adjudication committees and chose to lie to the petitioners that they had not commenced the adjudication process and that the petitioners’ complaints were premature. The petitioners also claim that there was a notice from the respondents dated 10th February, 2021 informing them to check whether their names were in the list.
27. The petitioners’ contended that the refusal by the respondents to publish the list of landowners is a confirmation that indeed they are proceeding with the adjudication process in a clandestine manner while all along breaching or denying the petitioners’ their constitutional rights and fundamentals freedoms.
28. I have taken time to read the petition and I do note that the petitioners herein filed their petition dated 24th February, 2021 seeking the following orders:-
- i. A declaration that failure and/or refusal by the respondent to grant the petitioners access to the information, documents and materials listed herein below is in breach of the petitioners’ constitutional rights and fundamental freedoms set out in Article 35.
 - a. Copies of the adjudication by-laws and any amendments thereto in respect of Morijo-Loita adjudication section.
 - b. Copies of minutes of the meetings at which the adjudication by-laws and any amendments thereto were discussed and approved by members of the adjudication section.
 - c. Copies of notices calling for meetings of members of the adjudication section to discuss the terms of the adjudication by-laws and any amendments thereto.
 - d. The gazetted map of Morijo-Loita adjudication section showing the proper boundaries of the section and total size of land available within the section for purposes of the adjudication process.



- e. A written confirmation of the total acreage of land within the Mirojo-Loita adjudication section and showing what portion of the total acreage is within Loita forest.
- f. Minutes of meeting showing discussions regarding the manner in which the part of Loita forest shall fall within the adjudication section will be owned and/ or handled pursuant to the adjudication process.
- g. Register of members/landowners of the adjudication section.
- h. Minutes of the meeting of the community at which the issue of appointment of members of the 2nd respondents was discussed and agreed upon.
 - i. Spatial plan prepared to govern the adjudication process in the adjudication section.
 - ii. A declaration that the appointment of members of the 2nd respondent by the 1st respondent was done in breach of the petitioners' constitutional rights and fundamental freedoms set out in Articles 10,11,27,28,40,43,47 and 69 of the [Constitution of Kenya](#) and is therefore null and void.
 - iii. A declaration that the adjudication process of Mirojo-Loita adjudication section being conducted by the 1st and 2nd respondents is in breach of the petitioners' constitutional rights and fundamental freedoms set out in Articles 10,11,27,28,40,43,47 and 69 of the [Constitution of Kenya](#) and is therefore null and void.
 - iv. An order of judicial review in the nature of certiorari to bring into this honourable court and quash the appointment of the members of and operationalization of the 2nd respondent by the 1st respondent.
 - v. An order of judicial review in the nature of certiorari to bring into this honourable court and quash the adjudication process undertaken by the 1st and 2nd respondents in breach of the petitioners' constitutional rights and fundamental freedoms set out in Articles 10,11,27,28,40,43,47 and 69 of the [Constitution of Kenya](#).
 - vi. An order of judicial review in the nature of Mandamus compelling the 1st respondent to appoint a new land adjudication committee for Mirojo-Loita Adjudication Section and to start and conduct the adjudication process afresh in strict compliance with the law and the [Constitution of Kenya](#).
 - vii. The petitioners be awarded the costs of this petition against the respondents jointly and severally.
 - viii. This court be pleased to issue any other orders that meets the ends of justice

29. The petitioners further contended that the 1st respondent commenced the adjudication process in blatant breach of the petitioners' constitutional rights and fundamental freedoms regarding the manner in which the members of the 2nd respondent were appointed, the manner in which it was constituted and operationalized which was without adequate public participation as required by the [Constitution](#).



30. By and large, the issues in the petition were dealt with in the ruling delivered by this court on 30th March, 2022. This court found that the petitioners had not exhausted the dispute resolution mechanisms contained in the *Land Adjudication Act*.
31. More importantly and as outlined in the above cited provisions of the *Land Adjudication Act*, there exists procedure for dispute resolution where the suit property is in an area already declared an adjudication section.
32. In the case of the *Owners of Motor vessel 'Ilian 'S' v Caltex Oil Kenya Ltd* [1989] 1 KLR 1, the Court of Appeal stated 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 and court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”
33. Where a statute expressly provides for a dispute resolution mechanism as is with the *Land Adjudication Act*, any party aggrieved with the adjudication process ought to exhaust all avenues for redress as per the provisions of the Act. This court therefore has no jurisdiction to entertain this matter at this stage.
34. Arising from the above, the petition dated February 24, 2021 is hereby struck out. The petitioners need to exhaust the procedure for resolution of disputes provided under the *Land Adjudication Act*. I will make no orders as to costs so as to promote harmony and reconciliation amongst the parties herein. It is so ordered.

DATED, SIGNED & DELIVERED VIA EMAIL ON THIS 6TH DAY OF JUNE, 2023.

HON. MBOGO C.G.

JUDGE

6/6/2023

In the presence of: -

CA:Chuma

