



**Koin & 5 others v Kikonyo & 5 others (Environment & Land Petition
E004 of 2022) [2023] KEELC 20490 (KLR) (9 October 2023) (Judgment)**

Neutral citation: [2023] KEELC 20490 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT & LAND PETITION E004 OF 2022
CG MBOGO, J
OCTOBER 9, 2023**

BETWEEN

**MURERA OLE KOIN 1ST PETITIONER
MOON MAINE 2ND PETITIONER
SUYIANKA KEKO 3RD PETITIONER
SANKAYON MELITA 4TH PETITIONER
OTUMOI KASHANKA 5TH PETITIONER
OLOIBONI TINKOI 6TH PETITIONER**

AND

**JOHN KIKONYO 1ST RESPONDENT
JOSPHAT KOIN 2ND RESPONDENT
CHARLES SAITABAU 3RD RESPONDENT
ADJUDICATION OFFICER 4TH RESPONDENT
DISTRICT LAND REGISTRAR 5TH RESPONDENT
HON ATTORNEY GENERAL 6TH RESPONDENT**

JUDGMENT

1. On the 27th April, 2022, the petitioner filed a petition dated 26th April, 2022 seeking judgment against the respondents for the orders that: -



- a. Permanent injunction restraining the respondents by themselves, their agents, servants or anyone acting under their authority or whosoever from surveying, demarcating, registration and inspecting parcel number Loita Ilkerin Land Adjudication Section Narok County.
 - b. The costs of this suit be borne by the respondents.
 - c. Any other relief this court may deem fit to grant.
2. The gist of the petition is that the 1st to 3rd respondents who are the officials of the Loita Ilkerin Adjudication Section have been carrying out activities on behalf of the members without well agreed consensus of the public involving all members of the adjudication section and, therefore, there was lack of public participation.
 3. In addition, that the officials of the said section have never displayed openly to the public the register of the members list, the register of the area list of each individual member and in the public meeting held on 29th March, 2022, members of the public were not allowed to give their opinions or discuss on the issuance of demarcation and placing of beacons.
 4. The petition was supported by the verifying affidavit of the 1st petitioner sworn on even date as well as his statement of even date.
 5. On the 15th June, 2022, the 4th, 5th and 6th respondents filed a statement of defence dated 14th June, 2022 and denied the contents of the petition and further stated that if any transaction was effected in respect of the suit property, the same was done in accordance with all the relevant laws and regulations which the petitioners have failed to demonstrate any illegality.
 6. The petition was canvassed by way of written submissions. On the 10th August, 2023 the 4th, 5th and 6th respondents filed their written submissions dated 9th August, 2023. The 4th, 5th and 6th respondents raised two issues for determination as listed below: -
 1. Whether the petitioner has set out with reasonable precision the constitutional violations conducted by the 4th -6th respondents.
 2. Whether the petitioners are entitled to the order of permanent injunction/orders sought.
 7. On the first issue, the 4th to 6th respondents submitted that the petitioners have failed to fulfill the requirements set out in *Anarita Karimi Njeru v Republic* [1979] eKLR and *Mumo Matemu v Trusted Society of Human Rights Alliance & Others* [2012] eKLR as they have not cited the constitutional provisions violated and the acts or omissions complained of with reasonable precision.
 8. On the second issue, the 4th to 6th respondents submitted that public participation must be involved in every step of the adjudication process to ensure that the end product is not only credible, legal but also participatory in nature which was conducted by the 4th respondent as was described in its replying affidavit. The 4th to 6th respondents relied on the case *Silverio Akubu & 4 Others v Charles Baariu Salesio & 3 Others* [2019] eKLR.
 9. The 4th to 6th respondents further submitted that the land owners within the adjudication section were given a chance to inspect the list from 4th February, 2021 to 22nd February, 2021 and as a result of the inspection a total of 241 land committee cases were filed which were heard and determined on 4th March, 2021 to 20th March, 2021. Further, that the twelve appeals to the Arbitration Board were filed by persons dissatisfied with the decisions of Ilkerin Land Adjudication Committee and they were heard and determined on 15th December, 2021.



10. Further, they submitted that the 4th respondent discharged their actions in a fair and procedural manner and that the petitioners had the right to escalate their disputes through the internal dispute resolution mechanisms provided for under the Act. The 4th to 6th respondents relied on the cases of *PZ Cussons East Africa Limited v Kenya Revenue Authority* [2013] eKLR and *Mohamed Ahmed Khalid (Chairman) and 10 Others v Director of Land Adjudication & 2 Others* [2013] eKLR.
11. The 4th to 6th respondents further submitted that the rights of the petitioners could not have crystallised into rights capable of being protected under Article 40 of the *Constitution* since the process of appeal within the adjudication process had not been exhausted as was held in the cases of *Justus Mugaa M'Impwi v District Land Adjudication & Settlement Officer Tigania West/East District & Another* [2018] eKLR and *Geoffrey Muthinja Kabiru & 2 Others v Samuel Munga Henry & 1756 Others* [2015] eKLR.
12. The petitioners did not file written submissions. Be that as it may, I have considered the petition, statement of defence and the written submissions filed by the 4th to 6th respondents and the issue for determination is whether the petitioners are entitled to the orders sought.
13. I will be quick to point out that it is for the petitioners to prove on a balance of probabilities that their fundamental freedoms and rights as protected by or under the *Constitution* have been violated or are threatened. The petitioners must establish this by not only clearly identifying the relevant and specific Articles of the *Constitution* but also availing the evidence of such violation as per the required standard in respect of constitutional petitions as set out in the case of *Anarita Katimi Njeru v The Republic* (196-1980) KLR 1272 where it was held, in the words of the Justices Trevelyan and Hancox that;

“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.”
14. Sadly, the instant petition has not in any way pleaded with precision, any violation, threat or infringement of the petitioners’ constitutional rights and fundamental freedoms as regards Loita Ilkerin Adjudication Section. The petitioners did not even seek to amend the petition to include the relevant articles of the *Constitution* said to have been violated, infringed or threatened. It has been over emphasized that parties are bound by their pleadings and in this case, this court cannot deduce on behalf of the petitioners their grievances.
15. The upshot of the above is that the petition dated 26th April, 2022 is dismissed with no orders as to costs.

It is so ordered.

DATED, SIGNED & DELIVERED VIA EMAIL ON THIS 9TH DAY OF OCTOBER, 2023.

HON. MBOGO C.G.

JUDGE

In the presence of:

CA: Pere Meyoki

