



**Mwambia v Ncooro & 3 others (Environment & Land Petition  
E002 of 2023) [2023] KEELC 20572 (KLR) (11 October 2023) (Judgment)**

Neutral citation: [2023] KEELC 20572 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT & LAND PETITION E002 OF 2023  
CK YANO, J  
OCTOBER 11, 2023**

**BETWEEN**

**STANLEY MUKUMU MWAMBIA ..... PETITIONER**

**AND**

**HENRY NCOORO ..... 1<sup>ST</sup> RESPONDENT**

**THE LAND REGISTRAR MAUA ..... 2<sup>ND</sup> RESPONDENT**

**COUNTY SURVEYOR (NATIONAL GOVERNMENT) MERU**

**NORTH ..... 3<sup>RD</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 4<sup>TH</sup> RESPONDENT**

**JUDGMENT**

1. By a petition dated and filed on 20<sup>th</sup> February, 2023, the petitioner seeks the following orders-;
  1. A declaration be issued, that the petitioner's LR. No. Amwathi/Maua/8926 should remain on the same position where it was gathered and demarcated on the ground, as possessed, occupied, utilized and developed by the petitioner.
  2. A declaration be issued, that the misplacement of the petitioner's L.R no. Amwathi/Maua/8926 on the Registry Index Map (R.I.M) as stated in the surveyor's report dated 23<sup>rd</sup> January, 2023, violated the petitioner's constitutional right to equality before the law and equal protection and benefit of the law, acquire and own property, Fair Administrative Action, access to justice and fair hearing under Article 27 (1) & (2), 40, 47, 48 and 50 of *the Constitution* of Kenya.
  3. A mandatory injunction be issued, compelling the 2<sup>nd</sup> and 3<sup>rd</sup> respondents to rectify or amend the Registry Index Map (R.I.M) as indicated in the surveyor's report dated 23<sup>rd</sup> January, 2023, to correctly position in the Registry Index Map (R.I.M), the petitioner's LR NO.



Amwathi/Maua/8926, to correspond with its ground position/location where the said LR. NO. Amwathi/Maua/8926 was gathered, demarcated and is actually positioned/located/situated on the ground.

4. A conservatory order be issued, prohibiting the 1<sup>st</sup> and 2<sup>nd</sup> respondents and their representatives, servants, agents and/or anybody else acting at their behest, direction or instructions from implementing the judgment in Maua CMCC NO. 159 of 2009 on the ground position of the petitioner's LR NO. Amwathi/Maua/8926 since the said judgment does not affect the petitioner's LR NO. Amwathi/Maua/8926.
  5. A permanent injunction be issued, restraining the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents and their representatives, servants, agents and or anybody else acting at their behest, direction or instructions, from entering into, trespassing onto, evicting the petitioner from, and/or whatsoever interfering with the petitioner's quiet, peaceful, uninterrupted and undisturbed actual possession, occupation, cultivation, user, development and enjoyment of LR.NO. Amwathi/Maua/8926 on the ground where it was gathered and demarcated.
  6. Costs of the petition and interests thereon at court rates, against the respondents jointly, and severally.
2. The petition is supported by the affidavits sworn by Stanley Mukumu Mwambia, the petitioner herein on 20<sup>th</sup> February, 2023 and a supplementary affidavit sworn on 5<sup>th</sup> July, 2023. It is the petitioner's case that he is the registered owner of LR. NO. Amwathi/Maua/8926, (hereinafter the suit property) which was gathered in 1968 and demarcated in 1980. The petitioner states that since then to-date, the petitioner and his family have exclusively occupied and developed the suit property. The petitioner has annexed a copy of the title deed and photographs showing the said developments.
  3. The petitioner avers that the suit land has clear delineations and boundaries on the ground where it was gathered and demarcated and has never been officially/legally relocated therefrom to any other place and has never had any dispute in any court of law or elsewhere.
  4. The petitioner states that in early January, 2023, the 1<sup>st</sup> respondent, accompanied by officers from the 2<sup>nd</sup> and 3<sup>rd</sup> respondents purporting to implement the judgment in Maua CMCC (ELC) NO. 159 OF 2009, entered into and trespassed onto the suit land intending to forcibly evict the petitioner therefrom and place the 1<sup>st</sup> respondent thereon. That the petitioner persuaded the said officers not to go on with the intended exercise since the said judgment did not affect the petitioner's land, but they informed the petitioner that his land was moved from that location in an undisclosed period. That an argument ensued which attracted villagers and the 1<sup>st</sup> respondent and his companions went away. The petitioner has annexed a copy of the said judgment.
  5. The petitioner states that on 9<sup>th</sup> January, 2023, he went to the lands office at Maua where he was verbally informed that his land LR. NO. Amwathi/Maua/8926 was, in the records only, relocated from where it was gathered and demarcated on the ground to an unknown place. That the petitioner wrote to the 1<sup>st</sup> respondent asking him to rectify the anomaly in the records. The letter dated 9<sup>th</sup> January, 2023 has been annexed. That later, the 3<sup>rd</sup> respondent visited the suit property and vide a report dated 23<sup>rd</sup> January, 2023 established inter alia, that the said parcel of land has clear boundaries on the ground, the surveyed area of the petitioner's parcel No. 8926 was misplaced on the Registry Index Map (R.I.M) plotted elsewhere which was unknown and its position taken by other land parcels, that the surveyed area of the petitioner's said land is 0.304 Ha and that amendments need to be done.
  6. The petitioner states that he requested to be given reasons why his land was misplaced in the R.I.M, but was not given any reasons by the 2<sup>nd</sup> and 3<sup>rd</sup> respondents, who have since 23<sup>rd</sup> January, 2023 not rectified



the said anomaly. It is the petitioner's contention that the respondents' aforesaid actions amount to violation/contravention of his fundamental rights and freedoms guaranteed under Article 27(1) & (2), 40, 47, 48 & 50 of *the Constitution* of Kenya. The petitioner has listed the particulars of the alleged violation, contravention breach of his fundamental rights and freedoms guaranteed under the said Articles of *the Constitution*. The petitioner further contends that the respondents' intention of wanting to evict him from the suit land is unlawful ab initio and if effected will cause the petitioner to lose his land and the properties thereon. It is further contended that the said actions, inactions, omissions and conduct of the respondents are arbitrary, unlawful and unconstitutional thereby inviting the intervention by this court.

7. It is the petitioner's submissions that at paragraph 15 of the petition, he has pleaded with a reasonable degree of precision and certainty the constitutional rights that have been violated and how they were infringed by the respondents. Learned counsel for the petitioner relied on the case of Anarita Karimi Njeru Vs Republic [ 1979] eKLR and Mumo Matemu Vs Trusted Society of Human Rights Alliance ([2013] eKLR and urged the court to find that the petition herein meets the threshold as held in those cases.
8. Learned counsel for the petitioner identified the following issues for determination-;
  - I. Whether or not the petitioner has proved the pleaded violations of this constitutional rights.
  - II. whether or not the 1<sup>st</sup> respondent has any right over or interest in the petitioner's land parcel No. 8926.
  - III. Whether or not the petitioner is entitled to the relief sought in the petition.
  - IV. Who should bear the costs of the petition.
9. Regarding the first issue, it is the petitioner's submission that the 2<sup>nd</sup> to 4<sup>th</sup> respondents having not opposed the petition, have not controverted the petitioner's averments at paragraph 11,12(1) ,(ii), (iii) & (iv), 13 to 18 of the petition and paragraphs 5 to 14 of the petitioner's affidavit in support of the petition and referred to the petitioner's title deed over the suit property and the photographs showing his family's extensive developments that have been annexed to the said affidavit. It is further submitted that the suit property is not affected by the judgment in Maua (ELC) NO. 159 of 2019. Counsel for the petitioner invited the court to find and hold that the 2<sup>nd</sup> and 3<sup>rd</sup> respondents being public officers, violated the petitioner's rights under Article 27 (1) & (2) of *the Constitution* of Kenya when they intended to evict him from the suit land and place the 1<sup>st</sup> respondent thereon, yet their own survey report confirms its existence on the ground, misplacement in the Registry Index Map and necessity to effect amendment which the 2<sup>nd</sup> and 3<sup>rd</sup> respondents have declined to do yet it is their statutory duty to do so under Section16 of the *Land Registration Act*. The petitioner further submitted that as a registered proprietor of the suit property, his rights are protected under Section 25 (1) and 26(1) of the *Land Registration Act* and relied on the case of Mbugua & another (suing as Administrator of the Estate of Simon James Mbugua) Vs Attorney General & 2 others (Environment and Land Constitutional Petition 2 of 2021) [2022] KEELC 3063 (KLR). It is also the petitioner's submissions that the respondents' actions blatantly violate the petitioner's right to protection to property under Article 40 (1) & (2) of *the Constitution* and relied on Mbugua & another (supra) and Morris Ngundo Vs Lucy Joan Nyaki & Another [2016] eKLR.
10. It is also the petitioner's submissions that the respondents violated his constitutional right to a Fair Administrative Action as provided under Sections 4,5, (2) (b) & (c) and 6 of the *Fair Administrative Action Act*. The petitioner relied on the case of President of the Republic of South Africa and others Vs South African Rugby Football Union and others CCT 16/98) 2000 (1) SA1 and Judicial Service



Commission Vs Mbalu Mutava & another Vs Non-Governmental Organizations Co-ordination Board & another [2018] eKLR.

11. The petitioner further submitted that his right to access to justice under Article 48 of *the constitution* was breached and relied on the case of Munoru M’Mugwongo & 2 others Vs County Government of Meru [2020] eKLR. The petitioner further submitted that the 2<sup>nd</sup> and 3<sup>rd</sup> respondents did not accord him any hearing in contravention of Article 50(1) of *the Constitution*. On the right to be heard and the cardinal tenets of natural Justice, the petitioner’s counsel relied on the case of Republic Vs Non - Governmental Organizations Co-ordination Board Exparte Evans Kidero Foundation [2017] eKLR.
12. The petitioner contended that the 1<sup>st</sup> respondent failed to prove his right over or interest in the suit property as required under sections 107, 108, 109 and 112 of the *Evidence Act* and submitted that the 1<sup>st</sup> respondent has no protectable right over or interest in the suit land.
13. The petitioner urged the court to find and hold that he is entitled to all the prayers sought because he has sufficiently demonstrated that he is the registered owner of the suit property whereon he lives and develops with his family and that flagrant violations of his Constitutional Rights by the respondents who intended to illegally and forcibly evict him and place the 1<sup>st</sup> respondent thereto, yet it is not affected by the judgment in Maua CMCC (ELC) No. 159 of 2009. Counsel for the petitioner relied on Mbugua & another (supra), Morris Nyundo (Supra) Kenya Human Rights commission (Supra) and Ann Nyaboke Achadu & 2 others Vs Abel Moranga Ongwanch & 3 others [2020] eKLR and submitted that Article 23 (1) & (3) (a), (b) & (c) as read with Article 162 (2) (b) of *the Constitution* of Kenya empower this court to grant a declaration, an injunction and a conservatory order as sought in the petition.
14. On the issue of costs, counsel for the petitioner submitted that costs follow the event and urged the court to award the petitioner costs of the petition plus interest thereon.
15. The 1<sup>st</sup> respondent opposes the petition through his replying affidavit sworn on 12<sup>th</sup> April 2023 and filed in court on 26<sup>th</sup> May, 2023, wherein he avers that he filed Maua CMCC No. 159 of 2009 against the petitioner herein on 14<sup>th</sup> August 2009 and that the petitioner filed his defence and counterclaim. That the said suit proceeded for hearing and the court lawfully, procedurally and legally delivered its judgment on 16<sup>th</sup> March 2022 in favour of the 1<sup>st</sup> respondent. That the petitioner herein never bothered to lodge an appeal against the said judgment and or file any review but instead filed the instant petition which the 1<sup>st</sup> respondent termed an afterthought to avoid execution of the decree which was imminent.
16. It is the 1<sup>st</sup> respondent’s contention that the allegations by the petitioner that he was informed on 9<sup>th</sup> January, 2023 by the land office at Maua that the suit land was relocated in the records only are misplaced as the issues were properly adjudicated by a competent court and judgment delivered on 16<sup>th</sup> March, 2022. The 1<sup>st</sup> respondent states that he believes the petition herein is just a device to delay the finalization of the matter and that the orders sought are highly prejudicial to his interests, adding that the same has no merit. That the petitioner only filed this petition on realizing that the period within which to file an appeal had lapsed, hence the 1<sup>st</sup> respondent should be left to enjoy the fruits of his judgment in Maua CMCC no. 159 OF 2009 to bring this litigation to an end.
17. The 1<sup>st</sup> respondent states that the petitioner has no proprietary interest on any of the 1<sup>st</sup> respondent’s parcels of land LR No. Amwathi/Maua/1394 and 8327 as the matter was heard and determined by a competent court. The 1<sup>st</sup> respondent avers that the petitioner is economical with the truth as in his counter claim in Maua CMCC (ELC) No. 159 of 2009 he never disclosed that he was seeking to have a rectification of the land register in Amwathi/Maua/Adjudication Section to cancel the recording therein of parcel Nos. 1394 and 8327 in the 1<sup>st</sup> respondent’s name. That the claim was adjudicated



upon and the petitioner's counterclaim dismissed. The 1<sup>st</sup> respondent further accuses the petitioner for failing to disclose to the court that he owns LR NO. Amwathi /Maua /1918 measuring 0.22 acres and which borders with the 1<sup>st</sup> respondent's land parcel Nos Amwathi Maua /1394 and 8327 where he lives and works with his family. The 1<sup>st</sup> respondent states that on 9<sup>th</sup> March, 2020, the District Land Adjudication and Settlement Officer and the County Surveyor, Meru North visited land parcel No. Amwathi/Maua/1418,1394 and 9327 and filed a report which was filed in court and produced in Maua CMCC NO. 159 of 2009 by one Joseph Mbai an Officer from DLASO office on 7<sup>th</sup> July, 2021 without any objection by the petitioner. Copies of the said report dated 9<sup>th</sup> March 2020, court order and sketch map are annexed. It is the 1<sup>st</sup> respondent's contention that the petition is incompetent, vexatious and an abuse of the court process and the 1<sup>st</sup> respondent urged the court to dismiss it with costs.

18. In their submissions, learned counsel for the 1<sup>st</sup> respondent gave brief facts of the matter and submitted inter alia, that the court below acted within the law in its judgment in Maua CMCC No. 159 of 2009 and denied violating the petitioner's constitutional rights in any way. It was further submitted that the petitioner has not produced any evidence to prove that his land exists on the ground. Counsel for the 1<sup>st</sup> respondent cited the provisions of Sections 107 and 109 of the [Evidence Act](#) and relied in constitutional petition No. 128 of 2006, Lt Col Peter Ngari Kagume & others Vs Attorney General.
19. It is the 1<sup>st</sup> respondent's submission that courts of law such as the subordinate court are empowered to make decisions and cannot be said to have violated provisions of [the constitution](#) and that where the court is alleged to have made a decision contrary to the text and spirit of [the constitution](#), the remedy lies in appealing, reviewing, revision, or in appropriate instances, judicial review proceedings. It is the 1<sup>st</sup> respondent's submissions that the decision (of a court) cannot be said to be unconstitutional provided it is made with jurisdiction. Learned counsel for the 1<sup>st</sup> respondent relied on the case of National Media Group Limited Vs Kamlesh Mansuklal Damji Pattni & 2 others [2013] eKLR. It is the 1<sup>st</sup> respondent's submissions that it is trite law that a party dissatisfied with the substance or merit of an order of a subordinate court but is not alleging procedural impropriety, cannot seek declaration of unconstitutionality. That the only options are appeal, review or Judicial review. Counsel for the 1<sup>st</sup> respondent relied on the case of Mahanja Vs The Attorney General of Trinidad & Tobago [1979] 385, and submitted that the prayers sought cannot issue to the petitioner and urged the court dismiss the petition with costs.
20. Although the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents did not file any response to the petition, they filed submissions through the Hon. Attorney General wherein they submitted inter alia, that the petition herein has not met the threshold required of a constitutional petition within the principles emanating from Mumo Matemu Vs Trusted society of Human Rights Alliance & 5 others (supra). It is their submissions that the petitioner has failed to set out with a degree of precision the petitioner's complaint, provisions infringed, and the manner in which the 2<sup>nd</sup> to 4<sup>th</sup> respondents herein have allegedly infringed his constitutional rights within the principles set out in the case of Mumo Matemu (supra). That the petitioner has not provided adequate particulars of violations of [the constitution](#) and submitted that it is not adequate to merely cite [the constitution](#) without providing particulars of violations thereon.
21. The respondents further submitted that no constitutional issues are discernable in the entire petition to warrant its admission and adjudication before this court. The respondents relied on the case of Republic Vs Paul Kihara Kariuki, Attorney General and submitted that the issue in this petition is that of ownership of the suit property and cancellation of titles since titles that have already been issued in the area in question and therefore calls for the interpretation of the [Land Registration Act](#) and the [Land Act](#), and not [the constitution](#). That the right to property can only be conferred upon the issue of ownership being conclusively determined.



22. Counsel for the respondents further submitted that where there is an alternative remedy in lieu of constitutional remedies, the constitutional mandate of this court should not be invoked as Lenaola J (as he then was) held in Patrick Mbau Karanja Vs Kenyatta University [2012] eKLR. The respondent's counsel relied on the case of Godfrey Paul Okutoyi & others Vs Habil Olaka & Another [2018] eKLR.
23. The respondents argued that the petitioner herein was a party to the suit filed at Maua Law Courts and when judgment was delivered, he had all the rights to file an appeal before the Environment and Land Court if he was not satisfied with the said decision of which he did not, and therefore he cannot now file an appeal disguised as a petition after realizing he is time barred from filing an appeal.
24. It is the respondents' submission that the petition herein does not call for this court's constitutional interpretative mandate under the bill of rights provisions in *the Constitution* of Kenya, 2010 though disguised as a Constitutional petition seeking enforcement of the bill of rights. Based on the foregoing, the respondents submitted that the petitioner has not proved denial, violation or infringement of his rights as stated in the bill of rights to the required threshold warranting the orders sought. It is the respondents' submission that the grounds posited by the petitioner in his petition are geared towards challenging the merits of Honourable A.G Munene in his decision and finding in Maua CMCC (ELC) No. 159 of 2009 which is not in the purview of a constitutional petition. The respondents submitted that this is akin to the petitioner herein inviting this court to determine contested issues of facts without hearing the evidence. It is the respondents' submissions that the petition herein is an abuse of court and should be dismissed with costs to the 2<sup>nd</sup> – 4<sup>th</sup> respondents.

#### **Determination**

25. Based on the parties' pleadings and respective submissions, I consider that the following issues, once determined, will dispose of the petition at hand.
  - (i) Whether the petition meets the threshold of a constitutional petition.
  - (ii) Whether the petitioner is entitled to the reliefs sought
  - (iii) Who bears the costs.
26. The subject of this petition is land parcel LR No. Amwathi/Maua/8926 which is registered in the petitioner's name and which the petitioner alleged was gathered in 1968 and demarcated in 1970. The petitioner further stated that he has exclusively occupied and developed the said land together with his family ever since and has clear delineations and boundaries and has never had any dispute either in court or elsewhere. The petitioner's case is that in early January, 2023, the 1<sup>st</sup> respondent, accompanied by officers from the office of the 2<sup>nd</sup> and 3<sup>rd</sup> respondents entered and trespassed on the said land with a view to evicting the petitioner therefrom and place the 1<sup>st</sup> respondent thereon by purporting to implement the judgment in Maua CMCC (ELC) No. 159 of 2009. The petitioner averred that he was informed that his land was moved from the location it was to another during an undisclosed period. That upon making inquiries at lands office at Maua, the petitioner was informed that the suit land was relocated in the records only from where it was gathered and demarcated to another unknown place. That when the petitioner requested the 2<sup>nd</sup> respondent in writing to rectify the anomaly, the 3<sup>rd</sup> respondent visited the suit land and made a report dated 23<sup>rd</sup> January, 2023 which inter alia, confirmed the aforesaid misplacement of the suit land on the Registry Index Map (R.I.M) and plotted elsewhere. It is the petitioner's contention that the respondents' aforesaid actions amount to violation or contravention of his fundamental rights and freedoms guaranteed under Article 27 (1) & (2), 40, 47, 48 and 50 of *the Constitution* of Kenya. The question therefore is whether there is a competent constitutional petition before the court. To do that, it is necessary for the court to consider whether the petition satisfies the



threshold of what constitutes a Constitutional Petition as per the principles established in the case of Anarita Karimi Njeru Vs Republic [1979] eKLR which principle was later restated by the Court of Appeal in the case of Mumo Matemo Vs Trusted Society of Human Rights Alliance & 5 others [2013] eKLR.

27. The principle established in the Anarita Karimi Njeru case (supra) was that a constitutional petition should set out with a degree of precision the petitioner's complaint, the provisions infringed and the manner in which they are alleged to be infringed. The Mumo Matemo case (supra) reaffirmed the principle in the Anarita Karimi Njeru case when it stated as follows-;

“ 44. We wish to reaffirm the principle holding on this question in Anarita Karimi Njeru (supra). In view of this, we find that the petition before the High Court did not meet the threshold established in that case. At the very least, the 1<sup>st</sup> respondent should have seen the need to amend the petition so as to provide sufficient particulars to which the respondents could reply. Viewed thus, the petitioner fell short of the very substantive test to which the High Court made reference to. In view of the substantive nature of the shortcomings, it was not enough for the superior court below to lament that the petition before it was not the epitome of precise, comprehensive or elegant drafting, without remedy by the 1<sup>st</sup> respondent”

28. In the case of Bernard Ouma Omondi & another Vs Attorney General & another [2021] eKLR it was stated-;

“ It is indisputable that a constitutional petition to be sustainable as such must be at a minimum satisfy a basic threshold. It must with some reasonable degree of precision identify the constitutional provisions that are alleged to have been violated or threatened to be violated and the manner of the violation and/or threatened violation. I do not suppose it is enough to merely cite constitutional provisions. There has to be some particulars of the alleged infringements to enable the respondents to be able to respond to and/or answer to the allegation or complaints.”

29. It has also been held that a constitutional question is one whose answers flow from either the interpretation of *the constitution*, relate to the enforcement of constitutional rights and freedoms, its roles, powers, directions and decisions of state organs as they exercise power and whose reliefs must flow from *the constitution* and not on a statute, and that not each and every violation of the law must be raised as a constitutional issue. Do the issues raised in this petition raise any constitutional issues?

30. I have keenly looked at the dispute in this case. The petitioner accuses the respondents of entering into and trespassing on his parcel of land with a view to forcibly evict him therefrom and place the 1<sup>st</sup> respondent in occupation pursuant to a decree emanating from the judgment in Maua CMCC (ELC) NO. 159 of 2009. It is the petitioner's contention that the said judgment does not affect his land. This court has perused the judgment in Maua CMCC (ELC) N0. 159 of 2009. I note that in that case, the 1<sup>st</sup> respondent herein was seeking for eviction and injunctive orders against the petitioner herein from land parcel Nos. Amwathi/Maua/Adjudication Section 1394 and 8327. The petitioner also lodged a counterclaim in that case against the respondents herein and one Isaiah Ntongondu Muremera in which he inter alia, accused the respondents of fraudulently recording parcel Nos 1394 and 8327 Amwathi/Maua/Adjudication Section in the name of the 1<sup>st</sup> respondent herein and sought an order of rectification of the register.



31. The court has also perused the report dated 23<sup>rd</sup> January, 2023 prepared by the 3<sup>rd</sup> respondent herein following the petitioner's request dated 9<sup>th</sup> January, 2023 to the 2<sup>nd</sup> respondent to rectify the anomaly in the records over parcel No. Amwathi/Maua/8926. The findings of the said report were as follows-;

“ A site visit was made and the following were the findings.

- i. The parcel has clear boundaries.
- ii. Currently there is a serious boundary dispute with the neighbors and a case in the court involving the proprietors of the abovementioned parcels of land and Parcel No.1418.
- iii. The parcel has been misplaced on the R.I.M whereas the parcel has been plotted elsewhere, the actual position is occupied by other numbers i.e 1418, 8327, 1319 and partially parcel No. 1439.
- iv. The surveyed area of the parcel is approximately 0.304 ha.
- v. The dispute and the court case should be settled first before any amendments is done.”

32. It is clear from a reading of the aforesaid report that there was a dispute and a court case not only over land parcel Numbers. 1418, 8327, 1319 and 1439 but also parcel No.8926. Indeed, the petitioner in his letter dated 9<sup>th</sup> January, 2023 acknowledges this when he stated-;

“I have been on the same piece of land since 1980. The following No. is my in my ground 8327” (sic). I am therefore not persuaded by the petitioner's contention that the judgment in Maua CMCC (ELC) No. 159 of 2009 does not affect the subject land parcel No. 8926. Otherwise, if it was not part of the parcel in dispute, then the petitioner had no business referring to parcel No. 8327 in his letter and which land was one of the suit properties in the said suit and a subject in the said judgment.

33. In my view, the dominant issue in the petition is the ownership of parcel No. 8926 vis a vis parcel No. 1418, 8327, 1319 and 1439. I further find that the issue is intrinsically connected to the position of the said parcels on the ground. The issues thus turn out to be who is the rightful person on the disputed ground amongst the proprietors of the above-mentioned parcels of land. In my considered view, the subject matter of this petition can be litigated in and adjudicated by a court of competent jurisdiction through an ordinary civil suit. And as rightly submitted by the respondents, the dispute at hand is clearly an issue of ownership of land and cancellation of title which calls for the interpretation of statutes such as the *Land Registration Act* and the *Land Act*, and not *the constitution*. The right to property can only be conferred upon the issue of ownership being conclusively determined upon a hearing, and such claim should be filed in the appropriate forum and in the manner allowed by the applicable law and procedure, and where contested issues of fact may be determined upon a hearing, not through a constitution petition as the petitioner herein seeks to do.

34. Having carefully considered the petition herein and the submissions, and for the reasons stated hereinabove I find that the petition has no merit. Consequently, the petition is dismissed with costs to the 1<sup>st</sup> respondent. I decline to award costs to the 2<sup>nd</sup> to 4<sup>th</sup> respondents since they did not file any response to the petition.

35. Orders accordingly.



**DATED SIGNED AND DELIVERED AT MERU THIS 11<sup>TH</sup> DAY OF OCTOBER, 2023**

In The Presence Of

Court Assistant- V. Kiragu/Lena M

Omari for 1<sup>st</sup> respondent

M/s Mugo holding brief for Ms Mbaikyatta for 2<sup>nd</sup> to 4<sup>th</sup> respondents.

**C.K YANO**

**JUDGE**

