



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Koros & 2 others v Attorney General & 3 others (Environment & Land  
Petition E001 of 2024) [2025] KEELC 72 (KLR) (23 January 2025) (Judgment)**

Neutral citation: [2025] KEELC 72 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT & LAND PETITION E001 OF 2024**

**EO OBAGA, J  
JANUARY 23, 2025**

**BETWEEN**

**DANIEL KOROS ..... 1<sup>ST</sup> PETITIONER  
WILLIAM KOROS ..... 2<sup>ND</sup> PETITIONER  
ALICE KOROS ..... 3<sup>RD</sup> PETITIONER**

**AND**

**ATTORNEY GENERAL ..... 1<sup>ST</sup> RESPONDENT  
KAPSERET LAND DISPUTES TRIBUNAL ..... 2<sup>ND</sup> RESPONDENT  
CHIEF MAGISTRATES COURT AT ELDORET ..... 3<sup>RD</sup> RESPONDENT  
PAUL KIPYEGO JIWIT ..... 4<sup>TH</sup> RESPONDENT**

**JUDGMENT**

**Introduction**

1. The Petitioners filed a Constitutional Petition against the Respondents in which they sought the following reliefs:
  - a. Declaration that the award and proceedings of the Land Dispute Tribunal at Kapseret, Eldoret in Land Arbitration Case No. 64/2001 and registered as Eldoret Chief Magistrate’s Court Award MCCC No. 99 of 2002 contravened the Petitioners rights to property, fair administrative action and fair hearing under Articles 40(1) & (3), 43(1) (b) 47 (1) and 50(1) of the *Constitution*.
  - b. Declaration on that the proceedings both before the Land Dispute Tribunal at Kapseret, Eldoret in Land Arbitration Case No. 64/2001 and the Eldoret Magistrate’s Court Award MCCC No. 99 of 2002 contravened rules of natural justice.



- c. Declaration that the proceedings both before the Land Dispute Tribunal at Kapseret Eldoret in Land Arbitration Case No. 64/2001 and the Eldoret Chief Magistrate's Court Award MCCC No. 99 of 2002 are null and void.
- d. Declaration that the rule of law doctrine prohibits taking away of a citizen's property or liberty without being given a chance to be heard.
- e. An order that the judgement entered by the Eldoret Chief Magistrate's Court Award MCCC No. 99 of 2002 be nullified and set aside.
- f. An order of Permanent injunction restraining the 4<sup>th</sup> Respondent either by themselves, agents, servants and/or anyone claiming under the 4<sup>th</sup> Respondent from entering, trespassing onto, cultivating, building structures thereon, interfering with and/or in any other manner dealing with the suit land, that is, Embaraa Farm LR/NO. 2225 and 5322/3
- g. A declaration that the impugned acts and omissions of the 1<sup>st</sup> to 4<sup>th</sup> Respondent's agents violated the Constitution of Kenya, 2010.
- h. A declaration that the Petitioners are entitled to the payment of damages and compensation for violations and contraventions of their fundamental rights and freedoms under the aforesaid provisions of the Constitution.
- i. General damages, special damages, exemplary damages on an aggregated scale under Article 23 (1) of the Constitution of Kenya for the unconstitutional conduct by Government servants and agents.
- j. Any further orders, writs, directions as this honourable court may deem fit.
- k. The Respondents to bear the costs of this Petition with interest at court rates.
- l. Such further orders as this Honourable Court may deem just and expedient.

## Background

2. There was a company called Embaraa Farm Limited which was the owner of LR. NO. 2235. This company was owned by four directors namely Kiptalam Rono, Elijah Koros, Micah Barsambu and Komen Yego. The company had 38 shareholders.
3. The company had taken a loan from Agricultural Finance Corporation (AFC) but it was unable to service the loan. AFC decided to sell the land. One of the directors of the company that is Elijah Koros approached Mr. Jiwit Ole Sale Sikorio and told him that AFC wanted to sell 1000 acres out of LR 2235 through the firm of Kamere & C. Advocates based in Nairobi.
4. Jiwit Ole Sale Sikorio then mobilised people who were interested in purchasing the 1000 acres which were going for Kshs.1,000,000. He was then accompanied to Nairobi by Elijah Koros where he made a down payment of Kshs.468,713.00 to Kamere & Co. Advocates. Mr. Kamere of Kamere & Co. Advocates told Jiwit Ole Sale Sikoria that he was going to issue him with a receipt once he completed paying the balance.
5. Mr. Jiwit Ole Sale Sikorio went to AFC seeking to pay the balance but he was informed that he could not be allowed to pay. He was referred to go and talk with Elijah Koros and Kiptalam Rono. Jiwit Ole Sale Sikorio had wanted to purchase the 1000 acres under the name of Talatany Farm Company Limited.



6. As the sale transaction was going on, there was a winding up cause No. 7 of 1977 seeking to wind up Embaraa Farm Limited. The company was wound up by a consent entered into on 24<sup>th</sup> April, 1989. Talatany firm Company Limited backed off the sale and called for its refund. The company was informed that a refund of Kssh.200,000 was made to Elijah Koros who was not a member of Talatany Farm Company Limited.
7. In 2001, Jiwit Ole Sale Sikorio filed Land Arbitration No. 64 of 2001 against Kiptalam Rono and Elijah Koros before the Land Dispute Tribunal, Kapsaret Division. On 26<sup>th</sup> November, 2002 the Tribunal held that the Estate of Elijah Koros should be held accountable for the monies contributed by Talatany Farm Company Limited. The Tribunal verdict was adopted as judgment of the court in Eldoret Chief Magistrate's court Award No. 99 of 2002. This is what prompted the Petitioners to file this petition alleging that their Constitutional rights had been violated.
8. The Petitioners are children of Elijah Koros and the administrators of his Estate. The 4<sup>th</sup> Respondent is sued as the administrator of the Estate of Jiwit Ole Sale Sikorio.

### **Petitioners' Contention**

9. The Petitioners contend that Talatany Farm Company Limited had negotiated a purchase of a portion of 1000 acres from Embaraa Farm Limited where Elijah Koros was one of the directors. A deposit of Kshs.428,115 was made. The 4<sup>th</sup> Respondent withdrew from the transaction alleging that the winding up proceedings were taking long to conclude. A refund was made and the last cheque was issued on 15<sup>th</sup> September, 1981.
10. The Petitioners have repeatedly filed disputes with the District Officer Moiben and all awards issued have been in favour of Petitioners, the last award having been made on 19<sup>th</sup> April, 1991. When proceedings in Arbitration case No. 64 of 2001 were filed, the Petitioners were not aware. The Petitioners only became aware of the proceedings on 8<sup>th</sup> February, 2005 when they were served with an application for eviction dated 29<sup>th</sup> December, 2004.
11. The Petitioners contend that the proceedings before Kapsaret Land Dispute Tribunal were filed against Elijah Koros who had already died on 12<sup>th</sup> October, 2001 and therefore were a nullity. They also argue that the adoption of the award by the Chief Magistrate's Court and a ruling delivered on 18<sup>th</sup> June, 2021 substituting Elijah Koros were nullities and further that the Tribunal acted without jurisdiction and that Constitutional Petitions are not bound by limitation of time.

### **Fourth Respondent's Contention**

12. The 4<sup>th</sup> Respondent opposed the Petitioners' petition through grounds of opposition dated 19<sup>th</sup> September, 2024 and a replying affidavit 26<sup>th</sup> September, 2024. The Respondent contends that the Petition does not meet the Constitutional threshold and is an abuse of the process of the court. He further states that the Petition is res judicata as the issues being raised were fully addressed in Eldoret Misc. Application No. E001 of 2022.
13. The Respondent further states that the Petition has been brought too late, the award and its adoption having been made in 2002 which is over two decades ago.

### **Petitioners' Submissions**

14. The Petitioners submitted that the proceedings against Elijah Koros were instituted after his death and that as such the same was a nullity. The Petitioners relied on the case of Vektar Maina Ngunjiri & 4



others -Vs- Attorney General & 6 others (2018) eKLR which quoted with approval the Indian case of Pratap Chand Mehta -Vs- Chrisna Devi Mehta AIR 1988 Delhi: 267 where it was stated as follows:

“...If a suit is filed against a dead person then it is a nullity and we cannot join any legal representative; you cannot even join any other party, because, it is just as if no suit had been filed. On the other hand, if a suit has been filed against a number of persons one of whom happens to be dead when the proceedings were instituted, then the proceedings are not null and void but the court has to strike out the name for the party who has been wrongly joined. If the case has been instituted against a dead person and that person happened to be the only person then the proceedings are nullity and even Order 1 Rule 10 or Order 6 Rule 17 cannot be availed of to bring about amendment”.

15. The Petitioners further submitted that their Constitutional rights under Article 47 and 48 as well as Article 50 the Constitution were violated as Elijah Koros was already died when the proceedings were instituted. They relied on the case of Pachito Holdings & another -Vs- Ndungu & 2 others KLR where the court of Appeal stated as follows:

“The rule of audi alteram partem is a rule of natural justice and an indispensable requirement of justice that the party who made the decision shall hear both sides, giving each an opportunity of hearing what is urged against him. The Applicant was not given such opportunity by the tribunal contrary to Section 3 (4) of the Act and therefore the decision was made in breach of the principles of natural justice”.

16. The Petitioners further submitted that the Tribunal had no jurisdiction to entertain the dispute by Jiwit. They relied on Section 3 (1) of the Land Disputes Tribunal Act No. 18 of 1990 (Now repealed).

3.(1) Subject to this Act, all cases of a civil nature involving a dispute as to—

- a. the division of, or the determination of boundaries to land, including land held in common;
- b. a claim to occupy or work land; or
- c. trespass to land,

17. Reliance was placed on the case Joseph Malakwen Lelei & another -Vs- Rift Valley Land Disputes Appeals Committee & 2 others (2014) eKLR where it was stated as follows:

“On the issue of jurisdiction, we note that the law on this issue is settled and we do not need to belabour it. Section 3 of the Land Disputes Tribunal Act (repealed) gives jurisdiction to the Land Disputes Tribunal to handle claims in the following matters only:....

Evidently the above provisions do not include jurisdiction to deal with issues of determination of title to or ownership of registered land.... Having found that the Tribunal and the Appeals Committee lacked jurisdiction to arbitrate on the matter before them, then all other grounds become moot. We say so because it is trite that where a court or tribunal takes upon itself to exercise a jurisdiction which it does not possess, its proceeding, decision, or award that results from such a process must be construed as a nullity.....”



#### Fourth Respondent's Submissions

18. The Respondent submitted that this is a purely contractual matter disguised as a Constitutional Petition. The Respondent submitted that the Tribunal rendered its decision which was not appealed against as provided under the Land Disputes Tribunal Act.
19. The Respondent further submitted that Land Dispute Tribunal Act did not contemplate filing of Constitutional Petitions or declaratory suits as was observed by Justice Ombwayo in Republic -Vs- Marakwet Land Disputes Tribunal & 6 others Ex-parte Shaban Clan & 3 others (2016) eKLR and Eldoret ELC Petition No. 3 of 2016 Lilian Barngetuny -Vs- Nandi Land Registrar & others (2016) eKLR.
20. The Respondent further relied on the case of Florence Nyaboke Machani -Vs- Mogere Amosi Ombui & 2 others, Civil Appeal No. 184 of 2011 (2011) eKLR where the Court of Appeal held that a party who did not challenge the decision of the Land Disputes Tribunal in the manner required under the Act and did not take out Judicial Review proceedings, was not entitled to file a declaratory suit.

#### Analysis and Determination

21. I have carefully considered the Petitioners' petition as well as the opposition to the same by the 4<sup>th</sup> Respondent. I have also considered the submissions by the parties. The issues which emerge for determination are firstly whether the Petition herein is statute barred. Secondly, whether the proceedings by the Tribunal and the subsequent adoption of the award was a nullity. Thirdly whether the Tribunal acted outside its jurisdiction. Fourthly, whether this Petition meets the threshold of a Constitutional Petition. Lastly, which order should be made on costs.
22. On the first issue, it is important to note that both the verdict of the Tribunal and the subsequent adoption were made in 2002. This Petition was filed in 2024. This is a period of 22 years. There was no explanation given for this inordinate delay. In the case of Janmohammed (SC) (suing as the Executrix of the Estate of the Late H. E. Daniel Toroitich Arap Moi & another -Vs- District Land Registrar Uasin Gishu & 4 others (2024) KESC 39 KLR, the Supreme Court of Kenya held that a Constitutional Petition does not automatically oust the Limitation of Actions Act where there is inordinate delay. The Supreme Court went on to state that the factors to be taken into account include the nature of the right, the time taken to ventilate the alleged violation and whether the Claimant may be riding on a mischief.
23. In the instant case it is clear that refund of some Kshs.200,000 or so was made to Elijah Koros who was not a member of Talatany Farm Company Limited. The Tribunal tried to get Joseph Kamere of Kamere & Co. Advocates to explain how refund was made and to whom but he did not want to come. In their verdict the Tribunal had to ask the court to compel the said advocate to explain. There was even a Notice to Show Cause which was issued against him but unfortunately he had passed on.
24. There is evidence from the Tribunal that Jiwit Ole Sale Sikorio was illiterate. Both Elijah Koros and Joseph Kamere were taking advantage of him. This is why he was not issued with a receipt of the deposit made and there is no clear evidence of how refund was made. The Petitioners have not come out clear on this in the Petition. It is therefore clear that they are riding on a mischief. The delay is inordinate and the Petition is statute barred. This is enough to dispose of the Petition but I will nevertheless proceed to address the other issues.
25. On the second issue, the Petitioners allege that the Tribunal proceedings were commenced a year after Elijah Koros had died and that the subsequent adoption was a nullity. I have looked at the Award by the Tribunal. It was filed in 2001. I did not have the benefit of looking at the date when the Arbitration



dispute was filed. It was upon the Petitioners to demonstrate that the dispute was filed after 12<sup>th</sup> October, 2001 when Elijah Koros died. They did not do this. In stead, they alleged that it was filed a year after Elijah Koros had died. Even if for argument's sake this court was to assume that the dispute was filed after 12<sup>th</sup> October, 2001, there were two parties sued. As per the decision in Viktar Maina Ngunjiri & 4 others (Supra), proceedings against more than one person where one of them had died before the same were filed, they do not become a nullity. What the court ought to do if that fact is brought to its attention is to strike out the name of the deceased.

26. The ruling of the Chief Magistrate rendered on 18<sup>th</sup> June, 2021 was not a nullity. The Applicant was seeking to substitute for execution purposes. There was nothing wrong in that and the law is clear that where a party dies after a verdict, execution can even proceed without bringing on board his/her administrators. I therefore find that proceedings before the Tribunal and the subsequent adoption were not a nullity.
27. On the third issue, it is clear that the Tribunal did not deal with ownership of the 1000 acres. The only issue they dealt with was on who had the money which Talatany Farm Company Limited paid for the aborted sale. If the 4<sup>th</sup> Respondent is laying claim to any land, then that is not a matter to be addressed in this Petition. That should have been addressed in an ordinary Civil Suit. I therefore do not find any basis upon which I can find that the Tribunal acted beyond its mandate.
28. On the fourth issue, I must say at the outset that this Petition does not meet the threshold of a Constitutional Petition as has been held time and again in the case of Anarita Karimi Njeru -Vs- Republic.

### **Disposition**

29. From the above analysis, it is clear that this Petition is not only statute barred but is also devoid of any merit. I proceed to dismiss it with costs to the 4<sup>th</sup> Respondent.

.....

**HON. E. O. OBAGA**

**JUDGE**

**JUDGEMENT READ, SIGNED AND DELIVERED VIA MICROSOFTTEAMS AT MAKUENI  
THIS 23<sup>RD</sup> DAY OF JANUARY, 2025.**

**IN THE PRESENCE OF:**

Ms. Mwangi for Petitioners

Dr. Chebii for 4<sup>th</sup> Respondent

Court assistant - Steve Musyoki

