



**Nang’ida v Cabinet Secretary Ministry of Lands, Public Works, Housing
and Urban Development & 4 others (Environment & Land Petition
E002 of 2024) [2025] KEELC 3926 (KLR) (22 May 2025) (Judgment)**

Neutral citation: [2025] KEELC 3926 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
ENVIRONMENT & LAND PETITION E002 OF 2024**

MN MWANYALE, J

MAY 22, 2025

BETWEEN

LATASONA MOSORI NANG’IDA PETITIONER

AND

**CABINET SECRETARY MINISTRY OF LANDS, PUBLIC WORKS, HOUSING
AND URBAN DEVELOPMENT 1ST RESPONDENT**

LANDS REGISTRAR TRANSMARA 2ND RESPONDENT

**LANDS ADJUDICATION AND SETTLEMENT OFFICER TRANSMARA WEST,
EAST AND SOUTH SUB-COUNTY 3RD RESPONDENT**

ATTORNEY GENERAL 4TH RESPONDENT

IGNATIUS CHEGE MWANGI 5TH RESPONDENT

JUDGMENT

1. Vide his Petition dated 14th March 2024 the Petitioner Latasona Mosori Nang’ida sought for the following orders: -
 - i. A declaration that the excision of parcels No. 1XX3 from the Petitioners parcel No. 1XX1 within Kimintet D Adjudication Section was fraudulent, illegal, null and void ab initio.
 - ii. A declaration that 3rd Respondent entry in the Demarcation Block and excision of parcel No. 1XX3 from parcel No. 1XX1 is Oppressive unlawful null and void.
 - iii. A declaration that the Petitioner is entitled to be registered exclusively as the legitimate and beneficial owner of his ancestral land of parcel No. 1XX1 within Kimintet ‘D’ Adjudication section.



- iv. An order or judicial review by way of an order of mandamus to compel the 2nd Respondent to recall title No. Transmara/Kimintet 'D'/1XX3 and thereby revoke or cancel the same and reissue the Petitioner with a title deed by merging the acreages in Transmara/Kimintet 'D'/1XX3 or 1XX1.
 - v. An order of certiorari be issued to remove to this court and quashing the decision of the 3rd Respondent that caused the mutation of parcels No. 1XX1 that created parcel No. 1XX3.
 - vi. A declaration that the 3rd Respondent has no power in law to cause the subdivision of parcel No. 1XX1 that had not been subjected to any objection as stipulated under Section 26 of the [Land Adjudication Act](#).
 - vii. Costs of the Petition.
 - viii. Any other reliefs that the Honourable court may deem fit and expedient to grant.
2. The Petition was supported by a supporting affidavit of the Petitioner.
 3. An application seeking conservatory orders was filed on 14th March, 2024.
 4. The 1st to 4th Respondents did not file a Response in opposition to the application for conservatory orders.
 5. The 5th Respondent filed a Notice of preliminary objection dated 02.04.2024 as well as Replying affidavit to the application and the Petition.
 6. On 11th April 2024, the Notice of Preliminary Objection dated 02.04.2024, filed by the 5th Respondent in response to the application was recorded as withdrawn and the Respondents were given 14 days to file substantive responses to the petition.
 7. The 5th Respondent filed a Response to the Petition dated 24th April 2024 together with a Replying affidavit of even date and a new Notice of Preliminary objection, in response to the petition.
 8. Directions were issued for the Petition to be canvassed by way of written submissions, the Petitioner filed submissions dated 15th July 2024 in respect of the Petition as well as the Preliminary Objection while the 5th Respondent file submissions dated 23rd July 2024.
 9. A series of mention were held on 25.07.2024, where service upon the 1st to 4th Respondents afresh was ordered.
 10. On 22.10.2024, the Petitioners sought time to file and serve submissions and a further mention date was slated. On the said dated the state law office through Mr. Nderitu sought to file submissions and another mention date for 17.12.2024 was given.
 11. On 17.12.2024, once again the court granted the 1st to 4th Respondents time to file submissions, and on 23.01.2024, the 1st to 4th Respondents counsel Mr. Nderitu confirmed that his clients would not be filing submissions.
 12. Judgment was initially reserved for 27.03.2025 but the same was not ready and deferred to 22nd May 2025.

The Petition.

13. The Petition is premised on Articles 10, 19, 20, 21(1), 23, 27(1), 40(1), 40(3), 40(4), 47, Article 50, 60, 64 Article 232(1) 232(2) of [the Constitution](#) of Kenya as well as Section 9(1), 10, 12(1) Section 13,



- 14, 17, 24, 26, 26A, 27, 28, 29 of the [Land Adjudication Act](#) and Section 4 of the Fair Administration Action Act.
14. It is the Petitioner's case that he is a Bonafide member of Kimintet 'D' Adjudication Section which section was established by a Notice of Establishment pursuant to the [Land Adjudication Act](#) and he was allocated parcel No. 1XX1 (herein known as the suit property)
 15. That the Petitioner's parcel No. 1XX1 was never subjected to any objections as envisaged under the [Land Adjudication Act](#), so as to justify a subdivision on the same.
 16. That long after completion of the adjudication process the Petitioner learnt that the 3rd Respondent had without any notice to him caused subdivision on parcel No. 1XX1 and created parcel No. 1XX3 and issued the title deed of the subdivision to the 5th Respondent.
 17. The excision of parcel No 1XX3 from parcel No. 1XX1 was thus irregular since the 5th Respondent was never a member nor a beneficiary of the adjudication section masterminded the excision in cohort with the 3rd Respondent without notification to the Petitioner.
 18. The excising of the Petitioners property infringed his rights, possession and occupation because of the flawed adjudication process which led to the dispossession of the petition contrary to Article 40 of [the Constitution](#) and the Petitioners legitimate expectation was thus breached in that: -
 - a. The Petitioner had a legitimate expectation that the Land Adjudication process conducted by the 3rd Respondent would be fair and reasonable.
 - b. The Petitioner had a legitimate expectation that he would be issued with a title deed for his entire parcel No. 1XX1 without any subdivision and that the 2nd and 3rd Respondents would issue title deeds only to the true residents of Kimintet 'D' Adjudication Section based on the members register and Area List and actual occupation and that no title deeds would be issued to non-members or absentee landlords.
 - c. The Petitioner has a legitimate expectation that the adjudication process would be fair and that the 3rd Respondent would act in the best interest of the Petitioner and not subjecting the parcel to mutation without following the due process of the law.
 19. That as a result of the foregoing the Petitioners right protected under Article 27 has been infringed in that he has been deprived secure protection of the law following a fraudulent land adjudication process which had the effect of dispossessing him of his ancestral land in favour of non-member of the adjudication section.
 20. That the actions of the 2nd and 3rd Respondents in subdividing parcel No. Transmara/Kimintet/1XX1 violated Section 4 of [Fair Administrative Action Act](#) and occasioned miscarriage of justice and oppression to the Petitioner; and their decision was tainted with illegality, irrationality procedural impropriety and ought to be declared null and void and quashed.
 21. In support of the Petition, is a supporting affidavit sworn by the Petitioner who reiterates the grounds in support of the petition and has annexed two annexures which are Adjudication Record of Transmara/Kimintet 'D'/1XX1, in his name and Annexure 2 a copy of the demarcation book and/or showing parcels numbers number 1299 to 1XX3.

1st to 4th Respondent's Response.

22. The 1st to 4th Respondent filed a Response dated 18th September 2024 under th hand of D.O Wabwire Esqure a Principal litigation counsel based at the Attorney General's office Kisii.



23. It is the 1st to 4th Respondents joint response that: -

- i. The petition is unfounded without any iota of merit, offends settled legal principles and fails the test of a constitutional petition as was announced and adumbrated in the Annarita Karimi Njeru Vs. Republic (1976 – 1980) KLR 1272 and restated in Mumo Matemu versus Trusted Society of Human Rights Alliance and 5 Others, as the affidavit in support of the petition is full of falsehoods misrepresentations of facts and law and is half baked hearsay and general assumptions.
- ii. The claim is purely a claim for recovery of land and it ought to be ventilated by way of civil action under the normal jurisdiction of civil claim of the issue is meant to circumvent the limitation period.
- iii. Petition offends the doctrines of exhaustion and constitutional Avoidance as read together with Article 159 of Constitution of Kenya 2010.
- iv. The Respondent denied the subdivision of parcel No. 1XX1 so as to create parcel No. Transmara/Kimintet ‘D’/1XX3 as alleged; and that parcel 1XX3 is not a subdivision from parcel No. Transmara/Kimintet ‘D’/1XX1.
- v. That parcel No. Transmara/Kimintet ‘D’/1XX1 was intact and had no interfered with as alleged thus no evidence had been provided to suggest that the Petitioners right under Article 27 were denied violated or infringed or there is a threat as alleged.
- vi. Issues raised in the Petition are also issues raised before the Senior Principal Magistrates Court Case No. E033/2023. Thus, there is no constitutional issues about the subject matter and court lacks jurisdiction to ear the same.
- vii. No rights have crystalized upon the Petitioner to enable the court entertain the petition, the petitioner has failed to demonstrate that the Respondents have discharged their constitutional and/or statutory mandate in breach of law as stated in the Kenya National Examination Council case hence the orders cannot be granted as in any event the Petition is frivolous and an abuse of the court process.

24. On the strength of the above the 1st to 4th Respondents invited the court to dismiss the Petition with costs.

5th Respondents Case.

25. The 5th Respondent filed an answer and Response to the Petition dated 24th April 2024 together with a Notice of Preliminary Objection of even date.

26. It is the 5th Respondents response that: -

- i. There is nothing for the court to uphold as the Petitioner’s right to own property has not been violated.
- ii. That Transmara/Kimintet ‘D’/1XX3 is a product of first registration and the title is protected under Section 143(1) of *Land Registration Act*.
- iii. That the Adjudication exercise was conducted regularly and in accordance with the laid down procedures, and that the petition is wholly meant to circumvent the pending suit before the Senior Principal Magistrates Court at Kilgoris.



27. It is the 5th Respondents further Response that the Petition offends the well-established principles of drafting constitutional petitions as stated in the Anarita Karimi Njeru decision in that: -
 - a. The Petitioner does not provide the particulars of the alleged complaints.
 - b. The petitioner does indicate (S.C) the manner in which the 5th Respondent has purportedly infringed his rights.
 - c. Petition is subjudice as there is an ongoing suit before the Kilgoris Senior Principal Magistrates Court ELC No. E033/2023.
28. On the strength of the above the 5th Respondents sought dismissal of the petition.
29. In the Notice of Preliminary Objection filed alongside the Reply to the petition the 5th Respondent raises the following.
 - i. The petition violates the doctrine of subjudice and Res-judicata.
 - ii. The violating of fundamental human rights as pleaded in the petition by the Petitioner is a preserve of the High Court jurisdiction under Article 165 of *the Constitution*.
 - iii. That the petition lacks merit and ought to be dismissed.
30. The court directed that the petition would be disposed by way of written submissions, the petitioner and the 5th Respondents filed their submissions, the 1st to 4th Respondents opting to rely solely on their Response.

Petitioner's Submissions.

31. The Petitioner file submissions in support of the petition and in response to the 5th Respondents Preliminary Objection dated 24.02.2024.
32. The Petitioner framed and submitted on three issues for determination, to wit,
33. On issue number 1, Whether the Petitioner is entitled to prayers sought?

On this issue the Petitioner submits that he stated with clear precision the provisions of *the Constitution* violated and the manner of the alleged violation as established in the case of Annarita Karimi Njeru Vs. A.G (1979) KLR 154 as affirmed in the Mumo Matemu Vs. Trusted Society of Human Rights Alliance and Others Nairobi Civil Appeal No. 290 of 2012.
34. The Petitioner submits that the court has jurisdiction to determine whether there is a violation of any rights under the Bill of Rights under Article 162(2) of *the Constitution* and submits that the Preliminary Objection is non founded. In support of this limb of submission the Petitioner places reliance in the south Africa decision in the case of Minister of Health and Others versus Treatment Action campaign and Others 2002) 5 LRC and the decision in Council of Governors and 6 Others Vs. Senate 2015(eKLR)
35. On the constitutionality of the petition, the petitioner submits that his rights under Article 47, Article 23(1) (f) as well as under Article 40 have been violated hence the redress could only be by way of this constitutional petition, and that the failure of the 3rd Respondent to give audience to the Petitioner before excising his parcel so as to create parcel No. Transmara/Kimintet 'D'/1XX3 infringed his constitutional rights.



36. It is the Petitioner's submission that his right not to be deprived of his property arbitrary as enshrined in Article 40(2) of *the Constitution* was equally infringed.
37. The Petitioner cites section 26 of the *Land Registration Act* to support the indefisibility of his title and submits that his case is merited.
38. On issue No. 2, whether the Preliminary objection raises a pure point of law, the Petitioner submits that the Preliminary Objection does not raise pure points of law, as it involves ascertaining of facts hence the Preliminary Objection to be dismissed.
39. On costs, the Petitioner submits that costs follow the event but places reliance on the decision in the *Jasbir Singh Rai and 3 Others Vs. Tartochan Sing Rai and 4 Others (2014) eKLR*.
40. The 1st to 4th Respondents did not file submissions, but relied on their Response as filed.

5th Respondent Submissions.

41. The 5th Respondent has framed and submitted on 4 issues for determination as follows: -
 - i. Whether the subordinate courts have jurisdiction to entertain and decide the issues raised in the petition, and whether this Honourable Court ought to transfer the Lower Court Suit.
 - ii. Whether the suit filed herein is subjudice.
 - iii. Whether the Preliminary Objection has merit and should be upheld whether the suit before court amounts to an abuse of court process?
42. On issue number 1, the 5th Respondent submits that the issues raised in the Petition involve the acquisition and ownership of the suit property are subject of a pending matter before the Chief Magistrate's Court in CMEL No. E033/2023 thus rendering this matter subjudice in terms of Section 6 of the *Civil Procedure Act* and hence outsing the jurisdiction of the court.
43. On issue number 2, the 5th Respondent submits placing reliance on Section 6 of the *Civil Procedure Act*, that the issues raised in this Petition are directly in issue before the Chief Magistrate Court and cites the decision in the case of *Kenya National Commission on Human Rights Vs. A.G, IEBC* as well as the decision in the case of *David Ndiu and Others versus Attorney General and Others*.
44. It is the 5th Respondent's submission that the suit pending before the Chief Magistrates Court raises similar issues raised in this Petition, and relates to the same parties, litigating under the same title; in a court having competent jurisdiction, rendering this petition as subjudice. That the suit pending before the Chief Magistrate was filed first in time and hence renders this petition subjudice.
45. On issue number 3, the 5th Respondent submits that the Preliminary Objection raised in the petition is merited as it raises pure point of law and has the potential of disposing the suit and falls squarely on the fours of a Preliminary Objection as was defined in *Mukhisa Biscuit Manufacturing Co. Ltd Vs. West End Distributors Ltd 1969 E.A 696*.
46. On issue number 4, The 5th Respondent placing reliance on the decision in the case of *Muchanga Investments Limited Vs. Safaris Unlimited* submits that the petition is an abuse of the court process.
47. Before framing issues for determination, the court notes the following undisputed facts with regard to the petition.
 - i. That the petitioner is yet to be issued with a title over Transmara/Kimintet 'D'/1XX1 although the adjudication process was finalized, and there is no pending appeal before the Minister.



- ii. That the 5th Respondent was issued with a title over Transmara/Kimintet ‘D’/1XX3.
- iii. That the adjudication process of Kimintet ‘D’ Adjudication section was finalized.
- iv. There is a pending civil suit before the Chief Magistrate Court at Kilgoris to wit ELC No. E033/2023 in which the 5th Respondent is the plaintiff and the Petitioner is the Defendant.

Issues for Determination.

48. Having analyzed the petition, the supporting affidavit, the respective answers to the petition and submissions filed the court frames the following as issues for determination.
- i. Whether or not the court has jurisdiction to hear and determine the petition in view of
 - a. Issue of subjudice and Resjudicata as raised by the 5th Respondent.
 - b. In view of issue that redress for violation of Human Rights is reserved exclusively to the High Court as raised by 5th Respondent.
 - c. In view of the principle of constitutional avoidance as pleaded by the 1st to 4th Respondent.
 - d. In view of the issue that the petition offends the principles of constitutional pleadings as stated in Annarita Karimi Njeru as pleaded by 1st to 4th Respondents, as well as the 5th Respondent.
 - ii. Whether or not the petition is merited and under this issue the court shall determine the sub-issue whether or not Transmara/Kimintet ‘D’/1XX3 is a first registration as pleaded by the 5th Respondent or whether the same is a subdivision of Transmara/Kimintet ‘D’/1XX1 as pleaded by the Petitioners.
A second sub-issue is whether the Petitioners fundamental rights have been violated.
 - iii. What orders ought to issue?
 - iv. Who bears the cost of the Petition?

Analysis and Determination.

49. In framing the issues as it has the court is well aware that it has to determine its jurisdiction before it can proceed with the other issues; for as was stated in the case of owners of motor vessel ‘Lilian S’ Vs. Caltex
- “Jurisdiction is everything. Without it, a court has no power to make a step. Where a court has no jurisdiction there would be no basis for a continuation of proceedings, pending other evidence and a court of law downs its tools in respect of the matter before it, the moment it holds the opinion that it is without jurisdiction.”
50. On sub-issue 1, whether the court has jurisdiction in light of the plea of Resjudicata and subjudice as raised in the Preliminary Objection as well as the Response by the 5th Respondent.
51. On Resjudicata, the 5th Respondent submits that the issues raised in the petition were handled by the Land Registrar and hence are Resjudicata; The petitioner’s submission did not address the issue.
- Resjudicata is provided for under Section 7 of the [Civil Procedure Act](#) and the conditions to be met, for a successful plea of Resjudicata were Restated by the Supreme Court in its decision in the case



of John Maritime Florence Services Limited and Another Vs. Cabinet Secretary and Transport and Infrastructure 2021 (KESC) 39 where the court held inter alia

“For the doctrine to apply the following must be demonstrated

- a. There is a former judgment or order which is final.
- b. The judgment or order was rendered by a court having jurisdiction over the subject matter and the parties.
- c. There must be between the first and second suits, identical parties, subject matter and cause of action”.

52. The 5th Respondent did not adduce evidence by way of an annexure to show that there was a previous final judgment of a court of competent jurisdiction over the same subject matter involving same parties litigating under the same title, but only stated that the issues were handled by the Land Registrar.

It follows that the challenge on the court’s jurisdiction based on Resjudicata is a non-starter no founded and the same fails.

53. On the issue of whether the petition is subjudice in view of the existence of a matter pending before the Chief Magistrates Court at Kilgoris, whereas the parties are the same, and the ownership of Transmara/ Kimintet ‘D’/1XX3 is subject of litigation before the Chief Magistrates Court, the Chief Magistrates court has no jurisdiction to entertain constitutional matters and issue orders of judicial review hence the parties herein are litigating on a different title and does not render this petition subjudice under Section 6 of the *Civil Procedure Act*.

54. The challenge on the court’s jurisdiction as raised in sub-issue number 1, thereof fails.

55. The court shall now examine the challenge on its jurisdiction as raised in sub-issue (ii) to wit that only the High Court has exclusive jurisdiction to hear matters involving violations and threats of violations of Human Rights.

56. The issue of the High Court having exclusive jurisdiction in matters of violation of Human rights was considered and settled in the following decisions; -

- i. United States International University Vs. Attorney General Nairobi Petition 170/2012 eKLR.
- ii. Court of Appeal in Chimueli Jangaa Mangale and 3 Others Vs. Hamis Mohammed Mwawasaa.
- iii. Nicholus Vs. Attorney General and 7 Others.

57. In the said cases the courts emphasized the Limitations of the jurisdiction of the High Court concerning matters falling within the purview of the specialized courts.

58. It follows therefrom that the ELC being a court of Equal status with the High Court has jurisdiction to hear and determine matters of violation of rights in a Constitutional Petition in matters preserved for it under Article 162(2) and Section 13 of the *Environment and Land Court Act*.

59. The allegations of infringements, threat and violations of rights herein relate to issue of proprietary rights to land and are well within the jurisdiction of the ELC.

60. This challenge on the jurisdiction of the court is equally not founded and it fails.

61. The next challenge on the jurisdiction of the court on (sub-issue (3)) is that their Petition offends the principles of Constitutional avoidance. In this Limb of challenge to the jurisdiction the 1st to 4th



- Respondents raise the issue that the issues raised, in the Petition could have been dealt with in an ordinary civil case. The same submission is adopted by the 5th Respondent.
62. The Petitioner submits that the petition herein raises constitutional issues which could not be raised in an ordinary suit.
 63. The petitioner herein has sought for Judicial Review reliefs.
 64. I am in Agreement with the Petitioner that the issues raised in the petition are constitutional issues as they include the issues of legitimate expectation and Judicial Review.
 65. In arriving at the said finding the court is guided by the decision in the case Republic Vs. Speaker of Senate and Another Ex-parte African Export and Import Limited where the court held inter alia, “Courts decision should boldly recognize *the constitution* as the basis for Judicial Review. Judicial Review is now a constitutional supervision of public authorities involving a challenge to the legal validity of a decision.”
 66. Having found that the petition raises constitutional issues as it is founded on Judicial Review and legitimate expectation, the challenge on the court’s jurisdiction under sub-issue 3 is equally not founded and the same fails.
 67. The last challenge on jurisdiction raises from the issue that the petition as drawn fails short of Constitutional pleadings set out in the Annarita Karimi Njeru decision which decision was upheld in the Mumo Matemu Vs. Trusted Society of Human Rights (2013 (eKLR)) decision and which required parties to frame their case or complaint with precision.
 68. A look at the petition at paragraphs 7 to 21, sets out the Constitutional provisions that have been alleged to be infringed while paragraphs 22 – 36 sets out the statutory provisions infringed by the Respondents. Paragraph 47 sets out the infringements of the right to own property contrary to Article 40, while paragraph 48 sets out the legitimate expectation breached by the Respondent.
 69. From the foregoing, the court finds that the petition substantially has complied with the principles in Annarita Karimi Njeru especially as paragraph 52 of the petition details the breaches and the Respondents in their respective answers to the petition were able to identify the breaches complained of.
 70. Equally this challenge on the jurisdiction fails flat.
 71. Having found that the challenges to the court’s jurisdiction in the 4 sub-issues as non-starter and that the court has jurisdiction the court shall now proceed to hear and determine the merits of the petition, hence now considers the issue.
 72. On as to whether the petition is merited and under this issue the court shall endeavor to answer whether the Transmara/Kimintet ‘D’/1XX3 was a first registration or was a subdivision of Transmara/Kimintet ‘D’/1XX1. Secondly whether the Petitioner’s rights have been infringed as pleaded in the petition!
 73. It is the Petitioner’s case that Transmara/Kimintet ‘D’/1XX3 was subdivided from his parcel No. Transmara/Kimintet ‘D’/1XX1 and that the 5th Respondent was not a member of the Kimintet ‘D’ Adjudication Section.
 74. The Petitioner sought for a cancellation of the mutation that gave rise to the subdivision. This mutation form however was not exhibited, and neither was a survey report availed before court to show that the acreages in Transmara/Kimintet ‘D’/1XX1 were reduced due to the, alleged subdivision.



75. The Petitioner produced a demarcation book and/or map showing that “Kimintet 1XX3 was off Kimintet 1XX1”. The Petitioner did not exhibit an Areal List showing the members of Kimintet ‘D’ Adjudication Section so as to confirm whether or not the 5th Respondent was a member of the Adjudication Section. The allegations in the petition on the subdivision as well as non-membership of the 5th Respondent were not supported by an evidence, the Petitioner thus failed to discharge that burden under Section 107 – 109 of the [evidence Act](#).
76. The Petitioner exhibited the demarcation map in which the name of the 5th Respondent is captured.
77. The demarcation map and the adjudication record together form the adjudication register, under Section 24 of the [Land Adjudication Act](#).
78. Once the Adjudication Register is finalized and there is no appeal, the Director of Land Adjudication forwards the Adjudication Register to the Chief Land Registrar under Section 27(3)(1) of the [Land Adjudication Act](#), who shall cause registration.
79. It follows thus, since the 5th Respondent name appears in the demarcation book and/or map, his name is deemed to appear in the adjudication register
80. Thus, the existence of Transmara/Kimintet ‘D’/1XX3 was a first registration, the name having been captured in the demarcation map and/or book and not a subdivision of Transmara/Kimintet ‘D’/1XX1 as claimed by the Petitioner, who has failed to prove the subdivision by way of a mutation and/or Areal list and/or green card, the court answers sub-issue 1 of issue 2, that the Transmara/Kimintet ‘D’/1XX3 was created pursuant to a first registration.
81. On sub-issue 2, of issue No. 2, as to whether the Petitioner rights as pleaded in the petition were violated. The Rights pleaded to have been infringed are the rights under Article 40, 27, and Section 4 of the Fair Administrative Action.
82. The court finds that having failed to prove that his property was subdivided so as to create the suit property, the Petitioner did not prove infringements of his rights to own property under Article 40 of [the Constitution](#), nor was he deprived of his rights under Article 27 and Section 4 of the Fair Administrative Action.
83. Further in view of the fact that the Petitioner is yet to be registered as the owner of Kimintet Transmara/Kimintet ‘D’/1XX1 the proprietary rights and interests have not accrued to him, as the Adjudication Register, just like an allotment letter cannot confer interests and right until the rights are registered and a title deed issued.
84. In arriving at the said finding, I am guided by parity of reasoning in the recent Court of Appeal decision in Ketan Narichannda Doshi Vs. Hon. Justice Charles D. Chemult and 7 Others, decision rendered on 9th May 2025 which decision quoted the Supreme Court decision in Torinon Enterprises Limited Vs. A.G where the court held
- “ An allotment letter was incapable of conferring interest in land, being nothing more than an offer, awaiting fulfilment of conditions stipulated.....it takes the act of registration that conferred a transferable title to registered proprietor.”
85. Consequently, the Petitioners having no title over the suit property his rights to ownership were not infringed as pleaded by him.
86. The court notes however that the Adjudication Register having been finalized, and the 5th Respondent having been issued with a title over Transmara/Kimintet ‘D’/1XX3 based on the said Adjudication



Register, the Petitioner had a legitimate expectation to be registered as the proprietor of Transmara/ Kimintet 'D'/1XX1, and issued with a title deed.

And that expectation was breached.

87. On issue No. 3 on what reliefs ought to issue.
88. The court declines to make findings on the violation or infringements of the Petitioners rights as pleaded in the petition but the petition partly succeeds on the issue of legitimate expectation and the appropriate relief commending itself to the court is thus:
- i. The Land Registrar Transmara West, East and South Sub-counties to liaise with the Chief Land Registrar, and the Director of Lands Adjudication and Settlement so as to proceed and Register the Petitioner as owner of Transmara/Kimintet 'D'/1XX1 in accordance with the adjudication register of Kimintet D Adjudication Section.
 - ii. The above order to be implemented within 6 months from the date hereof.
 - iii. The other prayers in the Petition are hereby disallowed.
 - iv. Having partially succeeded the Petitioner is awarded costs as against the 1st to 4th Respondents.

DATED AND DELIVERED AT KILGORIS THIS 22ND DAY OF MAY 2025.

HON. M.N. MWANYALE

JUDGE

