



**M'nkanata v The Adjudication Officer , Ruiru/ Rwarera Adjudication Section
& 2 others; Mutuma & 4 others (Interested Parties) (Environment & Land
Petition E006 of 2020) [2022] KEELC 13325 (KLR) (5 October 2022) (Judgment)**

Neutral citation: [2022] KEELC 13325 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ENVIRONMENT & LAND PETITION E006 OF 2020

CK NZILI, J

OCTOBER 5, 2022

**IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS
AND FREEDOMS UNDER ARTICLE 40 OF THE CONSTITUTION OF KENYA 2010**

AND

**IN THE MATTER OF ARTICLES 22 AND 23 AND
165 OF THE CONSTITUTION OF KENYA 2010**

AND

IN THE MATTER OF SECTION 24, 25 AND 78 OF THE LAND REGISTRATION ACT

AND

**IN THE MATTER OF THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS AND
FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULE 2013, SECTION 4**

BETWEEN

FRANKLINE MURIIRA M'NKANATA PETITIONER

AND

**THE ADJUDICATION OFFICER , RUIRU/ RWARERA ADJUDICATION
SECTION & 2 OTHERS RESPONDENT**

AND

ANNAH MWARI MUTUMA & 4 OTHERS INTERESTED PARTY

JUDGMENT

1. By a petition dated October 28, 2020 the petitioner describing himself as a recorded owner of parcel No's 282, 3483, 3484, 3485 and 3486 Ruiru/Rwarera adjudication section which he said he inherited



- from his late father M’Nkanata M’Nchau sued the respondents for fraudulently subdividing the subject land and depriving him his constitutional rights to land ownership in favour of the interested parties and for the dismissal of his objection No’s 5, 3382, 3444, 3779 and 473 without a fair hearing.
2. He sought for:- a declaration he was the absolute owner of the suit parcels; that the respondents breached his rights by recording the parcel numbers in favour of the interested parties; mandamus compelling the 1st & 2nd respondents to amend the adjudication register and record his names; certiorari to call for and quash the registration in the names of the interested parties and for permanent injunction restraining the respondents and the interested parties from any interference with his peaceful and lawful occupation of the subject parcels of land.
 3. The petition was supported by an affidavit sworn by Frankline Muriira M’Nkanata on October 28, 2020 where he stated the suit parcels of land were his only known homestead since 1980 as gathered by his late father in 1989.
 4. He attached copies of fees for the objections, copies of the proceedings for the objections, consent to sue and the chief’s letter as annexures marked FMM “1” – FMM “4” respectively.
 5. The respondents filed a notice of preliminary objection dated January 25, 2022 on the basis that the petition was fatally defective, misconceived, mischievous, an abuse of the court process and unsustainable; the court lacks jurisdiction to hear it for non-exhaustion of the internal dispute mechanisms under sections 29 [Land Adjudication Act](#) and 26 of [Land Consolidation Act](#); the orders sought for judicial review or review cannot issue for no exceptional circumstances exist to entertain the petition; it had failed to meet the threshold of a constitutional petition and that it was bad in law, meant to defeat the cause of justice, it was vexatious, frivolous and an abuse of the court process.
 6. With leave of court parties were directed to file written submissions to dispose both the preliminary objection and the petition by June 6, 2022.
 7. The petitioner submitted that he obtained a consent to sue dated January 14, 2020 and that contrary to the respondent’s powers under sections 4 & 5 of the [Land Adjudication Act](#) they colluded and or illegally subdivided his original parcel of land which he had developed to subdivisions parcel No’s 282, 3483, 3484, 3485 and 3486 without any notification. That his objection numbers 05, 3382, 3444, 3779 and 473 were also dismissed based on contradictory evidence through illegalities and without following both the [Constitution](#) and the land laws on the principles of equality, equity and fairness hence deserved the prayers sought based on the evidence herein.
 8. Reliance was placed on [Nelson Muturi Dumbeya Harun v County Government of Kajiado](#) [2020] eKLR and [Republic v Commissioner of Lands & another exparte George Kimani Njuki](#) [2018] eKLR.
 9. The respondents and the interested parties did not file any replying affidavits to the petition even after leave was granted to do so.
 10. Having gone through the petition, the notice of preliminary objection and the written submissions by the petitioner, the issues for determination are:
 - (i) If the petition meets the constitutional threshold.
 - (ii) If the petition offends the doctrine of non-exhaustion of other alternative forums under the law.
 - (iii) If the petitioner has pleaded and proved breach of his constitutional rights to fair hearing and fair administration action.



(iv) If the petitioner is entitled to the prayers sought.

11. Constitutional petition are governed by the articles 22, 23 & 25 of the Constitution and of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013 which requires a petitioner to state his capacity, specific rights breached, violated, infringed or threatened with violation, nature and the manner of violation, injuries or damages made, previous or pending suits over the matter and the reliefs sought.
12. In Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others [2013] eKLR, the court held that the rights and the manner of violation must be pleaded with a specific degree of precision.
13. The petitioner invoked articles 22, 23 and 165 of the Constitution. He averred he discovered the arbitral, fraudulent and illegal, deprivation of his land where he has lived for decades, has extensively made developments, but was demarcated to strangers following which his objections were also arbitrarily determined and dismissed.
14. In my considered view, the petitioner has complied with the law and pleaded the specific constitutional rights violated and the manner alleged to have been violated, infringed or threatened with violation.
15. As regards, non-exhaustion of the internal mechanisms set out under the law, objections, No 3382, 3444, 397 and 473 were heard and determined on May 4, 2018 and the petitioner was granted right of appeal in 60 days to the minister. He did not file the appeal as directed until he sought and obtained a consent dated January 14, 2020 to seek for injunctive orders regarding parcel No 282, 3483, 3484, 3485 and 3486.
16. The petitioner did not lodge the suit until October 2, 2020. Even though section 13 of the Land Adjudication Act talks of a successor and not an administrator, the petitioner has not laid any nexus between the person who participated in the objections and himself, notwithstanding the fact that one does not require letters of administration for an objection as held in Dominic Musei Ikombo v Kyule Makau (2019) eKLR.
17. The petitioner has not attempted to explain the reasons for the inordinate delay. Similarly, the petitioner has sued both the land adjudication officer and the land registrar Meru Central. Both respondents are governed by different land laws.
18. The petitioner has not attached anything to show that he was either recorded or a registered owner of any of the stated parcels of land which were subject to the objections. He has not attached anything to show that he has capacity to sue for and or behalf of the estate of his deceased father.
19. From the objection proceedings, there is nothing to show that the petitioner was part and parcel of the objection proceedings either as a party representing his late father, a witness or an interested party.
20. It is trite law that he who alleges must prove. Other than the complaint letter dated February 10, 2016, the petitioner has not attached any letter of confirmation of ownership from the land adjudication office to show that he is the recorded owner of parcel No 3483 or any other parcel numbers herein. Similarly, if the other parcels namely 3484, 3485 and 3486 belonged to Joseph Magiri M’Nkanata, Henry Gitonga M’Nkanata and Martin Kinoti Kibiti there were no annexures from the land adjudication officer to confirm such a position.
21. Additionally, the petitioner has not attached any authority to swear, plead and sue for and on behalf of the said parties.



22. The petitioner has complained that there was fraud and or collusion between the respondents and the interested parties in subdividing the suit parcels of land. It is trite law that fraud must also not only be pleaded but also proved on a balance of probability above the normal threshold but below proof beyond a reasonable doubt. This was the position taken in *Virjay Morjaria v Nasingh Madhusingh Darbar & another* [2000] eKLR, and *Arithi Developers Ltd v West End Butchery Limited & 6 others* [2015] eKLR.
23. In this petition, the particulars of the alleged collusion and or fraud were not specified. The dates the alleged fraud occurred or was discovered and or reported and investigations commenced, if any, and or reports made and to which office, have not been brought to the attention of the court.
24. Fraud or collusion cannot be inferred but must be proved through tangible and concrete evidence. (See *Arithi Developers v WestEnd Butchery* surpa)
25. As regards the decision out of the objections, there is no demonstration by the petitioner that the respondents did not observe the rules of natural justice while hearing and determining the objections.
26. The petitioner has not demonstrated and proved any procedural impropriety, irrationality, unreasonableness or the failure to follow any written law by the respondents in determining the objections. See *Republic v KRA ex parte Shake Distributors Ltd* (2012) eKLR.
27. In my view the onus was on the petitioner to prove such illegality, impropriety, irrationality and the failure to follow the law which he has not discharged.
28. Given the foregoing, my conclusion is that the petition lacks merits. The same is dismissed with no order as to costs.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT THIS 5TH DAY OF OCTOBER, 2022

In presence of:

C/A: Kananu

Maranya for petitioner

Mr. Kieti for the respondents

Atheru for the interested parties

HON. C.K. NZILI

