



**Suter & another v Land Adjudication Officer, Elgeyo Marakwet &
3 others (Environment and Land Constitutional Petition 8 of 2022)
[2022] KEELC 14501 (KLR) (3 November 2022) (Judgment)**

Neutral citation: [2022] KEELC 14501 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ITEN
ENVIRONMENT AND LAND CONSTITUTIONAL PETITION 8 OF 2022**

L WAITHAKA, J

NOVEMBER 3, 2022

**IN THE MATTER OF LAND ADJUDICATION ELGEYO MARAKWET ADJUDICATION
AREA CHESOI ADJUDICATION SECTION AFFECTING PROPERTY NO.1057 AND 1058**

AND

**IN THE MATTER OF THE CONSTITUTION OF KENYA
2010 ARTICLES 20, 21, 22, 23, 40(2)(A), 50(1), 165(3)(A)**

BETWEEN

ISAAC CHEPKURUI SUTER 1ST PETITIONER

MICHAEL TOROITICH CHEPTOO 2ND PETITIONER

AND

**THE LAND ADJUDICATION OFFICER, ELGEYO MARAKWET 1ST
RESPONDENT**

THE HON. ATTORNEY GENERAL 2ND RESPONDENT

SHAKWEI CHEBOI 3RD RESPONDENT

MICAH KIPTOO KAMATUR 4TH RESPONDENT

(Formerly Eldoret ELC Case No. 12 of 2021)

JUDGMENT

1. The petitioners who have described themselves as residents of Chesoi within Elgeyo Marakwet County filed this petition seeking the following reliefs:-



- i. Nullification of the decision of the land committee in case number 102;
 - ii. Nullification of the decision of the land adjudication arbitration board in case No 23/21/05/2013;
 - iii. Nullification of the decision of the Deputy County Commissioner Elgeyo Marakwet County in appeal to the Minister case No 548 of 2020; and
 - iv. A declaration that they are the lawful owners of plot Nos 1057 and 1058 (the suit lands).
2. The petition is premised on the grounds that the petitioners settled on the suit lands in or about 1980s; that the suit lands were ancestral (belonged to Baringech, deceased, who was the petitioner's grandfather); that on or about 1988 the first demarcation was done but documents concerning the exercise got misplaced or destroyed leading to a second demarcation exercise; that during the demarcation carried out in 2009, the suit lands were demarcated in the petitioners' names.
 3. It is the petitioners' case that on or about the year 2014, Tamgalas Kisang encroached into their parcels of land leading to a complaint to wit land committee case No 102. The land committee awarded the suit lands to Tamgalas Kisang (deceased).
 4. Dissatisfied with the decision of the land committee, the petitioners appealed to the land arbitration board *vide* case No 23/21/05/2013 but lost the appeal.
 5. The petitioners successfully objected the decision of the arbitration board but lost the appeal to the minister to wit appeal No 548 of 2020.
 6. The 1st and 2nd respondents through their response dated June 28, 2022 and filed on June 29, 2022 contend that the petition raises ownership issues that cannot be determined by way of a constitutional petition; that from the proceedings attached to the petition, there is no evidence that the petitioners were denied opportunity to call witnesses or that their testimonies were not considered before the impugned decision was made and that the petition does not meet the threshold set out in the case of *Anarita Karimi Njeru Vs Attorney General* (1979) KLR 154/(1976 – 1980, KLR 1272).
 7. The 1st and 2nd respondents have further deposed that the entire adjudication process in respect of the suit lands was done lawfully and in full adherence to the principles of the *Constitution*.
 8. The 4th respondent through the affidavit he swore on October 12, 2021 has deposed that the petitioners were trespassers on the suit lands.
 9. Pursuant to directions given on June 30, 2022, the petition was disposed of by way of written submissions.

Petitioners' Submissions

10. In their submissions filed on August 17, 2022, the petitioners have stated that the gist of the petition is that they are the lawful owners of the suit lands and asserted that the suit lands were initially ancestral land belonging to their great grandfather, Baringetich (deceased). They state that upon adjudication, the parcel was divided into two portions.
11. Concerning the 1st and 2nd respondents' contention that the petition does not raise constitutional issues, the petitioners have pointed out that the petition is brought under articles 20, 21, 22, 23, 40(2)(a), 50(1) and 165(3)(a) of the *Constitution* of Kenya, 2010 and submitted that the decision awarding the suit lands to the respondents denied the petitioners their right to property enshrined in the *constitution*.



12. The petitioners maintain that they were not given fair hearing in contravention of article 50(1) and section 12(1) of the *Land Adjudication Act*, cap 284 laws of Kenya (LAA).
13. According to the petitioners, the actions of the land adjudication officer did not meet constitutional test.
14. On costs, it submitted that costs follow the event and the court is urged to award costs of the petitioner to the petitioners as they have made a case for being granted the orders sought.

The 3rd and 4th Respondent's submissions

15. The 3rd and 4th respondents have submitted that in all the proceedings, there were no constitutional breaches; that there is no proof of any procedural impropriety by the tribunal or minister to warrant nullification of the tribunals' proceedings; that the proceedings were procedural in all stages and that none of the respondents breached any legal rule to cause room for nullification or avoidance.
16. Based on the decision in the case of *Timotheo Makange v Manunga Ngochi* (1978) KLR 53 at 63, it is submitted that the reliefs sought cannot be granted.

Analysis and Determination

17. It is clear from the petition that the petitioners are challenging the decision of the minister on the ground that they were denied a fair hearing.
18. The proceedings before the (DCC) Deputy County Commissioner Elgeyo Marakwet in Appeal Case No 548 of 2020 show that the petitioners were heard by themselves and through their witness, Edward Yego. The mere fact that the petitioners lost the case preferred before the minister is not a good reason for challenging the decision by way of a constitutional petition as there is nothing unconstitutional in losing a case through a process established by law for ascertaining interests in land.
19. By operation of law, this court is estopped from sitting on appeal on the decision of the minister. In that regard see the case of *Timotheo Makange v Manunga Ngochi* supra where the Court of Appeal held:-

“The act (*Land Adjudication Act*) prescribes within itself a specific and complete code for treatment of the Land Adjudication cases through set stages, with the minister empowered to determine appeals to him; and make such orders as he thinks just, his orders being final... for even at that stage it was not a matter of interference with vested rights of individuals.”
20. Whereas the instant suit is packaged as a constitutional petition, the petitioners are merely appealing the decision of the minister through the back door. The law does not allow them to do so.
21. The upshot of the foregoing is that the petition has no merit and is dismissed with costs to the respondents.

DATED, SIGNED AND DELIVERED AT ITEN THIS 3RD DAY OF NOVEMBER, 2022.

L. N. WAITHAKA

JUDGE

Judgment delivered virtually in the presence of:

N/A for the Petitioner

N/A for 1st and 2nd Respondents



Mr. Keter M. K holding brief for Dr. Chebii for the 3rd and 4th Respondents.

Christine Towett: Court Assistant

