



Maingi (Suing on Behalf of the Estate of M'imangi M'mutanthi - Deceased) ((Suing on Behalf of the Estate of M'imangi M'mutanthi - Deceased)) v Land Adjudication and Settlement Officer Igembe South County & 3 others; Miriti & another (Interested Parties) (Petition E007 of 2024) [2025] KEELC 4082 (KLR) (19 May 2025) (Judgment)

Neutral citation: [2025] KEELC 4082 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
PETITION E007 OF 2024**

JO MBOYA, J

MAY 19, 2025

BETWEEN

**JOHN GICHUNGE MAINGI PETITIONER
(SUING ON BEHALF OF THE ESTATE OF M'IMANGI M'MUTANTHI -
DECEASED)**

AND

**LAND ADJUDICATION AND SETTLEMENT OFFICER IGEMBE SOUTH
COUNTY 1ST RESPONDENT
DIRECTOR OF LAND ADJUDICATION 2ND RESPONDENT
LAND REGISTRAR – MAUA 3RD RESPONDENT
ATTORNEY GENERAL 4TH RESPONDENT**

AND

**SHIPRAH MUKOANJA MIRITI INTERESTED PARTY
JACINTA MUKOITI MIRITI INTERESTED PARTY**

JUDGMENT

1. The Petitioner has approached the court vide Petition dated 13th May 2024 and wherein the petitioner has sought various reliefs. The reliefs sought at the foot of the petition are as hereunder:
 - i. A declaration that the 1st, 2nd, 3rd and 4th respondents' actions/decisions relating to the petitioner's land are irregular, fraudulent, arbitrary, wrongful, ambiguous, irrational unconstitutional, hence null and void.



- ii. An order of certiorari for purpose of quashing the decision of land adjudication and settlement officer that the late father of the interested parties should take the whole parcel No.1 562 & 12946 Amungenti 'A' Adjudication section measuring 8.00 acres.
 - iii. A declaration that the two parcels No. 1562 and 12946 Amungenti 'A' adjudication section measuring 8.00 acres belongs to the petitioner.
 - iv. An order of mandamus compelling the chief land registrar to register the two parcels in the names of the estate of M'Maingi Mutanthi as the proprietor of parcel No. 1562 & 12946 Amungenti 'A' adjudication section measuring 8.00 acres.
 - v. General damages for breach of the petitioner's right to property
 - vi. Costs of the petition and interest in (e) above.
2. The instant petition is premised on various grounds which have been enumerated in the body thereof. Furthermore, the petition is supported by the supporting affidavit sworn by the petitioner on the 13th May 2024 and wherein the petitioner [deponent] has annexed various documents including a copy of the minutes and resolution of the 1st respondent herein.
 3. The Respondents filed a replying affidavit sworn by the 1st respondent herein and wherein the respondents have raised diverse issues. In particular, the respondents have contended that the petitioner herein lodged objection proceedings numbers 116 and 117, respectively seeking to challenge the registration of plot No's 1652 and 12946 Igembe Adjudication area.
 4. Moreover, the respondents have averred that the objections which were lodged by the petitioner were subsequently heard and disposed of vide decision rendered on the 11th November 2022 and wherein the objections were dismissed. In addition, it has been contended that the petitioner herein ought to have filed an appeal in accordance with the provisions of section 8 as read together with section 30 of the Land Consolidation Act, cap 283 Laws of Kenya.
 5. The interested parties filed a replying affidavit sworn by Shipra Mukwanjagi Miriti [who is the First Interested Party] and wherein the deponent has annexed various documents including a copy of the judgment that was delivered in ELC JR No. E015 of 2022, concerning the same subject matter.
 6. Furthermore, the interested parties have also averred that the suit properties lawfully belong to the Estate of Samwel Miriti [now deceased] and not otherwise. For good measure, it has been posited that the Deceased was the father of the Interested Parties.
 7. The petition beforehand came up for directions on the 23rd of January 2025 whereupon the advocates for the parties covenanted to canvass and dispose of the petition by way of affidavit evidence. Besides, the advocate for the parties also sought to file and exchange written submissions. In this regard, the court proceeded to and circumscribed the timelines for the filing and exchange of the written submissions.
 8. The petitioner filed two [2] sets of written submissions and wherein the petitioner has raised and highlighted four [4] salient issues. The issues raised by the petitioner are namely, that the respondents herein violated and or infringed upon the rights of the petitioner as pertains to the suit property; that the respondents failed to afford the petitioner fair hearing and or treatment during the hearing of the objection proceedings; the 1st respondent failed to take into account the resolutions of the Ntune-Itatu committee which had deliberated on the ownership of the suit property and finally that the decision of the 1st respondent was irregular and illegal for want of compliance with the provisions of the Land Consolidation Act.



9. Regarding the first issue, learned counsel for the petitioners submitted that the petitioner herein filed and or lodged the objection to the suit properties. Subsequently, the said objection was heard and determined by the 1st respondent, who failed to take into account the rights and the interests of the petitioner beforehand. Furthermore, the petitioner has contended that the 1st respondent failed to take into account the evidence that the petitioner and his family have been in occupation of the suit plots without any interference by the interested parties.
10. Having failed to take into account the rights and interests of the petitioner, it has been contended that the 1st respondent has since violated and breached the petitioner's property rights in terms of Article 40 of the constitution 2010.
11. Secondly, the petitioner has submitted that the 1st respondent herein failed to afford the petitioner a reasonable opportunity during the hearing and determination of the objections. In this regard, the petitioner has contended that, having not been granted a fair and reasonable opportunity, the 1st respondent breached and violated the petitioner's rights under Article 47 of the constitution 2010.
12. Thirdly, learned counsel for the petitioner has submitted that the decision by the 1st respondent is contrary to and in contravention of the provisions of Section 26 of the Land Consolidation Act, Cap 283 Laws of Kenya, in so far as the first respondent sat alone without involving the committee in terms of Section 9 of the Land Consolidation Act. In this regard, it has been posited that the decision of the 1st respondent is therefore ultra vires and hence illegal.
13. Finally, the petitioner has submitted that the dispute pertaining to and concerning ownership of the suit plot had been resolved by the Ntune-Itatu committee. Furthermore, the petitioner contended that same availed the proceedings and resolutions of the committee to the 1st respondent. Nevertheless, it was contended that the 1st respondent ignored and/or disregarded the decision of the committee in question and thus arrived at an erroneous conclusion.
14. Arising from the foregoing, the petitioner has therefore invited the court to find and hold that the decision was not only ultra vires, but same was illegal and unconstitutional. To this end, the petitioner has implored the court to find and hold that the petition is meritorious and thus same ought to be allowed.
15. Moreover, the petitioner has invited the court to proceed and grant the various reliefs sought at the foot of the petition including an order of mandamus.
16. The Respondents filed written submissions dated 3rd March 2025; and wherein the respondents have raised five [5] issues, namely; whether the 1st respondent acted ultra vires the provisions of section 26 of the land consolidation act; whether the respondents violated the petitioner's constitutional rights to own property; whether the petition dated 13th May 2024 satisfies the precision threshold required of constitutional petitions; and whether this court has jurisdiction to entertain this suit.
17. In respect of the first issue, learned counsel for the Respondent[s] has submitted that the 1st respondent herein duly complied with and acted in accordance with the provisions of section 26 (1) of the Land Consolidation Act, Chapter 283, Laws of Kenya. In particular, it has been submitted that the 1st respondent was at liberty to entertain and adjudicate upon the objection which was mounted by the petitioner.
18. Moreover, it has been submitted that the provisions of section 9 of the Land Consolidation Act, which has been cited and referenced by the petitioner, was inapplicable to the objection that was filed by the petitioner.



19. Secondly, the learned counsel for the Respondent[s] has submitted that the respondents herein did not violate, breach and or infringe upon the petitioners' right to property either as contended or at all. In any event, it was submitted that the duty of the 1st respondent was to consider the objections lodged by the petitioner and to discern whether same disclosed any legal rights to the suit plot or otherwise. To this end, it was posited that the 1st respondent merely discharged his mandate under the law and thus same did not violate any property rights.
20. Furthermore, it was submitted that the petitioner herein failed to place before the 1st respondent credible and plausible evidence to demonstrate title to and or ownership rights over the suit plots. In any event, it was contended that the fact that the petitioner has lived on the suit plot without interruption does not bestow upon the petitioner ownership rights to the land in question.
21. It was the further submission by the respondents herein that the petition beforehand does not meet and or satisfy the requisite threshold as pertains to specificity and particularity. To this end, learned counsel for the respondents submitted that the petitioner has not pleaded the relevant provisions of the *constitution*, which are contended to have been breached, violated and or infringed at all. Besides, it has been posited that the petitioner has also failed to supply the particulars pertaining to the manner in which his rights have been breached and if so, by whom.
22. To the extent that the petitioner has failed to craft and plead the petition with the requisite particularity, it has been contended that the petition beforehand does not therefore meet the threshold espoused vide the decision in *Anarita Karimi Njeru vs Republic (1979) eKLR* and *Mumo Matemu vs Trusted Society of Human Rights Alliance and another (2013) eKLR*, respectively.
23. Fourthly, it has been submitted that the *Land Consolidation Act*, cap 283 laws of Kenya, contains inbuilt mechanism for challenging the decisions of the 1st respondent. In this regard, it has been posited that the decision of the 1st respondent dismissing the petitioner's objections was challengeable vide an appeal in the manner prescribed by the provisions of sections 8 & 30 of the *Land Consolidation Act*. To this end, learned counsel for the respondents has therefore contended that the petitioner was obligated to exhaust the established dispute resolution mechanism provided for under the act before approaching the jurisdiction of the court.
24. Arising from the foregoing, learned counsel for the respondents has therefore implored the court to find and hold that the court is divested of the requisite jurisdiction to entertain and adjudicate upon the subject petition. In this regard, the court has therefore been invited to strike out the petition.
25. To buttress the submissions pertaining to the doctrine of exhaustion, learned counsel for the respondents has cited and referenced the decision of the Supreme Court in the case of *Bernard Murage vs Fine Serve Africa Ltd and 3 others (2015) eKLR*.
26. The Interested parties filed written submissions dated 4th March 2025 and wherein same [interested parties] have raised and highlighted three [3] salient issues for consideration. The issues highlighted by the interested parties are namely; whether the petitioner's constitutional rights to own property were violated; whether the actions of the respondents relating to the land herein were irregular, fraudulent, arbitrary, unconstitutional and hence void; and whether the petitioner has demonstrated sufficient grounds to warrant the issuance of the orders sought.
27. As pertains to the first issue, learned counsel for the interested parties has submitted that the suit plots, which are the subject of the dispute beforehand, were lawfully acquired by Samuel Miriti [now deceased] in accordance with the law. In particular, it has been contended that the said deceased is the



- one who gathered the suit plot way back in the year 1971 and thereafter the rights of the deceased were recorded in the Register of Existing Rights [RER].
28. Moreover, it has been submitted that upon gathering the rights in terms of the suit plot, the father of the petitioner herein did not lodge and or amount any objection against the rights of Samuel Miriti (deceased). To this end, therefore, it has been contended that the suit plot[s] lawfully belonged to the estate of Samuel Miriti and not otherwise. In addition, it has been submitted that the petitioner herein has previously conceded and acknowledged the rights of the estate of Samuel Miriti over the suit plots.
 29. Arising from the foregoing, learned counsel for the interested party has submitted that the petitioner herein has not demonstrated and or established any right to and in respect of the suit plot. In this regard, it has been contended that the petitioner's claim that his constitutional rights to the suit plots were violated is therefore misconceived and made in vacuum.
 30. In respect of the second issue, learned counsel for the interested parties has submitted that the 1st respondent heard and disposed of the objections filed by the petitioner in accordance with the law. Furthermore, it has been submitted that the petitioner was afforded an opportunity [reasonable opportunity] to tender evidence pertaining to his claim over the suit plot.
 31. Additionally, it has been submitted that the objection by the petitioner was heard by the land adjudication officer and a committee in accordance with the provisions of the [Land Consolidation Act](#). In this regard, it has been submitted that the 1st respondent acted in accordance with the law and did not violate the provisions of section 26 (1) of the [Land Consolidation Act](#), either in the manner contended or at all.
 32. Regarding the third issue, namely; whether the petitioner has demonstrated sufficient ground to warrant the issuance of the reliefs sought, it has been submitted that the petitioner herein has neither placed before the court any plausible reasons nor demonstrated any violations of his constitutional rights. In this regard, learned counsel for the interested party has therefore submitted that the petitioner is not entitled to the reliefs sought at the foot of the petition or at all.
 33. Premised on the foregoing submissions, learned counsel for the interested parties has invited the court to find and hold that the petition beforehand is not only premature and misconceived but same is also bereft of merits. To this end, the court has been invited to dismiss the petition.
 34. Having reviewed the pleadings filed by the parties; having taken into account the evidence tendered [affidavit evidence] and upon consideration of the written submissions filed on behalf of the parties, I come to the conclusion that the determination of the dispute before hand turns on four [4] key issues, namely; whether the court is seized of the requisite jurisdiction to entertain and or adjudicate upon the subject dispute or otherwise; whether the petitioner herein is seized of the requisite locus standi to commence, mount and or maintain the subject petition on behalf of the estate of M'Imangi M'Mutanthi [deceased] or otherwise; whether the petition beforehand meets the requisite threshold pertaining to pleadings in accordance with the decision in Anarita Karimi Njeru vs Republic (1979) eKLR or otherwise; and whether the petitioner has demonstrated that his rights under article 40 & 47 of the [constitution](#) were [sic] violated or otherwise.
 35. Regarding the first issue herein, namely, whether this honourable court is seized of the requisite jurisdiction to entertain and adjudicate upon the subject matter, it is imperative to recall and reiterate that the petitioner herein is laying a claim to ownership of the suit plots. For good measure, the petitioner contends that what constitutes the suit plots lawfully belongs to his [petitioner] father who bought the suit plot from the Naathu clan. Furthermore, the petitioner has posited that the purchase



of the suit plot by his father was attested to by a witness namely Baitumbiri, who gave evidence before the Ntune-Ithatu committee. [see paragraph 19 of the petition].

36. Moreover, the petitioner has also contended that upon the purchase and or acquisition of the suit plot by his father [now deceased] same entered upon and occupied the suit plot. Besides the petitioner has averred that same [petitioner] has continued to reside on the suit plot to date.
37. On the other hand, it has been contended that despite the fact that the suit plot[s] belong to the petitioner's father, one Samuel Miriti [now deceased] colluded with the 1st respondent and caused the suit plot to be registered in his name. To this end, the petitioner has contended that the registration of the suit plot in the names of Samuel Miriti [now deceased] was fraudulent and irregular. [see paragraph 25 of the petition].
38. Be that as it may, the petitioner has averred that same proceeded to and lodged objections numbers 116 and 117 challenging the registration of the suit plots in the name of Samuel Miriti. In addition, it has been contended that the objections were thereafter heard and disposed off by the 1st respondent vide decision rendered on the 17th of November 2022.
39. The petitioner has averred that vide the decision under reference, the 1st respondent held that the suit plot[s] lawfully belong to Samuel Miriti [now deceased]. To this end, it has been averred that the 1st respondent proceeded to and dismissed the objections.
40. Following the dismissal of the two objections by the 1st respondents, the petitioner has now approached the court and same seeks a plethora of reliefs, including a declaration that the two plots namely, Plot No. 1562 and 12946 Amung'enti A Adjudication section measuring 8.00 acres belong to the petitioner.
41. My reading of the petition filed by and on behalf of the petitioner drives me to the conclusion that the petitioner herein is actually seeking to be declared as the lawful owner of the two plots. For good measure, that is the import of prayer number (c) at the foot of the petition.
42. To the extent that the petition beforehand seeks orders pertaining to and concerning the declaration of ownership rights over and in respect of the suit plot, it is important to underscore that the petitioner was obligated to procure and obtain the requisite consent of the 1st respondent before filing the petition under reference. In this regard, the provisions of section 8 of the [Land Consolidation Act](#) Cap 283, Laws of Kenya, are instructive and pertinent.
43. The provisions of Section 8 of the [Land Consolidation Act](#) [supra] stipulate thus;
Staying of land suits
 - (1) Subject to the provisions of this section, no person shall institute and no court whatever shall take cognisance of, or proceed with or continue to hear and determine, any proceedings in which the ownership or the existence under native law and custom of any right or interest whatsoever in, to or over any land in an adjudication area is called in question or is alleged to be in dispute unless the prior consent in writing of the Adjudication Officer to the institution or continuance of such proceedings has been given.
 - (2) No officer of any court whatever shall issue any plaint or other legal process for the institution or continuance of any proceedings which by virtue of the provisions of subsection (1) of this section are for the time being prohibited, except upon being satisfied that the consent required by those provisions has been given.



- (3) Nothing in the foregoing provisions of this section shall prevent the enforcement or execution of any final order or decision given or made in any proceedings in respect of any land in an adjudication area, where such order or decision is not the subject of a pending appeal at the time of the application of this Act to such land.
- (4) A certificate signed by an Adjudication Officer certifying any parcel of land to be, or to have become on a specified date, land within an adjudication area shall be conclusive evidence that the land is such land.
- (5) Every certificate purporting to be signed by an Adjudication Officer shall be received in evidence and be deemed to be so signed without further proof, unless the contrary is shown.
44. The provisions under reference underpin the legal position that where a party, the petitioner not excepted is desirous to approach a court of law with a view to propagating a claim touching on ownership to and or interest over land which is still the subject of adjudication under the [Land consolidation act](#), such a person is obligated to procure and obtain the consent of the land adjudication officer. For good measure, the word deployed in section 8 (1) supra, is shall and thus same makes it peremptory to obtain the consent.
45. I am aware of the argument that what has been filed is a constitutional petition and that to the extent that what has been filed is a constitutional petition, then the provisions of section 8 of the [Land Consolidation Act](#) does not apply.
46. For coherence, learned counsel for the petitioner has cited and referenced the decision vide judicial review application No. 20 of 2017, wherein it is reported that the court stated as hereunder;
- “What are barred by the act under section 30 (1) are civil proceedings. Since judicial review proceedings are neither civil nor criminal in nature, no consent was therefore required from the land adjudication officer before the institution of these proceedings. The application herein is therefore not bad in law for want of such consent by the interested parties”.
47. Though learned counsel for the petitioner has not supplied the full details and particulars of the case under reference, however, from the title thereof, it is evident that the decision being referenced is one that emanated from either the high court or the courts of equal status. In this regard, the holding or the decision under reference is no binding on me.
48. Nevertheless, I beg to state that the court of appeal in the case of Ole Pere & another v District Land Adjudication and Settlement Officer, Narok South & 24 others; Pere & another (Interested Parties) (Civil Appeal 79 of 2019) [2025] KECA 113 (KLR) (24 January 2025) (Judgment), considered a similar situation and held that a failure to procure the consent invalidates the suit.
49. For coherence, the court stated as hereunder;
- (33) Having concluded as herein above, we find no reason to determine the merits or otherwise of the appeal, save to underscore that the failure to obtain consent as required by Section 31 (1) of the [Land Adjudication Act](#) was fatal to the appellants’ case because the mandatory requirements of the said Section cannot be cured by filing a constitutional petition as happened in this case.
50. Even though the Court of Appeal was addressing the import and tenor of the provisions of Section 30 (1) of the [Land Adjudication Act](#), Cap 284 Laws of Kenya, it is imperative to underscore that the wordings of the said section are similar to the wordings of Section 8 (1) of the [Land Consolidation Act](#).



To this end, I hold the humble view that the decision of the court of appeal [supra] applies with equal force to the matter beforehand.

51. Arising from the foregoing, it is my finding that the petition beforehand is not only premature and incompetent but same is also legally untenable for want of the requisite consent of the land adjudication officer. Instructively, the entire petition courts striking out for contravening the mandatory provisions of the law.
52. Regarding the second issue, namely; whether the petitioner is seized of the requisite locus standi to mount and maintain the instant petition on behalf of the estate of the deceased or otherwise, it is imperative to observe that the petition beforehand has been filed by the petitioner albeit on behalf of the estate of M’Imangi M’Mutanthi [deceased].
53. It is the petitioner who has posited and highlighted that the petition has been filed on behalf of the estate of the deceased. To this end, it was therefore incumbent upon the petitioner to establish and or demonstrate that same [petitioner] has since procured and obtained the requisite Grant of letters of administration to enable same to act for and on behalf of the deceased. [See the provisions of section 82 of the *Law of Succession Act*, Cap 160 Laws of Kenya].
54. At any rate, it appears that the petitioner was alive to the requirement that same was obligated to procure and obtain the grant of letters of administration. In this respect, the petitioner herein indeed procured and obtained [sic] a grant of letters ad litem dated 22nd April 2024. [see annexure JGM 1 attached to the affidavit in support of the petition].
55. Be that as it may, I must point out that though the petitioner procured and obtained a grant ad litem, however, the purpose for which the grant ad litem was issued is captured in the body thereof. Given the purpose that is captured, nay highlighted in the body thereof, it is important to reproduce the salient features of the said grant.
56. Same are produced as hereunder;

Be it known that the letter of administration ad litem to the estate of the above named M’Imangi M’Mutanthi [deceased] who died domiciled in Kenya which devolves to and vests in his personal representative but limited to the purposes only of filing a succession cause and until further representation granted by this court to John Gichunge Maingi. [emphasis supplied].

57. The purpose for which the grant ad litem was issued is stated and shown to be for filing a succession cause. To my mind, the grant ad litem which is ordinarily prescribed for a particular purpose [normally for filing a suit on behalf of the Estate of the Deceased] indicate the very limited purpose to be filing of a succession cause and not otherwise.
58. Though the filing of a succession cause does not require a grant ad litem or at all, the grant which was procured and obtained by the petitioner herein is curiously limited to the same purpose. This court is beholden to the document tendered and filed by the petitioner. For good measure, the petitioner stands or falls with the documentation filed. That is our Law.
59. To the extent that the grant ad litem did not authorize and or mandate the filing of a constitutional petition, I am afraid that the petitioner herein is not seized and or possessed of the requisite locus standi to commence and or mount the instant petition.
60. Suffice it to state that locus standi is a threshold jurisdictional question. Indeed, it is the locus standi [capacity to sue] which gives a person the right to approach a court of law with a view to canvassing



the grievances [if any] espoused by the person. Absent locus standi, a person can not be heard by a court of law.

61. The importance of locus standi was highlighted and elaborated upon by the Supreme Court in the case of *Matemu v Trusted Society of Human Rights Alliance & 5 others* (Civil Application 29 of 2014) [2014] KESC 6 (KLR) (9 December 2014) (Ruling) where the court stated thus;

(39) The submission has been made that the objection on locus standi had not been raised since the filing of the matter on 2 September 2013. The issue of locus standi raises a point of law that touches on the jurisdiction of the Court, and it should be resolved at the earliest opportunity. In *Mary Wambui Munene v. Peter Gichuki Kingara and Six Others*, Sup. Ct. Petition No. 7 of 2013; [2014] eKLR, this Court held (at paragraphs 68 and 69) that the question of jurisdiction is a “pure question of law,” and should be resolved on a priority basis.

62. The legal implications of locus standi were also elaborated upon in the case of *Michael Osundwa Sakwa v Chief Justice and President of the Supreme Court of Kenya & another* [2016] eKLR where the court stated and observed as hereunder;

61. It is therefore clear that over time the issue of standing, particularly in public law litigation has been greatly relaxed and in our case the *constitution* has opened the doors of the Courts very wide to welcome any person who has bona fide grounds that the *constitution* has been or is threatened with contravention to approach the Court for an appropriate relief. In fact, since Article 3(1) of the *constitution* places an obligation on every person to respect, uphold and defend the *constitution*, the invitation to approach the Court for redress as long as the person hold bona fide grounds for believing that the *constitution* is under threat ought to be welcome. I must however hasten to add that the liberal interpretation does not mean that the rule on locus standi is no longer relevant in constitutional petitions. Where it is clear that the Petitioner has completely no business in bringing the matter to Court to permit such proceedings to be litigated would amount to the Court itself abetting abuse of its process.

63. It is also instructive to reference the holding in the case of *Rajesh Pranjivan Chudasama vs Sailesh Pranjivan Chudasama* (2014) eKLR where the Court of Appeal stated as hereunder;

In *Alfred Njau & Others v City Council of Nairobi* (supra) this Court had occasion to discuss the two. They stated:

Lack of locus standi and a cause of action are two different things. Cause of action is the fact or combination of facts which give rise to a right to sue whereas locus standi is the right to appear or be heard, in court or other proceedings; ...”

The court proceeded to state:

To say that a person has no cause of action is not necessarily tantamount to shutting the person out of the court but to say he has no locus standi means he cannot be heard, even on whether or not he has a case worth listening to.”

64. There is no gainsaying that locus standi is a threshold issue and thus a party must demonstrate that same is seized of the requisite locus standi before approaching a court of law. In the absence of locus standi, such a party cannot be heard before a court of law, irrespective of whether the cause of action is prescribed under the law. For good measure, locus standi denotes the right to appear and hence where same is lacking such a person cannot make any legal appearance or perform any legal act before a court of law.



65. It is the petitioner who contended that same is the duly authorized legal administrator of the estate of the deceased and thus mandated to file the petition. In this regard, it was incumbent upon the petitioner to demonstrate his capacity. Sadly, the grant of letters ad litem which has been deployed was limited only to [sic] filing a succession cause and not a constitutional petition.
66. Before concluding on this issue, I beg to state that I am alive to the provisions of articles 22 and 258 of the *constitution* 2010, which have essentially relaxed the interpretation and application of the law as pertains to locus standi. Nevertheless, it is not lost on me that the petitioner is the one who described himself as the duly constituted administrator and hence authorized to file the petition. In this regard, the petitioner was and is therefore bound by his pleadings in line with the doctrine of departure. [See also the decision in the case of IEBC vs Stephen Mutinda Mule (2013) Eklr].[see also Dakianga Distributors Limited versus Kenya Seed Company Limited [2015] eklr].
67. In the premises and taking into account the limited purpose highlighted at the foot of the grant of letters of administration ad litem availed by the petitioner, I come to the conclusion that the petitioner is devoid of the requisite locus standi.
68. As pertains to the third issue, namely; whether the petition beforehand meets the requisite threshold pertaining to pleadings in accordance with the decision in Anarita Karimi Njeru vs Republic (1979) eKLR or otherwise, it is imperative to state and observe that being a constitution petition, the petitioner herein was under obligation to plead the petition with the necessary particularity and specificity, by ensuring that same has not only highlighted the provisions of the *constitution* that are contended to have been breached, infringed upon and or violated, but also the particulars pertaining to the manner of such breach and thereafter highlighting the persons [if any] responsible for the breach complained of.
69. The need for particularity and specificity, [simply referenced as the Rule of Precision] has been emphasized over a period of time. In any event, it has been stated that where a petition is pleaded with the requisite particularity and specificity, it enables a court of law to interrogate the complaints and thereafter to address same in accordance with the *constitution*.
70. In the case of Anarita Karimi Njeru vs Republic (1979) eKLR the court stated thus;
- ... if a person is seeking redress from the High Court on a matter which involves a reference to the *constitution*, it is important (if only to ensure that justice is done to his case) that he should set out with a reasonable degree of precision that of which he complains, the provisions said to be infringed, and the manner in which they are alleged to be infringed.”
71. Furthermore, the Court of Appeal in the case of Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others [2013] eKLR, underscored the importance of precision, particularity and specificity in constitutional matters by stating as hereunder;
- (41) We cannot but emphasize the importance of precise claims in due process, substantive justice, and the exercise of jurisdiction by a court. In essence, due process, substantive justice and the exercise of jurisdiction are a function of precise legal and factual claims. However, we also note that precision is not coterminous with exactitude.
- Restated, although precision must remain a requirement as it is important, it demands neither formulaic prescription of the factual claims nor formalistic utterance of the constitutional provisions alleged to have been violated. We speak particularly knowing that the whole function of pleadings, hearings, submissions and the judicial decision is to define issues in litigation and adjudication, and to demand exactitude ex ante is to miss the point.



(42) However, our analysis cannot end at that level of generality. It was the High Court’s observation that the petition before it was not the “epitome of precise, comprehensive, or elegant drafting.” Yet the principle in *Anarita Karimi Njeru* (supra) underscores the importance of defining the dispute to be decided by the court. In our view, it is a misconception to claim as it has been in recent times with increased frequency that compliance with rules of procedure is antithetical to Article 159 of the *constitution* and the overriding objective principle under section 1A and 1B of the *Civil Procedure Act* (Cap 21) and section 3A and 3B of the *Appellate Jurisdiction Act* (Cap 9). Procedure is also a handmaiden of just determination of cases. Cases cannot be dealt with justly unless the parties and the court know the issues in controversy. Pleadings assist in that regard and are a tenet of substantive justice, as they give fair notice to the other party. The principle in *Anarita Karimi Njeru* (supra) that established the rule that requires reasonable precision in framing of issues in constitutional petitions is an extension of this principle. What Jessel, M.R. said in 1876 in the case of *Thorp v Holdsworth* (1876) 3 Ch. D. 637 at 639 holds true today:

The whole object of pleadings is to bring the parties to an issue, and the meaning of the rules...was to prevent the issue being enlarged, which would prevent either party from knowing when the cause came on for trial, what the real point to be discussed and decided was. In fact, the whole meaning of the system is to narrow the parties to define issues, and thereby diminish expense and delay, especially as regards the amount of testimony required on either side at the hearing.”

72. There is no gainsaying that precision and particularity are key ingredients in a constitutional petition. In this regard, it behooved the petitioner to ensure that the petition was couched in precise terms, both in terms of the articles of the *constitution* complained of as well as the manner in which the breach is alleged to have been perpetrated.
73. However, in the instant case, the petitioner has impleaded the respondents but same has failed to particularize the manner in which his [petitioners] constitutional rights have been violated. Suffice it to state that it is not enough to throw generalized allegations onto the court and leave it for the court to discern how and in what manner the alleged constitutional rights have been breached.
74. Similarly, it is not also enough to implead several respondents and thereafter throw the allegations unto the court and leave it for the court to plough through the paragraphs of the petition and evidence and thereafter to discern for itself, who possibly amongst the respondents may have [sic] infringed upon the petitioner’s rights, if any.
75. To my mind, the petition beforehand does not meet the requisite threshold as highlighted in the celebrated case of *Anarita Karimi Njeru* [supra]. In this regard, I am afraid that the petition by the petitioner herein is lacking in material particulars and thus same merits dismissal. Simply put, the Petition does not meet or satisfy the Rule of precision as pertain[s] to Constitutional Petition[s].
76. Regarding the last issue, namely; whether the petitioner has demonstrated that his rights under article 40 & 47 of the *constitution* were [sic] violated or otherwise, it is important to recall that the petitioner has accused the respondents and in particular, the 1st respondent of violating his [petitioners] rights under articles 40 and 47 of the *constitution* 2010. To this end, I beg to address the petitioners’ complaints in a two-pronged manner as hereunder.
77. To start with, the petitioner has complained that the 1st respondent has breached, violated and or infringed upon his property right under Article 40 of the *constitution* 2010. In this respect, it is worthy to state that before one, the petitioner not excepted, adverts to breach of property rights, same



must demonstrate that he has acquired such property rights in accordance with the law. Instructively, property rights are acquired in various modes as prescribed vide the provisions of section 7 of the [Land act 2012](#).

78. For ease of reference and appreciation, the provisions of section 7 [supra] states as here under;

Methods of acquisition of title to land

Title to land may be acquired through—

- (a) allocation;
- (b) land adjudication process;
- (c) compulsory acquisition;
- (d) prescription;
- (e) settlement programs;
- (f) transmissions;
- (g) transfers;
- (h) long-term leases exceeding twenty-one years created out of private land; or
- (i) any other manner prescribed in an Act of Parliament

79. Had the petitioner herein acquired any lawful and or actionable rights over the suit property? It is imperative to state that the suit plots are currently registered in the name of Samuel Miriti [deceased] in accordance with the land consolidation process. Instructively, the land adjudication officer conducted the entire process of gathering and demarcation and ultimately caused the suit property to be registered in the names of the deceased.

80. Granted the petitioner herein has variously sought to impeach the registration of the suit plots in the name of Samuel Miriti [deceased]. To this end, the petitioner filed objections numbers 116 and 117, respectively. Furthermore, the objections filed by the petitioner were dismissed.

81. Moreover, the petitioner thereafter filed judicial review proceedings vide ELC JR E015 of 2022 and which was disposed of vide judgment rendered on the 4th of April 2024. For good measure, the court proceeded to and struck out the substantive notice of motion application dated 17th march 2023 with costs.

82. Unrelenting, the petitioner has now approached this court vide the instant petition and wherein same has sought inter alia declaration that the suit plots lawfully belong to him [petitioner] on the basis of being the legal administrator of the estate of M'Imangi M'Mutanthi [deceased].

83. Simply put, the petitioner has all along sought to be declared to be the owner of the suit plots. However, there is no gainsaying that the petitioner has not accrued and or acquired any title to the suit plots. For good measure, the petitioner is still searching for title, if at all.

84. The question that does arise is whether the 1st respondent can be accused of having violated the petitioner's property rights under article 40 of the [constitution](#) 2010, long before the petitioner acquires title thereto. I am afraid that the petitioner must first acquire title to or rights over the designated properties before same can be heard to allege breach and or violation of his property rights. Absent property rights over the suit plots, the petitioner cannot be heard to allege breach. In any event, property rights must be acquired beforehand.



85. The Court of Appeal in the case of Nelson Kazungu Chai and 9 others vs Pwani University (2017) eKLR considered a similar position and came to the conclusion that property rights must first be acquired in any manner prescribed under the law before same can be protected/enforced under the constitution.
86. For ease of reference, the court stated and observed thus;
22. Before we conclude, we need to say something about Dr. Khaminwa's submission about the appellants' human rights being violated, and also on forceful evictions. A right can only be protected when it exists in reality and not where it remains an illusion or a mere expectation. Right to property is not one of those rights that inhere to every human being upon birth. They are acquired in different ways after one comes into this world. One cannot acquire property rights over another's property other than in a manner prescribed in law. In this case the appellants' claim to the suit property was in our view merely aspirational or rhetorical. This is so both under our very progressive Constitution and also under International Law. Indeed other than call in aid International Law, learned counsel Dr. Khaminwa did not cite any specific instrument that the appellants can leverage on to elevate the appellants' right to practice and enjoy their culture on the respondent's property over the respondent's rights under Article 40 of the constitution. In the absence of any right under the doctrine of legitimate expectation and of any other valid colour of right, the trial court could not have arrived at any other finding. Our conclusion is that the learned Judge arrived at the right decision based on the evidence placed before him, and he cannot be faulted.
87. In my humble, albeit considered view, the petitioner's contention that the respondents and in particular, the 1st respondent violated/breached his constitutional rights under article 40 of the constitution, 2010 is clearly premature and misconceived. Moreover, the claims pertaining to the property right in respect of the suit plots, is not only illusory, but imaginary.
88. As pertains to the complaints touching on article 47 of the constitution 2010, it is imperative to state that upon lodging the objections by the petitioner, the 1st respondent indeed scheduled the objection[s] for hearing. Furthermore, the 1st respondent issued and served the requisite notices upon the petitioner and the interested parties herein.
89. Additionally, there is no gainsaying that the 1st respondent thereafter conducted a hearing, wherein the petitioner and the interested parties were afforded an opportunity to tender evidence in support of their respective cases. Besides, the parties were also afforded an opportunity to undertake cross-examination. Notably, the proceedings and decision of the 1st respondent have been filed by both the petitioner and the interested parties.
90. Despite the fact that the petitioner was afforded due opportunity to present his case and to cross-examine the interested parties, the petitioner is now before this court complaining that his rights under Article 47 of the constitution 2010 were violated.
91. Be that as it may, evidence abound that the petitioner was duly afforded the latitude to present his case and to cross-examine adverse parties. Instructively, the first respondent complied with the provisions of articles 47 and Article 50 (1) of the constitution 2010. [See the decision of the Court of Appeal in the case of the Speaker, Kisumu County Assembly and Others versus The Clerk, Kisumu County Assembly Service Board and Others [2015] eKLR].
92. In a nutshell, I am afraid that the contention pertaining to breach and or violation of the petitioner's rights under articles 40 and 47 of the constitution 2010, have been mounted in vacuum. Simply put,



the petitioner has been unable to demonstrate any breach and or violation of the provisions of the said articles.

93. Moreover, it is not lost on me that no particulars of breach of the said articles were highlighted and captured in the body of Petition.

Final Disposition:

94. Having reviewed the thematic issues, which were highlighted in the body of the Judgment, it must have become apparent that the petitioner has failed to discharge the burden and or obligation placed on him.
95. Instructively, there is no gainsaying that the burden of proof laid on the shoulders of the petitioner and a failure to discharge same leaves the Court with no alternative but to dismiss the action. [see sections 107, 108 and 109 of the *Evidence Act*, cap 80 laws of Kenya].
96. In the premises, the final orders that commend themselves to the court are as hereunder;
- i. The Petition be and is hereby dismissed.
 - ii. Costs of the Petition be and are hereby awarded to the Respondents and the interested parties.
 - iii. The Costs in terms of clause (ii) hereof shall be agreed upon and in default same to be taxed in the conventional manner.
97. It is so ordered.

DATED, SIGNED AND DELIVERED AT MERU THIS 19TH DAY OF MAY 2025.

OGUTTU MBOYA, FCI Arb, CPM [MTI]

JUDGE.

In the presence of

Mutuma– Court Assistant

Mr. Kaberia for the Petitioner.

Miss Miranda for the Respondents.

Mr. Thurania Atheru for the Interested parties

