



REPUBLIC OF KENYA



**Kibandi & 16 others v Land Registrar, Kiritiri & another (Environment and Land Petition 2 of 2023) [2025] KEELC 5859 (KLR) (25 June 2025) (Judgment)**

Neutral citation: [2025] KEELC 5859 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT EMBU  
ENVIRONMENT AND LAND PETITION 2 OF 2023**

**AK BOR, J  
JUNE 25, 2025**

**BETWEEN**

**STEPHEN KARIUKI KIBANDI & 16 OTHERS ..... PETITIONER**

**AND**

**LAND REGISTRAR, KIRITIRI ..... 1<sup>ST</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. Through the Amended Petition dated 19/02/2024, the Petitioners sought a declaration that the cancellation of their titles by the land registrar was illegal, null and void. They sought an order for the removal of all the inhibitions, cautions or restrictions registered against their parcels of land and an order for the land registrar to rectify the land register by reinstating all the Petitioners' titles canceled together with the corresponding green cards. An order was also sought for the land registrar to make a new entry in all the green cards indicating the reinstatement of the titles by virtue of a court order and a declaration that the Respondents breached the Petitioners' fundamental constitutional right to property. Additionally, the Petitioners sought general damages for breach of their constitutional rights and costs of the suit.
2. The petition was supported by the affidavits of Stephen Kariuki Kibandi sworn on 30/8/2023 and 27/11/2024. Mr. Kibandi averred that Nthumbi Muchungu & 12 Others filed Kerugoya ELC Case No. 922 of 2013 claiming a share of Mbeti/Gachuriri/ 438 and 439 which they claimed were unlawfully excised from Mbeti/Gachuriri/172. They sought a declaration that the registration of the Gekara Group Ranch over Mbeti/Gachuriri/172 was unlawful. He explained that Mbeti/Gachuriri/172 was subdivided to create Mbeti/Gachuriri/426 to 4490.
3. Kerugoya ELC Case No. 922 of 2013 was transferred to Embu and registered as Embu ELC Case No. 224 of 2015. The suit was heard by Judge Y. M. Angima and vide the judgment delivered on 5/4/2018,



the Learned Judge issued a declaration that the registration of Gekara Group Ranch as the proprietor of Mbeti/Gachuriri/172 was fraudulent and that all subdivisions and transfers of the suit land to the defendants was null and void. After delivery of that judgment, the plaintiffs filed an application seeking to inhibit the subdivision of Mbeti/Gachuriri/426 to 429, 435, 438 to 440, 445, 446 and 462 pending an intended appeal. The court allowed the registration of the inhibitions but declined to grant any injunction.

4. Bedan Munyi & Others filed Embu ELC Petition No. 7 of 2018 seeking a declaration that Mbeti/Gachuriri/172 was and remained clan land and that its subdivision to create Mbeti/Gachuriri/426 to 4490 was unlawful. Among other reliefs, they sought to have the subdivision of Mbeti/Gachuriri/172 done afresh and the equitable sharing of the land among the legitimate clan members. The petition was dismissed for being *res judicata*.
5. In January 2023, the Petitioners discovered that the Land Registrar had cancelled a majority of the parcels of land within the range of parcel numbers Mbeti/Gachuriri/426 to Mbeti/Gachuriri/4490. The Petitioners' claim is that by the cancellation of their titles, the Respondents violated the Petitioners' right to property protected by Article 40 of the Constitution. They also contended that their rights under Articles 21, 27, 35, 43 and 47 of the Constitution had been violated by the Respondents' actions of cancelling their titles without affording them an opportunity to be heard.
6. Through the Replying Affidavit of Margaret Mutai sworn on 15/2/2024, the Respondents admitted cancelling the Petitioners' titles and emphasised that that was done pursuant to the judgment dated 5/4/2018 delivered in Embu ELC No. 224 of 2015- Nthumbi Muchungu & 12 Others v Herbert Nthiiri & 16 Others which gave rise to the decree dated 12/4/2018. The Respondents maintained that the only reason why the Petitioners' titles were cancelled was in compliance with the court's decree. The Respondents annexed a copy of the decree to their replying affidavit and denied that they had violated the Petitioners' constitutional rights in any way or as the Petitioners claimed.
7. The Respondents also urged that the court could not issue orders in vain and that there were no registers or green cards in existence for the Petitioners' parcels of land as those ceased to exist on 11/11/2022 when they were all cancelled.
8. The petition was canvassed through written submissions. The Petitioners reproduced order 1 in the decree dated 12/4/2018 and expounded that their reading of that order was that it meant that the judgment or decree was only to affect the 17 defendants in Embu ELC No. 224 of 2015. According to them, that position was affirmed by Judge Y. M. Angima in his ruling dated 16/5/2019 where the court pronounced itself as follows:

“The court is therefore satisfied that it is necessary to preserve the subject matter of litigation amongst the litigants herein. However, the plaintiffs have purported to irregularly expand the scope of litigation by seeking orders with respect to 129 parcels of land whereas most of them were not directly the subject of litigation in the instant suit. By its judgment dated 5<sup>th</sup> April 2018 the court made orders only against 17 defendants who were parties to the suit. The court is therefore not inclined to make any orders which may adversely affect registered proprietors who are not parties to the suit.”

9. They urged that Judge Y. M. Angima went further and specified the affected titles as Mbeti/Gachuriri /456, 446, 426, 427, 428, 429, 435, 438, 439, 443, 462, 440 and 445 hence thwarting any ambiguity in the interpretation of his judgment and decree.
10. The Petitioners submitted that they were not parties in Embu ELC No. 224 of 2015 nor were their properties listed or mentioned in page 2 and 3 of the petition in that case. That notwithstanding,



the Respondents insisted that they lawfully canceled the Petitioners' titles pursuant to Judge Y. M. Angima's judgment and the decree emanating from it.

11. The Petitioners contended that in the eyes of the literal rule of legal interpretation and in the presence of verbatim or express mentioning of the affected titles by the Learned Judge, the 1<sup>st</sup> Respondent's action could not be said to be lawful. They referred to the Black's Law Dictionary 2<sup>nd</sup> Edition which defines the literal rule as a rule of statutory interpretation where the courts simply look at the words of the statute and apply them as they are written, giving them their ordinary and natural meaning.
12. The Petitioners submitted that the cancellation of their titles was unlawful, unjustified and with no legal justification and that the 1<sup>st</sup> Respondent's action of cancelling their titles without any legally justifiable reason amounted to a breach of their constitutional right to property protected by Article 40(1) and (3) of the Constitution.
13. The Petitioners contended that the Respondents' move to cancel their titles and corresponding green cards was not motivated by any lawful intent of compulsory acquisition and that as such, their right to property was arbitrarily taken away. Further, that cancellation of their titles by a State Officer, the 1<sup>st</sup> Respondent under the watch of its official legal advisor the 2<sup>nd</sup> Respondent, also a State Officer, without any legally justifiable reason amounted to a breach of their constitutional duty to observe, respect, protect, promote and fulfil the rights and fundamental freedoms in the Bill of Rights enshrined in Article 21 (1) of the Constitution.
14. The Petitioners urged that the cancellation of their titles was targeted and discriminatory as the 1<sup>st</sup> Respondent canceled the Petitioners' titles but did not cancel Mbeti/Gachuriri/1126 which falls within the same series of titles without giving any reason and that that was discriminatory. The Petitioners argued that it was evident that the cancellation was targeted and was an affront to the Petitioners' freedom from discrimination enshrined in Article 27 of the Constitution.
15. The Petitioners further submitted that they live, dwell and farm on the parcels of land mentioned in the petition and that the 1<sup>st</sup> Respondents' actions of cancelling their titles posed the danger of eviction and that it denied them their social economic rights to adequate housing and freedom from hunger protected by Article 43 of the Constitution. They argued that although veiled as sanctioned by a court order, the 1<sup>st</sup> Respondent's actions of cancelling the Petitioners' titles was unlawful and amounted to unfair administrative action, a right protected under Article 47 of the Constitution.
16. The Petitioners invited the court to find and declare that the Respondents breached their fundamental human rights in light of Article 23 (3)(a) of the Constitution. That having established that the 1<sup>st</sup> Respondent's actions were illegal and a breach of their fundamental human rights, it was only in the interest of justice that the canceled titles be reinstated. They relied on the maxim that equity will not suffer a wrong to be without a remedy.
17. The Petitioners relied on Section 80 of the Land Registration Act which allows rectification of the land register by virtue of a court order. They urged that it was in the interest of justice and meritorious for their titles and the corresponding green cards illegally canceled by the 1<sup>st</sup> Respondent to be reinstated through rectification or amendment of the land register. They sought to have the court direct the 1<sup>st</sup> Respondent to make a new entry in all affected green cards indicating reinstatement of the titles by virtue of a court order.
18. The Petitioners submitted that they were entitled to compensation as envisaged under Article 23 (3)(e) of the Constitution as a result of the illegal and unconstitutional conduct of the 1<sup>st</sup> Respondent because their titles have remained cancelled for two years. They urged that as result of the 1<sup>st</sup> Respondents'



- actions, they had suffered economically and socially as they were denied electrification, the opportunity to establish a farming enterprise and the opportunity for business enterprises as titles were the most preferred securities for commercial loans. Additionally, that they had suffered active social discrimination since not all land parcels were canceled.
19. The Petitioners relied on *Gitobu Imanyara & 2 others v Attorney General* (2016) KECA 557 (KLR) where the Court of Appeal upheld the awards of Kshs 17 million, 10 million and 7 million granted by the High Court for breach of fundamental constitutional rights. The Petitioners submitted that an award of Kshs 3.5 million would be appropriate for each Petitioner and that were it not for the Respondents' actions and misadvice, no court action would have ensued.
  20. The Respondents submitted that although the Petitioners claim their property rights were infringed, those rights were not protected under Article 40(6) which excludes titles acquired unlawfully from the protection afforded by that constitutional provision. According to the Respondents, the court order dated 12/4/2018 found the subdivision and issuance of the titles from Gekara Group Ranch to be fraudulent, null, and void. They relied on *Isaac Gathungu Wanjohi & Another v Attorney General & 6 Others* (2012) eKLR, where the court held that Article 40(6) excluded protection of property acquired through fraud, which in their reinforced the Respondents' position.
  21. In answer to the Petitioners' argument that cancellation of their titles was done without notice or a hearing which violated their right to fair administrative action, the Land Registrar urged that she did not exercise administrative discretion but merely implemented a court directive, which does not fall within the purview of administrative action requiring procedural fairness. They referred the court to the decision in *Teachers Service Commission v Kenya Union of Teachers & 3 Others* (2015) eKLR where the court held that public officers must obey court orders and that failure to do so amounted to contempt of court.
  22. On the allegation by the Petitioners that they were denied access to information concerning the cancellation, the Respondents maintained that no formal request was ever made, and that access to such information was contingent upon application. The Respondents cited *Katiba Institute v President's Delivery Unit & 3 Others* (2017) eKLR where the court held that the State was obligated to disclose information only when properly requested, and that it was the applicant's burden to show that the request was made and ignored. The Respondents maintained that the Petitioners had not discharged that burden.
  23. The Respondents reiterated that all actions taken stemmed from a binding court order, which they were obligated to enforce. They cited *Republic v County Government of Mombasa Ex Parte Outdoor Advertising Association of Kenya* (2014) eKLR in which the court held that compliance with a court order, even if adverse, could not be equated to unconstitutional conduct.
  24. The Respondents were emphatic that they had justified their actions through Article 40(6) to disqualify protection of fraudulently acquired titles and that they had demonstrated that the Land Registrar was bound to act on a court order and not discretionary administrative power. Further, that a claim for denial of the right to access to information claim could not stand without a formal request. The Respondents submitted that the petition lacked merit and that the orders sought by the Petitioners should not be awarded since no constitutional rights were violated as alleged.
  25. The issues for determination are whether the Petitioners proved their claim that their constitutional rights under Articles 21, 27, 35, 43 and 47 of the *Constitution* were violated by the Respondents' actions of cancelling their titles without affording them an opportunity to be heard; and whether the court should grant the reliefs sought by the Petitioners.



26. It is not in dispute that the Respondents cancelled the Petitioners titles, the contention revolves around the interpretation to be given to the decree issued pursuant to the judgment delivered by Judge Y. M. Angima on 5/4/2018, the Learned Judge to the effect that the registration of Gekara Group Ranch as the proprietor of Mbeti/Gachuriri/172 was fraudulent and that all subdivisions and transfers of the suit property to the defendants was null and void.
27. The Petitioners relied heavily on the ruling of Judge Y. M. Angima dated 16/5/2019 where the Learned Judge observed that the plaintiffs had purported to irregularly expand the scope of litigation by seeking orders with respect to 129 parcels of land whereas most of them were not directly the subject of litigation in that suit, yet in the judgment dated 5/4/2018, the court only made orders against 17 defendants who were parties to that suit.
28. In the judgment delivered on 5/4/2018, the Judge Y. M. Angima issued a declaration that the registration of Gekara Group Ranch as the proprietor of Mbeti/Gachuriri/172 was fraudulent and that all subdivisions and transfers of the suit land to the defendants was null and void. The subdivision of Mbeti/Gachuriri/172 is what led to the creation of the parcels known as Mbeti/Gachuriri/426 to 4490. While it is evident that only a small fraction of the registered owners whose parcels of land fell within the Mbeti/Gachuriri/426 to 4490 bracket were parties in Embu ELC Case No. 224 of 2015, the finding of the court was that the registration of Gekara Group Ranch as the proprietor of Mbeti/Gachuriri/172 was fraudulent and that all subdivisions and transfers of the suit land, which was Mbeti/Gachuriri/172, to the defendants was null and void.
29. Once the court found that the registration of Gekara Group Ranch as the proprietor of Mbeti/Gachuriri/172 was fraudulent and that all subdivisions and transfers of the suit land to the defendants was null and void, it automatically followed that all the parcels of land, that is Mbeti/Gachuriri/426 to 4490 which were created from the subdivision of Mbeti/Gachuriri/172 stood cancelled irrespective of whether or not the registered owners had participated in that suit.
30. While this outcome is without doubt unfair and unjust and was not the intention of the court when it determined the dispute regarding the 17 defendants who were before it in Embu ELC Case No. 224 of 2015, this was the undesired effect of the cancellation of the subdivision of Mbeti/Gachuriri/172. Put differently, it would not be possible to cancel only some of the resultant subdivisions created from Mbeti/Gachuriri/172 and leave other parcels untouched. Cancellation of the subdivision of Mbeti/Gachuriri/172 naturally affected all the parcels created from the subdivision of Mbeti/Gachuriri/172 cumulatively with the land reverting back to how it existed as Mbeti/Gachuriri/172 before it was subdivided.
31. Ideally, the plaintiffs in Embu ELC Case No. 224 of 2015 should only have sought cancellation of some of the portions created from the subdivision of Mbeti/Gachuriri/172, specifically Mbeti/Gachuriri /456, 446, 426, 427, 428, 429, 435, 438, 439, 443, 462, 440 and 445 which were registered in the names of the 17 defendants in Embu ELC Case No. 224 of 2015 and not the cancellation of all the parcels created from the subdivision of Mbeti/Gachuriri/172 as this was bound to affect parcels of land held by persons who were not parties to that suit. That is the unfortunate situation that the Petitioners and other innocent parties find themselves in that their titles were cancelled through no wrongful doing on their part.
32. The upshot of this is that one cannot fault the land register for implementing the court decree in the manner in which it was couched. The Petitioners were only implementing the decree of the court in Embu ELC Case No. 224 of 2015. They did not breach the Petitioners' constitutional rights as the Petitioners allege.



33. The correction of the anomaly and the absurd outcome should have been undertaken in Embu ELC Case No. 224 of 2015 by the decree being amended to indicate expressly that what was cancelled was the parcels of land known as Mbeti/Gachuriri /456, 446, 426, 427, 428, 429, 435, 438, 439, 443, 462, 440 and 445 created from the subdivision of Mbeti/Gachuriri/172. The order could go further to order the amalgamation or consolidation of those parcels of land if that is possible based on their physical location on the ground.
34. The court declines to grant the orders sought in the Amended Petition dated 19/2/2024. Each party will bear its own costs.

**DELIVERED VIRTUALLY AT EMBU THIS 25<sup>TH</sup> DAY OF JUNE 2025.**

**K. BOR**

**JUDGE**

In the presence of: -

Mr. Munene Njiru for the Petitioners

Mr. I. Kiplimo holding brief for Mr. J. Kiongo for the Respondents

