



**Ndambili v Gatakaa & 3 others (Environment & Land Petition
E002 of 2024) [2025] KEELC 4824 (KLR) (24 June 2025) (Judgment)**

Neutral citation: [2025] KEELC 4824 (KLR)

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

BM EBOSO, J

JUNE 24, 2025

BETWEEN

JULIUS RIUNGU MUCHEKE NDAMBILI APPLICANT

AND

IRERI CATHERINE GATAKAA 1ST RESPONDENT

**DISTRICT LAND ADJUDICATION OFFICER THARAKA NITHI
COUNTY 2ND RESPONDENT**

ATTORNEY GENERAL 3RD RESPONDENT

LAND REGISTRAR, THARAKA NITHI COUNTY 4TH RESPONDENT

JUDGMENT

Background

1. Through a petition dated 29/7/2024, Julius Riungu Mucheke Ndambili (hereinafter referred to as “the petitioner”) sought the following reliefs from this court:
 - “(a) An order of adoption of the Minister’s decision and transfer of land parcel Mwimbi/Kiraro/557 to the applicant (sic).
 - (b) An order for judicial review by way of an order of mandamus to compel the 4th respondent to recall the suit property title deed issued to the 1st respondent and thereby revoke or cancel the same.
 - (c) An order for judicial review by way of an order of mandamus to compel the fourth respondent to issue a fresh title deed of the suit property for the petitioner who is the true and legitimate owner of the suit property.



- (d) A permanent and mandatory injunction restraining the 1st respondent and interested parties, by themselves, their children, employees, servants and whomsoever acting or claiming on behalf of or through them from entering into uninterrupted exclusive and actual possession, user development and enjoyment of land parcel number Mwimbi/Kiraro/557 situated in Kiraro location measuring around 1.3Ha.
 - (e) An order directing the Deputy Registrar to sign all documents relating to transfer of land parcel Mwimbi/Kiraro/557.
 - (f) Costs of this petition and interest thereon at court rates.
2. The petition was expressed as brought under Articles 27, 40, 47, 48, 50 and 258 of *the Constitution*. It was canvassed through written submissions dated 13/2/2025, filed by M/s T. M. David & Co. Advocates. The 1st respondent opposed the petition through her replying affidavit dated 7/1/2025 and written submissions dated 25/2/2025, filed by M/s Ngina Mbugua & Company Advocates. The 2nd, 3rd and 4th respondents opposed the petition through grounds of opposition dated 23/2/2025 and written submissions dated 27/2/2025, both filed by Ms E. Kendi, Litigation Counsel in the Office of the Attorney General.
 3. The petition now falls for determination in this judgment. One of the key questions to be considered in the judgment is whether a case has been made to warrant issuance of orders of mandamus compelling the Land Registrar, Tharaka Nithi County, to recall and cancel the title deed issued to Dexter Ileri M’Imanene and issue a title deed to the petitioner in relation to land parcel number Mwimbi/Kiraro/557. Before I analyse and dispute the issues that fall for determination, I will briefly outline the parties’ respective cases.

Petitioner’s Case

4. The case of the petitioner is contained in the petition dated 27/7/2024; his supporting affidavit dated 29/7/2024; and his written submissions dated 13/2/2025, filed through M/s T. M. David & Co. Advocates. In summary, the case of the petitioner is that the 1st respondent is the personal representative of the late Dexter Ileri M’Imanene (hereinafter referred to as “the deceased”) who died in 2019 domiciled in Kenya. In 2002, the deceased lodged a dispute against him alongside Phyllis Mucheke Ndambili, Julius Riungu Mucheke Ndambili and Silas Mbaya Mucheke Ndambili in Land Disputes Tribunal Case No. MWI/5/2002 in relation to land parcel number Mwimbi/Kiraro/557. A ruling was subsequently rendered in the said case, awarding the trio the said land and directing that the land, which was registered in the name of the deceased (Dexter Ileri M’Imanene), was to be transferred to the trio.
5. The petitioner adds that in 2022, he filed Chuka CMC Misc ELC Case No. E005 of 2003 seeking orders adopting the award of the tribunal and on 6/7/2023 the Senior Principal Magistrate (Hon. D.A. Ocharo) adopted the award and authorized the Land Registrar to process and issue a title deed to the petitioner. Prior to the Land Registrar acting on the order, the 1st respondent applied for and obtained an order setting aside the said adoption order, hence the land is still registered in the name of the late Dexter Ileri M’Imanene.
6. The petitioner contends that no appeal was lodged against the award of the Tribunal, which he describes as “the ruling by the minister”. It is for the above reasons that he seeks the above orders.
7. The petition is premised on the grounds that: (i) the petitioner had a legitimate expectation that the land adjudication process conducted by the 2nd respondent would be fair and reasonable; (ii) the



petitioner had legitimate expectation that the 4th respondent would issue title deed to the true owners of the land in actual occupation and use; and (iii) the petitioner had a legitimate expectation that the adjudication process would be fair and that the 2nd respondent would act in the best interest of the residents to promote peace and harmony in the area.

1st Respondent's Case

8. The case of the 1st respondent is that she is the duly appointed personal representative of the late Dexter Ireri M'Imanene pursuant to a limited grant issued to her on 21/11/2023. The deceased was lawfully registered as proprietor of the suit land after he lawfully acquired the suit land and after he fully complied with all the relevant legal requirements. She states that the deceased's title was acquired without any form of fraud, illegality or irregularity.
9. The first respondent faults the petitioner for withholding material facts, contending that the petitioner, together with his family members, filed Case No.37 of 2006 seeking orders of adverse possession, which case was defended and was subsequently dismissed on 20/6/2010.
10. The 1st respondent faults the petitioner for failing to comply with Rule 10 of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013 (hereinafter referred to as "the Rules"), adding that the petition does not identify and specify the constitutional provisions which have been allegedly violated. The 1st respondent adds that the Land Disputes Tribunal lacked jurisdiction to entertain a dispute relating to title under Section 159 of the Registered *Land Act* (now repealed) and under Section 3 of the Land Disputes Tribunal *Act, No.18 of 1990*, hence the decision was void ab initio. She adds that the deceased lawfully contested the Tribunal's decision through Meru Misc JR Application No.260 of 2003. The 1st respondent made various "prayers" in the replying affidavit.

2nd 3rd and 4th Respondents' Case

11. The case of the 2nd, 3rd and 4th respondents is that the petition is fatally defective, misconceived, mischievous, an abuse of the process of the court and unsustainable. They urge that if the petitioner was dissatisfied with the order of the Magistrate Court which set aside the adoption order, he should have appealed against it. They add that the orders of mandamus which the petitioner seeks are subject to a limitation period of six months, adding that the petitioner should have brought a judicial review application as opposed to a petition. They fault the petitioner for bringing a petition that is too general and lacks specificity. They also fault the petitioner for breaching the requirement for exhaustion of alternative statutory remedies. They urge the court to reject the petition.

Analysis and Determination

12. The court has considered the petition, the responses to the petition and the parties' respective submissions. The court has also considered the cited constitutional provisions and the relevant rules and constitutional principles. The following are the three issues that fall for determination in this judgment: (i) Whether the petition meets the threshold of a constitutional petition under the relevant rules; (ii) Whether the respondents or any of them violated or threatened to violate the petitioner's right of legitimate expectation; and (iii) Whether the reliefs sought in the petition are available. I will be brief in my sequential analysis and disposal of the three issues.
13. Does the petition meet the threshold of a constitutional petition? The petitioner chose to ventilate his grievances on the platform of a petition under the Bill of Rights. The heading part of the petition cited in general terms Articles 27, 40, 47, 258, 48 and 50 of *the Constitution*. The respondents faulted the petitioner for failing to comply with the requirement that the petition should specifically plead



the provisions of *the Constitution* allegedly violated or threatened with violation, the manner of the violation, and the injury suffered. The respondents cited the pronouncements of the courts in the cases of: (i) *Mumo Matemu v Trusted Society of Human Rights Alliance & 5 Others* [2013] eKLR; and (ii) *Anarita Karimi Njeru v Republic* (1979) JKR. The court has reflected on the issue.

14. Petitions under the Bill of Rights are regulated by the framework in *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013 [hereinafter referred to as “the Rules”]. Rule 10(1) and (2) provides the following threshold that a petition should satisfy:

“ 10.

- (1) An application under rule 4 shall be made by way of a petition as set out in Form A in the Schedule with such alterations as may be necessary.
- (2) The petition shall disclose the following—
 - (a) the petitioner’s name and address;
 - (b) the facts relied upon;
 - (c) the constitutional provision violated;
 - (d) the nature of injury caused or likely to be caused to the petitioner or the person in whose name the petitioner has instituted the suit; or in a public interest case to the public, class of persons or community;
 - (e) details regarding any civil or criminal case, involving the petitioner or any of the petitioners, which is related to the matters in issue in the petition;
 - (f) the petition shall be signed by the petitioner or the advocate of the petitioner; and
 - (g) the relief sought by the petitioner.”

15. As early as the late 1970s and early 1980s, Kenya’s courts emphasized the above threshold. In *Anarita Karimi Njeru v Republic* [1979] eKLR the Court stated that:

“...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.”

16. Upon the enactment of the new Constitution, the threshold was codified into the above cited rule. The Court of Appeal emphasized the threshold in *Mumo Matemu v Trusted Society of Human Rights alliance and 5 others* (2013) eKLR as follows:

“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 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.”

17. In *Trusted Society of Human Rights Alliance v Attorney General & 2 Others* (2013) eKLR, the court emphasized the threshold as follows:

“We do not purport to overrule *Anarita Karimi Njeru* as we think it lays down an important rule of constitutional adjudication: a person claiming constitutional infringement must give sufficient notice of the violation to allow her adversary to adequately prepare her case and save the court from the embarrassment of adjudicating on issues that are not appropriately phrased as justiciable controversies. However, we are of the opinion that the proper test under the new constitution is whether a petition as stated raised issues which are so insubstantial and so attenuated that a court of law properly directing itself to the issue cannot fashion an appropriate remedy due to the inability to concretely fathom the constitutional violation alleged. The test does not demand mathematical precision in drawing constitutional petitions. Neither does it demand talismanic formalism in identifying the specific constitutional provisions which are alleged to have been violated. The test is a substantive one and inquires whether the complaints against respondents in a constitutional petition are fashioned in a way that gives proper notice to the respondents about the nature of the claims being made so that they can adequately prepare.”

18. I have looked at the petition that is the subject of this judgment. Part “A” of the petition contains names of parties to the petition. Part “B” contains the facts relied upon. Part “C” contains what is described as “Grounds of the Petition.” The last part contains the reliefs sought by the petitioner.

19. For clarity, Part “C” reads as follows:

- “(i) The petitioner had a legitimate expectation that the land adjudication process conducted by the 2nd respondent would be fair and reasonable,
- (ii) The petitioner had legitimate expectation that the 4th respondent would issue title deed to the true owners of the land in actual occupation and use,
- (iii) The petitioner had a legitimate expectation that the adjudication process would be fair and that the 2nd respondent would act in the best interest of the residents to promote peace and harmony in the area.”



20. The following are the key elements of a constitutional petition which are missing in this petition: (i) the constitutional provisions violated or threatened with violation; and (ii) the nature of injury caused or likely to be caused to the petitioner. As a consequence of the omission, the respondents have not been told the precise article of *the Constitution* which they violated or threatened to violate. They have not been told what it is that they did or omitted to do.
21. From part B of the petition, it emerges that the 1st respondent's late husband lodged a claim against the petitioner and his two family members at the Land Disputes Tribunal. The Tribunal rendered decision that was against the deceased. Although the petitioner and her co-respondents or co-defendants were not claimants or counterclaimants in the dispute, they were given an award that translated into a cancellation of the deceased's title. For reasons known to the petitioner, he did not bother to apply for adoption of the award as a judgment of the magistrate court in tandem with the law that was in force at the time.
22. It also emerges from Part B of the petition that, after sitting on the award of the Tribunal for 20 years, the petitioner filed in the Chief Magistrate Court at Chuka, Misc ELC Application No. E005 of 2022 against a deceased respondent and obtained an ex-parte adoption order against the deceased respondent. The estate of the deceased subsequently moved the court and obtained an order setting aside the ex-parte post-humous adoption order.
23. The other fatal feature of the petition is the mix-up of proceedings that were pursued at the Land Disputes Tribunal within the framework of the Land Disputes Tribunal Act (now repealed) and proceedings that may have been pursued within the framework of the *Land Adjudication Act*. It is clear from the petition that the petitioner has mixed up the two proceedings. A party aggrieved by a decision of the Land Adjudication Officer made under Section 26 of the Act has the statutory remedy of an appeal to the Minister under Sections 29 and 30 of the Act. When exercising appellate jurisdiction under Section 29 of the Act, the Minister receives evidence from the parties to the appeal before rendering a determination. A reading of the petition reveals a serious mix-up of the two proceedings to the extent that the petitioner sought an order adopting the Minister's decision and in support of that he exhibited the award of the Land Disputes Tribunal as the minister's decision to be adopted.
24. For the above reasons, the court agrees with the respondents that the petition dated 29/7/2024 does not meet the threshold of a constitutional petition under *the Constitution* of Kenya (Protection of Rights and Fundamental Freedom) Practice and Procedure Rules 2013.
25. Has it been demonstrated that the respondents or any of them violated or threatened to violate the petitioner's right of legitimate expectation? I have focused on the right of legitimate expectation because that is what was pleaded in general terms in Part "C" of the petition. The petitioner alleged that he had a legitimate expectation that the land adjudication process conducted by the 2nd respondent would be fair and reasonable. He added that he had a legitimate expectation that the 4th respondent would issue a title deed to the true owners of the land who were in actual occupation and use of the land. Lastly he pleaded that he had a legitimate expectation that the adjudication process would be fair and the 2nd respondent would act in the best interest of the residents to promote peace and harmony in the area.
26. It is clear that part "C" of the petition relates to and targets the land adjudication process under the *Land Adjudication Act*. It does not align with part "B" which relates to the proceedings that were undertaken under the repealed Land Disputes Tribunal Act and the abortive post-humous adoption proceedings. Prayer (a) is a plea for an order adopting what the petitioner described as "the minister's decision". It also contains a plea for transfer of the suit land to the petitioner. The proceedings which were exhibited are those of the Land Disputes Tribunal. The decision which was exhibited is similarly



that of the Tribunal. No decision of the Minister was exhibited. None of the proceedings and decisions relating to land adjudication under the Land Adjudication Act was exhibited.

27. In his submissions on the petition, the petitioner focused on the proceedings and the decision of the defunct Land Disputes Tribunal. The submissions do not align with Part “C” of the petition which focused on the Land Adjudication Act. Even if this court were to look at the merits of the submissions in relation to the plea for an order adopting the award of the Tribunal, it is clear to this court that the defunct Land Disputes Tribunals did not have jurisdiction to cancel registered titles to land.
28. In the case of *Gitau & 2 others v Chesire & 35 others* (Civil Appeal 156 of 2017) [2022] KECA 94 (KLR) (4 February 2022) (Judgment), the Court of Appeal held:

“The High Court and this Court too have pronounced themselves on the question of the jurisdiction of the Land Disputes tribunal on several occasions. We have set out earlier in this judgment the jurisdiction of the now repealed Land Disputes Tribunal Act as contained in Section 3 of the said Act. This Court has repeatedly maintained that the Land Disputes Tribunals had no jurisdiction to determine ownership of land let alone cancelling title deeds, or directing cancellation of title deeds. The Court of Appeal in *Marete vs Republic & 3 others* [2004] eKLR also held:

“In our view, the dispute before the Tribunal did not relate to boundaries, claim to occupy or work the land, but a claim to ownership. Taking into account the provisions of section 3 of the Act and what was before the Tribunal, we are of the view that the Tribunal went beyond its jurisdiction when it purported to award parcels of land registered under Registered Land Act to the appellant. In our view, the Tribunal acted in excess of its jurisdiction.”

29. The award which the defunct Tribunal purported to issue suo motto (without any claim) was made without jurisdiction and was null and void for all practical purposes. In the case of *Macfoy v United Africa Co Ltd* [1961] 3 All ER 1169 Lord Denning delivering the opinion of the Privy Council at page 1172 (I) said:

“If an act is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of the Court to set it aside. It is automatically null and void without more ado; Though it is sometimes convenient to have the Court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse.”

30. For the above reasons, the court comes to the finding that the petitioner has failed to prove violation or threat of violation of his right of legitimate expectation by any of the respondents. For the same reasons, none of the reliefs sought in the petition dated 29/7/2024 is available.

31. Taking into account the circumstances of the case, the petitioner shall bear costs of the petition.

DATED, SIGNED AND DELIVERED VIRTUALLY AT CHUKA THIS 24TH DAY OF JUNE, 2025.

B M EBOSO [MR]

JUDGE

In the Presence of:

Ms. David for the Petitioner

Ms. Mbugua for the 1st Respondent



2nd, 3rd and 4th Respondents: Absent

Court Assistant – Mr. Mwangi

