



**M’Kailanya v Kaungu & 15 others (Environment and Land Petition
E008 of 2021) [2025] KEELC 6701 (KLR) (25 September 2025) (Judgment)**

Neutral citation: [2025] KEELC 6701 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND PETITION E008 OF 2021**

**JO MBOYA, J
SEPTEMBER 25, 2025**

BETWEEN

PATRICK M’KAILANYA PETITIONER

AND

ANNISIETA KAUNGU 1ST RESPONDENT

WILSON KABERIA 2ND RESPONDENT

DOMIANO MWENDA 3RD RESPONDENT

GABRIEL CHOKERA 4TH RESPONDENT

FESTUS MATHEW 5TH RESPONDENT

PAUL KIANJI 6TH RESPONDENT

ROSE KAGWIRIA 7TH RESPONDENT

SIMON WAWERU 8TH RESPONDENT

ISAACK MUCHENURA 9TH RESPONDENT

PATRICK KUBAI 10TH RESPONDENT

MOSES GICHURU 11TH RESPONDENT

PETER NTONJIRA 12TH RESPONDENT

LAND REGISTRAR TIGANIA 13TH RESPONDENT

ATTORNEY GENERAL 14TH RESPONDENT

ATTORNEY GENERAL 15TH RESPONDENT

**DISTRICT LAND AND ADJUDICATION AND SETTLEMENT OFFICER
TIGANIA EAST DISTRICT 16TH RESPONDENT**



JUDGMENT

1. The Petitioner has approached the court vide the Petition dated 10th February 2021; and wherein same has sought the following reliefs:
 - a. A declaration that the actions of the respondents have expressly contravened the petitioner's right to acquire property under Article 40 of *the Constitution*.
 - b. A declaration that the petitioner is entitled to 15.9 acres of the original parcel 817/Antuamburi adjudication section measuring 31.81 acres in total.
 - c. An order directing the land registrar, Tigania and the district surveyor to implement in full the land adjudication officer decision arising from objection 1929 of 2011.
 - d. Upon granting prayer (c) above, an order directing the land registrar to cancel all titles issued as a result of sub-divisions of the original land namely Meru North/Antuamburi/7684,817, 7773, 13939, 12345, 6094, 7896, 614, 6662, 8366, 12198, 5863, 6284, 5865, 2951 and any other sub-divisions made from the original parcel 817 Antuamburi adjudication section till a portion of 15.9 acres being the half of the original land is registered in the names of petitioner.
 - e. An order directing the land registrar and district surveyor to rectify the cadastral survey map to reflect the decision of the land adjudication officer in objection 1929 of 2011.
 - f. Upon granting prayer © above, a permanent order of injunction restraining the respondents themselves, families, employees or any other person acting at their behest from interfering with the parcel of land as will be registered by the land registrar.
 - g. Any further orders this Honourable court deems just in furtherance of justice.
 - h. Costs of this Petition.
2. The petition beforehand is anchored on the various grounds that have been captured in the body thereof. Furthermore, the petition is supported by the affidavit sworn by Patrick Kailanya [the petitioner on 10th February 2021; and the supplementary affidavit sworn on 30th January 2024. In addition, the petitioner has also relied on assorted documents, including the objection proceedings and decision in respect of objection number 1929, Antuamburi Adjudication Section.
3. The 1st – 13th respondents duly entered appearance and thereafter filed various responses. The responses on behalf of the 1st to 13th respondents are contained in the various replying affidavits, which were filed before the court on 10th November 2021. Furthermore, the 1st to 13th respondents also filed further affidavits confirming the manner in which same acquired and became the registered owners of their respective parcels of land.
4. Additionally, the 2nd, 3rd, 4th, 7th, 10th, 11th & 13th respondents filed a cross petition dated 19th April 2023 and wherein same [the designated respondents/cross petitioners] sought the following reliefs:
 - i. An order setting aside the administrative action in Objection No. 1929 over parcel No. 817 Antuamburi Adjudication Section of 2012.
 - ii. A declaration that the petitioners' rights to fair administrative action under Article 47 and a right to fair hearing under Article 50 were infringed by the 1st respondent.



- iii. An order of judicial review in the nature of certiorari to bring up before this court for quashing the decision delivered in 2012 of the 1st respondent in objection No. 1929 over land parcel number 817 of Antuamburi Adjudication Section.
5. The petition herein came up for directions and the parties covenanted to dispose of the petition by way of viva voce evidence. To this end, the court proceeded to and issued directions confirming that the petition was to be heard and disposed of by way of oral evidence [viva voce].
6. The petitioner's case is premised on the evidence of one witness namely; Patrick Kailanya. Same testified as PW 1.
7. The petitioner adopted the contents of the supporting affidavit sworn on 10th February 2021 and the supplementary affidavit sworn on 30th January 2024, respectively. Furthermore, the petitioner also tendered and produced the various annexures attached to the main affidavit, including a copy of the objection proceedings and the decision rendered vide objection No. 1929 in respect of plot No. 817.
8. It was the further testimony of the petitioner that same lodged the subject objection, namely; objection number 1929 and wherein same challenged the decision of the board awarding the entire parcel number 817 to Mbiriti Itamu. Moreover, the petitioner contended that the objection under reference was heard and disposed of. In addition, the petitioner contended that the objection was allowed and the land adjudication officer directed that plot no. 817 be shared between Mbiriti Itamu and Ambrose Kailanya and Patrick Kailanya. Besides, the petitioner posited that the adjudication officer directed that, because the petitioner was already in possession of six (6) acres out of the 31.81 acres, the petitioner was awarded 9.96 acres and the balance of the plot was to remain with Mbiriti Itamu.
9. It was the further averments of the petitioner that the decision under reference has never been challenged and or impeached. For good measure, the petitioner averred that the decision remains in existence. Nevertheless, the petitioner added that despite the decision being in existence, the 14th respondent has failed, neglected and or refused to implement the decision.
10. Additionally, the petitioner averred that the 14th respondent has colluded with the 1st to 13th respondents and thereafter proceeded to sub-divide plot no. 817 into several parcels of land, whose details the petitioner has highlighted in the body of the petition. To this end, the petitioner has posited that the failure to implement the decision of the adjudication officer [arising out of objection number 1929] and the unlawful subdivision of the said plot into various parcels constitute a breach/ infringement of his [petitioner's] rights.
11. Flowing from the foregoing, the petitioner has invited the court to find and hold that the actions complained of constitute a breach of his constitutional rights and that the court should proceed and grant the reliefs highlighted at the foot of the petition dated 10th February 2021.
12. The 1st – 13th respondents' case is premised on the evidence of 7 witnesses, namely; RW 2 – RW 8, respectively.
13. The witnesses for the named respondents adopted and relied on the various affidavits sworn in opposition to the petition. In particular, RW 2 [Wilson Kaberia Laibuni] adopted the affidavit sworn on 19th April 2023 and the further affidavit sworn on 12th April 2024. In addition, the witness averred that same has also filed a cross petition and thereafter sought to rely on the cross petition.
14. It was the further testimony of RW 2 that same has also annexed various documents to the replying affidavit sworn on 19th April 2023; and thereafter same sought to rely on the said documents. For good measure, the documents were adopted and constituted as exhibits on behalf of RW2.



15. The 2nd witness who testified on behalf of the 1st to the 13th respondents was Domiano Mwenda. Same testified as RW3.
16. It was the testimony of the said witness that same is conversant with the facts of the matter. Furthermore, the witness averred that same has also filed a cross petition dated 19th April 2023 and which cross petition the witness sought to adopt and rely on. In addition, the witness also adverted to the supporting affidavit of even date and which supporting affidavit the witness adopted as his evidence in chief.
17. Additionally, the witness averred that same has since filed another affidavit sworn on 12th of January 2024 and which affidavit was similarly adopted and constituted as the evidence in chief of the witness. Moreover, the witness also tendered and produced a copy of the sale agreement and the certificate of title relating to plot number 12345, which the witness averred was acquired by way of purchase. Furthermore, the witness averred that same person purchased his plot from one Denis Kirianki.
18. The 3rd witness who testified on behalf of the 1st – 13th respondents was Gabriel Njenjere Chokera. Same averred that he is one of the respondents herein. In addition, the witness stated that he has filed a replying affidavit sworn on 19th April 2023 and which replying affidavit the witness sought to adopt and rely on. Besides, the witness also averred that same has also filed a further affidavit sworn on 12th April 2024. Similarly, the said further affidavit was adopted and constituted as further evidence in chief.
19. The next witness was Rose Kagwiria. Same testified as RW5. The witness averred that same has sworn a replying affidavit dated 19th April 2023 and which replying affidavit the witness sought to adopt and rely on as her evidence in chief. In addition, the witness also referenced the certificate of title in respect of L.R No. Meru North/Antuamburi/8366, which certificate of title was tendered and produced as an exhibit before the court. It was the further testimony of the witness [RW5] that same has also sworn a supporting affidavit dated 12th January 2024 and which affidavit the witness sought to adopt and rely on. Instructively, the affidavit under reference was adopted and constituted as further evidence of the witness.
20. The next witness was Tabitha Muthoni Kubai. Same testified as RW6. It was the testimony of the witness that same was the legal administrator of the estate of Patrick Kubai. Moreover, the witness testified that the deceased filed an affidavit sworn on 19th April 2023. To this end, the witness sought to adopt the said affidavit. In addition, the witness highlighted the annexures attached to and thereafter tendered same as exhibits before the court.
21. On the other hand, the witness referenced the supporting affidavit sworn on even date [19th April 2023] and also sought to rely on same. In particular, the witness posited that same bought her parcel of land from Aron Robert Chokera. Furthermore, the witness averred that the plot which same acquired is plot number 6662.
22. The next witness who testified on behalf of the 1st – 13th respondents was Moses Gichuru. Same testified as RW7. It was the testimony of the witness that same is conversant with the facts of the matter. Additionally, the witness averred that same has since recorded and filed a replying affidavit sworn on 19th April 2023 and which replying affidavit same sought to adopt and rely on. Moreover, the witness referenced the green card attached to the replying affidavit and thereafter produced same as an exhibit.
23. It was the further testimony of RW 7 that same is the lawful owner of parcel number 5865. Besides, the witness testified that same bought/acquired the suit property from one Andrew Kigumba. Besides, the witness averred that same is aware that Andrew Kigumba was also known as Mbirithi Itari.



24. The next witness who testified was William Muriungi. Same testified as RW 8. It was the testimony of the said witness that same has recorded and filed a replying affidavit sworn on 19th April 2023 and which replying affidavit the witness sought to adopt and his evidence in chief. To this end, the replying affidavit, sworn on 19th April 2023, was duly adopted and constituted as the evidence in chief of the witness. In addition, the witness referenced the green card in respect of LR. No. Meru North/Antuamburi/13939 and which documents the witness tendered and produced as an exhibit.
25. It was the further testimony of the witness that same also swore a further affidavit dated 6th January 2024 and thereafter sought to adopt and rely on the same as further evidence in chief. Suffice it to state that the further affidavit was duly constituted as further evidence on behalf of the witness.
26. The 14th, 15th & 16th respondents called one witness. The witness was Anthony David Mureithi. Same testified as RW 1. For coherence, the witness on behalf of the named respondents testified ahead of the rest of the witnesses and thus same was constituted as RW 1.
27. It was the testimony of the witness that same is the subcounty land adjudication officer for Tigania East and West Sub-counties. Furthermore, the witness testified that plot No. 817, Antuamburi Adjudication Section, falls within his area of jurisdiction. Furthermore, the witness averred that same is therefore conversant with the facts of this matter.
28. It was the testimony of the witness that same was aware of the dispute beforehand. Furthermore, the witness testified that objection number 1929 touched on and concerned ownership of plot No. 817, Antuamburi Adjudication Section. In addition, the witness averred that the objector in the said petition is the current petitioner.
29. It was the further testimony of the witness that the subject objection was heard and determined and a decision was rendered whereby it was ordered that plot number 817 Antuamburi Adjudication Section be shared between Mbirithi Itamu on one hand and Ambrose Kailanya and Patrick Kailanya. Furthermore, the witness averred that the determination of the objection proceedings highlighted that Patrick Kailanya was to be awarded 9.96 acres out of 31.81 acres, which constituted plot 817. However, the witness averred that the decision under reference has never been implemented.
30. Additionally, it was the testimony of the witness that the decision has not been implemented because the acreage that was referenced at the foot of the objection proceedings and the decision does not correspond with the acreage of plot no. 817. Instructively, the witness averred that plot no. 817 was affected by several Land committee; and Arbitration Board cases and thus its acreage at the conclusion of the committee and land board stage herein was 0.41 acres and not 31.81 acres.
31. It was the further testimony of the witness that following the closure of the committee and Arbitration board cases herein; a certificate of finality was issued in line with the provisions of sections 17 & 18 of the *Land Consolidation Act*, Chapter 283, Laws of Kenya; and that by the time of the issuance of the said certificate the acreage of plot No. 817 stood at 0.41 acres. For good measure, the witness testified that though the original acreage of plot 817 was 31.81 acres, the said acreage was impacted upon; and reduced by committee cases and land board cases, respectively. To this end, the witness averred that by the time the decision vide objection 1929 was being rendered the acreage of plot 817 was not 31.81 acres. On the contrary, the witness averred that the acreage was 0.41 acres.
32. Upon the close of the hearing, the advocates for the parties sought time to file and exchange written submissions. To this end, the court proceeded to and circumscribed the timelines for the filing and exchange of written submissions.



33. The petitioner filed written submissions dated 23rd July 2025, and wherein the petitioner has highlighted various issues. The issues highlighted by the petitioner are, namely; whether the Honourable The court has jurisdiction to grant the reliefs sought; whether the petitioner has proven violation of his constitutional rights and Fundamental Freedoms to the required standard; whether the petitioner is entitled to the prayers sought; whether the cross petitioners have proved violation of their constitutional right to their required standard; and who ought to bear the costs of the proceedings.
34. The 1st to the 13th respondents/cross petitioners filed written submissions dated 23rd July 2025, wherein same has highlighted two [2] key issues namely; that the petitioner has failed to establish/prove the allegations at the foot of the petition; and the respondents' right to fair administrative action was infringed upon.
35. The Hon. Attorney General on behalf of 14th, 15th & 16th respondents filed written submissions dated 24th July 2025. The Hon. Attorney General has highlighted one solitary issue, namely; whether the land adjudication officer acted ultra vires or otherwise.
36. Having reviewed the petition, the supporting affidavit thereto and the responses; having reviewed the cross petition and the supporting affidavit thereto; and upon taking into account the written submissions filed on behalf of the respective parties, I come to the conclusion that the determination of the subject matter turns on three [3] key issues, namely; whether the petitioner has proved his claim to the requisite standard or otherwise; whether the decision in respect of objection number 1929 is valid; lawful; and enforceable or otherwise; and whether the cross petitioners have established and proved breach or violation of their right to fair administrative action or otherwise.
37. Regarding the first issue, namely; whether the petitioner has proved his claim to the requisite standard, it is imperative to underscore that the petitioner approached the court contending that his constitutional rights have been breached and or violated by the respondents. Furthermore, the petitioner ventured forward and particularized the manner in which his rights have been violated. [See the particulars highlighted at the foot of paragraph 11 of the petition].
38. The petitioners' case before the court is to the effect that same lodged/mounted objection number 1929 in respect of plot number 817, Antuamburi Adjudication Section. Furthermore, the petitioner has posited that the objection under reference was duly heard and thereafter determined by the land adjudication officer. In addition, it has been averred that the land adjudication officer rendered a determination whereby it was ordered that plot number 817 Antuamburi Adjudication Section was to be shared between Mbirithi Itamu on one hand and Ambrose Kailanya and Patrick Kailanya. Moreover, it was posited that according to the decision of the adjudication officer, the petitioner was to be awarded 9.96 acres out of 31.81 acres comprising plot No. 817.
39. Additionally, the petitioner contended that at the time when the objection was heard and determined, the acreage of plot 817 Antuamburi Adjudication section was 31.81 acres.
40. Furthermore, the petitioner has asserted that despite the decision arising out of the objection being in existence, the 14th respondent failed, refused and or neglected to implement same. For good measure, the petitioner has posited that the decision remains unimplemented to date.
41. On the contrary, the petitioner asserted that the 14th respondent has since colluded with the 1st to 13th respondents and thereafter caused plot No. 817 Antuamburi Adjudication Section to be sub-divided into various parcels. To this end, the petitioner referenced the various parcels of land, namely; Meru North/Antuamburi/7684, 7773, 13939, 12345, 6094, 7896, 614, 6662, 8366, 12198, 5863, 6284, 5865 and 2951 respectively.



42. Flowing from the foregoing, the petitioner has therefore contended that the actions by the 14th respondents, namely; failing to implement the decision arising from objection 1929; and colluding with the 1st to 13th respondents to sub-divide plot number 817 Antuamburi adjudication section, has breached and violated his constitutional rights. To this end, the petitioner now seeks the reliefs sought at the foot of the petition.
43. Despite the contentions by and on behalf of the petitioner, evidence abound that plot no. 817 Antuamburi Adjudication section was affected by Land Committee cases and Arbitration board cases; and the acreage of the said plot was reduced to 0.41 acres. For good measure, RW 1 [The subcounty land adjudication officer] testified that the acreage of plot No. 817 was affected by the various committee cases.
44. For ease of reference, it is imperative to reproduce the evidence of RW 1 while under cross-examination by learned counsel for the petitioner.
45. Same testified as hereunder;
- “I do confirm that the cumulative acreage of plot no. 817 was 31.8 acres as at the time of preparing the record of existing rights under section 15 of the Land Consolidation Act. I do confirm that the initial acreage was affected by various disputes filed during the land committee and arbitration board stages. The cases were underpinned by sections 15 to 20 of the Land Consolidation Act. The acreage was reduced pursuant to the named cases. The acreage was reduced courtesy of the arbitration cases”.
46. It is also important to highlight that RW 1 stated that following the completion of the arbitration board cases, various plots arose out of what was plot no. 817. To this end, the witness highlighted and referenced inter alia plot numbers 614, 6662, 5865, 13939, 7773, 7896, 6094, 1627, 6284 and 2951.
47. What becomes apparent is that the plots which are now complained against arose from the committee and arbitration board cases. For good measure, the plots under reference did not come out of plot 817 after the filing and determination of the objection case. In this regard, it is dishonest on the part of the petitioner to purport that plot no. 817 was sub-divided after the decision by the objection committee-land adjudication officer’s decision].
48. Additionally, it is also apparent that even though the petitioner filed objection number 1929 challenging ownership of plot 817, same did not file any objection to challenge the various titles/plots which had arisen out of plot of No. 817 during the arbitration board cases. Notably, the objection proceedings which the petitioner has relied on confirm[s] that plot number 817 was affected by the arbitration board cases. Furthermore, the said arbitration proceedings confirm the creation of various plots, namely plot No. 410, 940, 1625, 1626, 764, 1627, 1628 and 817. Instructively, the acreage of plot no. 817 is stated to be 5.0 acres. In addition, it is only plot no. 817 which was awarded to Mbirithi Itaru; and not the other distinct plots that had been birthed during the Arbitration Board case[s].
49. In the premises, it is my finding and holding that the petitioner herein cannot disingenuously seek to rely on the objection proceedings and the decision arising therefore to impeach/impugn the creations of plots [parcels] whose creation was never challenged vide any objection proceedings].
50. Simply put, there is sufficient evidence to show that the plots being complained of by the petitioner were in existence long before the objection number 1929 was filed. Furthermore, it is also common ground that the petitioner did not file any objection against the other plots, save for plot 817.



Nevertheless, it is common ground that by the time the petitioner was filing the objection number 1929, plot number 817 Antuamburi was not measuring 31.81 acres.

51. Flowing from the foregoing, I am unable to agree with the petitioner in respect of the various assertions. For coherence, the petitioner has failed to demonstrate that his right to property has been violated and or infringed upon.
52. Before concluding on this issue, it is imperative to underscore that the burden of proof laid on the petitioner to prove the various aspects/perspectives of his complaints. Proof requires plausible, cogent and compelling evidence pertaining to violations.[See the provisions of Section 3 of the [Evidence Act](#), Chapter 80, Laws of Kenya].
53. In the case of Dr. Samson Gwer & 5 others vs KeMRI (2020)eklr; the Supreme Court of Kenya [the apex Court] expounded on the burden and standard of proof as hereunder:

Section 108 of the [Evidence Act](#) provides that, “the burden of proof in a suit or procedure lies on that person who would fail if no evidence at all were given on either side;” and section 109 of the Act declares that, “the burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.” This Court in Raila Odinga & others v Independent Electoral & Boundaries Commission & others, Petition No 5 of 2013, restated the basic rule on the shifting of the evidential burden, in these terms:...a petitioner should be under obligation to discharge the initial burden of proof before the Respondents are invited to bear the evidential burden....”.In the foregoing context, it is clear to us that the petitioners, in the instant case, bore the overriding obligation to lay substantial material before the Court, in discharge of the evidential burden establishing their treatment at the hands of 1st respondent as unconstitutional. Only with this threshold transcended, would the burden fall to 1st respondent to prove the contrary. In the light of the turn of events at both of the Superior Courts below, it is clear to us that, by no means, did the burden of proof shift to 1st respondent.

54. Regarding the second issue, namely; whether the decision of the land adjudication officer in respect of objection no. 1929; is lawful, legal and enforceable or otherwise. To start with, it is important to underscore that the objection under reference was filed pursuant to the provisions of section 26 of the [Land Consolidation Act](#), Cap 283 Laws of Kenya, and not the [Land Adjudication Act](#) Cap 284 Laws of Kenya. For good measure, the regime governing the objection proceedings is highlighted in the body thereof, where the land adjudication officer has referenced Cap 283 Laws of Kenya.
55. It is worthy to recall and reiterate that under the provisions of section 26 of the [Land Consolidation Act](#), the land adjudication officer is obliged and enjoined to hear objection proceedings, albeit with committee members. The provisions of section 26 of the [Land Consolidation Act](#) states as hereunder;

26. Objection to Adjudication Register

- (1) Any person named in or affected by the Adjudication Register who considers such Register to be inaccurate or incomplete in any respect, or who is aggrieved by the allocation of land as entered in the Adjudication Register, may, within sixty days of the date upon which the notice mentioned in section 25 of this Act is published at the office of the Regional Government Agent within whose district the adjudication area to which such Register relates is situated (and such date shall be endorsed upon the said notice), inform the Adjudication Officer, stating the grounds of his objection, and the Adjudication Officer shall consider the matter with the Committee and may



dismiss the objection, or, if he thinks the objection to be valid, order the Committee to take such action as may be necessary to rectify the matter and for this purpose the Committee may exercise all or any of the powers conferred by section 21 of this Act.

- (2) If the Adjudication Officer considers that such rectification would incur unreasonable expense, delay or inconvenience, he may award such compensation in lieu of rectification as he may deem appropriate.
- (3) No appeal shall lie against any decision by the Adjudication Officer to dismiss an objection or order rectification or to award compensation in lieu of rectification, as the case may be, but the Minister or any person to whom compensation has been awarded and who is dissatisfied with the amount awarded by the Adjudication Officer may apply to a subordinate court held by a Resident Magistrate for its revision in such manner as may be prescribed.
- (4) Any compensation awarded by the Adjudication Officer under this section, together with such costs as the Court may award, shall be paid by the Minister. After the expiration of sixty days from the date of the certificate mentioned in section 25, or on the determination of all objections in accordance with section 26, of this Act, whichever shall be the later, the Adjudication Register shall be final.

56. The legal import and tenor of section 26 of the *Land Consolidation Act* and the necessity that the land adjudication officer must sit with the committee and not otherwise, was underscored in the case of Peter Kimandiu vs the District Land Adjudication officer – Tigania East/West Subcounties (2016) eKLR.

57. For coherence, the Court of Appeal stated as hereunder;

22. We consider that the matter before us had gone through the stages of committee adjudication and LAO/Arbitration Board objections under the foregoing provisions. In the latest dispute, the parties were invoking Section 26(1) of the Act which comes into play after completion of the Adjudication Register and provides in relevant parts as follows:

“Any person named in or affected by the Adjudication Register who considers such Register to be inaccurate or incomplete in any respect, or who is aggrieved by the allocation of land as entered in the Adjudication Register, may, within sixty days of the date upon which the notice mentioned in section 25 of this Act is published .. inform the Adjudication Officer, stating the grounds of his objection, and the Adjudication Officer shall consider the matter with the Committee and may dismiss the objection, or, if he thinks the objection to be valid, order the Committee to take such action as may be necessary to rectify the matter and for this purpose the Committee may exercise all or any of the powers conferred by Section 21 of this Act”.

23. From the foregoing examination of the scheme of the Act, it is manifestly evident that the centrality of the committee is maintained throughout and it is mandatory for the LAO to sit with the committee even after the completion of the Adjudication Register, albeit the final arbiter remains the LAO, who may also on his own “..correct any clerical error or error of a like nature in the Adjudication Register.” As Section 26(3) states:

“No appeal shall lie against any decision by the Adjudication Officer to dismiss an objection or order rectification or to award compensation in lieu of rectification, as the case may be...”

58. The question that does arise is whether the objection proceedings and the decision which underpin the instant petition were lawful and valid? For good measure, it is apparent that the land adjudication officer who entertained and adjudicated upon objection number 1929 did not sit with the committee



- in the manner commanded by the provisions of section 26 (1) of the *Land Consolidation Act*. To this end, there is no gainsaying that the decision under reference was ex facie ultra vires; and thus invalid.
59. The second aspect that also comes to the fore touches on and concerns the acreage of plot number 817 Antuamburi. From the objection proceedings which have been filed before the court, it is evident that plot number 817 Antuamburi Adjudication section was affected by various land committee and arbitration board cases. Furthermore, it is apparent that by the time the certificate of finality was issued, the acreage of the said plot had substantially reduced.
 60. Be that as it may, the land adjudication officer who heard the objection proceedings, albeit without the requisite jurisdiction, proceeded to decree that the said plot measures 31.81 acres. Furthermore, the officer also ventured forward and ordered that a portion measuring 9.96 acres be excised therefrom.
 61. Nevertheless, evidence abounds that by the time the objection proceedings were being heard and the decision thereunder being made, plot number 817 did not bear the acreage of 31.81 acres. This bit is clear and discernable from the body of the objection proceeding[s] relied upon by the Petitioner. Suffice it to state that had the land adjudication officer examined the records of existing rights [RER] and the certificate of finality issued under sections 17 & 18 of the *Land Consolidation Act*, same would no doubt have ascertained the correct acreage.
 62. Be that as it may, RW 1 testified that the decision arising from objection no. 1929 is not capable of being implemented. Moreover, the witness posited that the decision cannot be implemented because the acreage alluded to thereunder does not exist. On the contrary, RW 1 posited that as at the time of concluding the arbitration board cases, the acreage of plot 817 was 0.41 acres.
 63. What comes to mind is that the decision under reference [which I have found to be ultra vires] is one that is not capable of being enforced and or implemented. Quite clearly, the decision was made without regard to the records held by the adjudication department and concerning the suit plot. Simply put, the impugned decision was made on the basis of assumption and hypothesis.
 64. Turning to the third issue, namely; whether the cross-petitioners' right to fair administrative action was violated. The cross petitioners have contended that the 14th respondent entertained the objection proceedings touching on and concerning plot number 817 Antuamburi Adjudication Section and thereafter proceeded to make decisions affecting their [cross petitioners] rights. In particular, the cross petitioners have posited that the decision arising from the objection proceedings has affected; or is likely to affect their titles and yet same were neither notified of nor involved in the impugned proceedings.
 65. Arising from the foregoing, the cross petitioners have therefore contended their rights and entitlements vide the provisions of Article 47 of *the Constitution* were violated, infringed and or breached. However, it is not lost on me that the objection proceedings which are complained of, only concerned plot 817 Antuamburi. Furthermore, it is common ground that parcels of land currently registered in the names of the cross petitioners came out of plot 817 during the land committee and arbitration board cases. In this regard, the said plots became independent and thus could not be affected by the objection proceedings complained of.
 66. Moreover, if anyone, the Petitioner not excepted was aggrieved by the creation of the said parcels during the Land Committee, or Arbitration Board cases; then it behooved such claimant to lodge separate objections. None was lodged. The Objection Number 1929 did not concern the parcels owned by the Cross-Petitioners and hence same were not entitled to be heard.
 67. Additionally, it is not lost on me that the cross petitioners herein acquired and or accrued the titles to their respective plots in the years 2017; 2019; 2020; and subsequently thereafter. The question that



comes to the fore is whether [for whatever is worth] the cross petitioners could have been entitled to participate in the proceedings in respect of plot 817 in the year 2011 or at all.

68. Quite clearly, the objection proceedings in respect of objection no. 1929 and the resultant decision were undertaken/made long before the cross petitioners acquired their respective titles. It was not possible to anticipate and or speculate on the cross-petitioners' rights.
69. Sadly, I find and hold that the Cross-Petition is pre-mature; and prophetic in nature.
70. Finally, and before concluding on this aspect of the matter, I beg to state that the parcels of land which were subsequently sold/transferred to the cross petitioners were birthed during the land committee and arbitration board cases. Same are/were separate and distinct and hence a separate objection would need to be filed against the said titles. Simply put the objection proceedings in respect of plot 817 Antuamburi Adjudication Section did not touch on and or affect the cross-petitioners' parcels.
71. In the premises, I am unable to agree with the complaint[s] raised by the cross-petitioners. For the umpteenth time, I hold the view that the cross petition was/is not only premature; misconceived but same is also premised on a misapprehension of the legal implications of the objection proceedings; and the resultant decision attendant to Objection Number 1929.

Conclusion And Disposition

72. Flowing from the analysis in the body of the Judgment, it must have become apparent that the petitioner has neither established nor proved the claims at the foot of the petition. Moreover, it is common ground that the objection proceedings and the decision underpinning the petition were/are void ab initio.
73. Furthermore, it suffices to highlight that the burden of proof laid on the shoulders of the petitioner to substantiate the allegations. However, the petitioner failed to discharge the burden of proof.
74. Similarly, the cross petitioners bore the burden of proving the claims adverted to at the foot of the cross petition. In particular, it behooved the cross petitioners to demonstrate that the impugned decision was intended to quash their titles. Nevertheless, I have found and held that the cross petition was premised on a misapprehension of the legal implications of the objection proceedings and the attendant decision arising therefrom.

Final Orders

75. In the upshot, the final orders of the court are as hereunder;
 - i. The Petition dated 10th February 2021 be and is hereby Dismissed.
 - ii. The Cross Petition be and is hereby dismissed.
 - iii. Each party to bear its own costs of the proceedings; taking into account that both the Petition and the Cross Petition have been dismissed.
76. It is so ordered.

DATED, SIGNED AND DELIVERED AT MERU THIS 25TH DAY OF SEPTEMBER 2025

JOSEPH OGUTTU MBOYA, FCIArb; CPM [MTI-EA].

JUDGE

In the presence of:



Hussein – Court Assistant

Mr. Karatu for the Petitioner

Mrs. Mwanzia for the 1st to 13th Respondents/cross Petitioners.

Ms. Miranda [Senior litigation counsel] for the 14th, 15th & 16th Respondents.

