



Simoit & 2 others v Baringo County Government & 2 others (Environment and Land Petition E006 of 2024) [2025] KEELC 7081 (KLR) (2 October 2025) (Ruling)

Neutral citation: [2025] KEELC 7081 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KABARNET

ENVIRONMENT AND LAND PETITION E006 OF 2024

L WAITHAKA, J

OCTOBER 2, 2025

IN THE MATTER OF ARTICLES 1(1), 20, 21, 22, 23, 40, 42, 62 AND 165(3)(B) OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS AND FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES, 2013

AND

IN THE MATTER OF SECTIONS 3, 4(3) AND 13 OF THE ENVIRONMENT AND LAND COURT ACT NO.19 OF 2021

AND

IN THE MATTER OF KARIAMUKITAI/KIBINGERON/KAPTUTU COMMUNITY

BETWEEN

MOSES SIMOIT 1ST PETITIONER

ZAKARIA YANO 2ND PETITIONER

CHEBET STANLEY 3RD PETITIONER

AND

BARINGO COUNTY GOVERNMENT 1ST RESPONDENT

ZHENGWEI TECHNIQUE KENYA LTD 2ND RESPONDENT

MINISTRY OF LANDS AND PHYSICAL PLANNING 3RD RESPONDENT



RULING

1. The petitioners herein, instituted this suit/petition seeking judgment against the respondents for among other orders, a declaration that the 1st and the 2nd respondents have illegally set up a mine on community land.
2. The petitioners inter alia complain that the 1st and 2nd respondents purportedly entered into a memorandum of understanding for diatomite mining on community land without any prior authorization or following the due process of setting up mining activities on community land.
3. The petitioners also accuse the 1st respondent of disregarding her mandate of holding unregistered community land in trust of the community until it is registered and for having allowed the 2nd respondent to establish/ and run a mining site on unregistered community land without participation and involvement of the affected community.
4. Simultaneously with the petition, the petitioners filed the notice of motion dated 30th October, 2024 seeking to restrain the impugned dealings of the respondents pending the hearing and determination of the petition.
5. By a ruling delivered on 20th February 2025, this court inter alia stated/held: -

“...It is clear from the above cited provision of the law that the consent of the National Land Commission is mandatory before prospecting and/or mining rights can be issued in respect of unregistered community land.

In the circumstances of this case, whilst the Respondents claim that they complied with all laws applicable in undertaking the impugned dealings with the suit property, which property is unregistered community land, there is no indication or even mention of involvement of the National Land Commission in the process that culminated in issuance of mining rights to the 2nd Respondent.

Arising from the foregoing provisions of the law, which based on the material/evidence presented before this court appear to have been violated by the Respondents, I am satisfied that the Petitioners/Applicants have established a prima facie case with high probability of success.

Although the Respondents may suffer loss and prejudice arising out of grant of the orders sought, having determined that the Respondents may not have not complied with the law in entering into the impugned activities, it would be against public policy to allow the 2nd Respondent to continue with the impugned activities pending the hearing and determination of the petition.

The upshot of the foregoing is that the Petitioners/Applicants have made a case for being granted the orders sought in the notice of motion dated 30th October 2024 which orders I hereby grant them in terms of prayer 4, 5 and 6 of the notice of motion.”

6. Despite the court having determined that the petitioners have established a prima facie case with high probability of success, by a notice of preliminary objection dated 20th May 2025, the 1st respondent seeks to strike out the petitioners’ case on the following grounds: -
 1. The petition is incompetent, misconceived and an abuse of the court process;



2. The petitioners have failed to demonstrate direct constitutional or legal claim against the 2nd respondent;
 3. The petition offends the provisions of section 30 of the [Land Adjudication Act](#);
 4. The petition is fatally defective for misjoinder and non-joinder of parties;
 5. That the petition is premature, an afterthought and an abuse of court process.
7. Pursuant to directions given on 21st May 2025 and re-stated on 19th June 2025, the preliminary objection was disposed of by way of written submissions. The petitioners filed submissions on 15th July 2025, 1st respondent filed submissions on 19th July 2025 and the 2nd respondent filed on 21st July 2025 all of which I have read and considered.
8. The objection by the 1st respondent raises issues which were either raised in the petitioners' application for interlocutory reliefs or that ought to have been raised in that application. Raising those issues as grounds for preliminary objection when they had been raised or ought to have been raised in the petitioners' application for interlocutory application is a violation of section 7 of the [Civil Procedure Act](#), which prohibits this court from trying any suit or issue in which the matter directly and substantially in issue in a former suit between the same parties or be parties under whom they or any of them claim litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised and has been heard and finally decided by such court.
9. Issues raised in the preliminary objection such as whether the petition is incompetent, misconceived and an abuse of the court process; whether the petitioners have failed to demonstrate direct constitutional or legal claim against the 2nd respondent and whether the petition is premature, an afterthought and an abuse of court process are issues that were either explicitly or implicitly raised in the 1st respondent's response to the petitioners' interlocutory application. In that regard see paragraph 14 of the ruling delivered on 20th February 2025 where the court stated/observed:-
- “The 1st Respondent submits thatthe petitioners have not demonstrated that their rights have been infringed.”
10. Upon considering the case presented before it, the court determined that the petitioners had established a prima facie case with high probability of success.
11. The contention by the 1st respondent that the petitioners have failed to demonstrate direct constitutional or legal claim against the 2nd respondent and that the petition is premature, incompetent, misconceived and an abuse of the process of the court is clearly an attempt to re-litigate issues that have been tried by the court and a determination, albeit implicitly, made in respect thereof. For the foregoing reasons, I find grounds 1, 2 and 5 of the preliminary objection to offend Section 7 of the [Civil Procedure Act](#) hence incapable of forming a basis for granting orders sought by the 1st respondent. Moreover, the issues raised in the grounds are not pure points of law as evidence is required to determine them.
12. On whether the petition offends Section 30 of the [Land adjudication Act](#), based on the persuasive authorities cited by the petitioners namely *Lorunyei & another v Attorney General & others* (Constitutional Petition E105 of 2021) (2023) KEHC 1611 (KLR) (Constitutional and Human Rights) (10 March 2023), I agree with the petitioners submissions that the instant suit, being a constitutional petition for enforcement of fundamental rights is not barred by Section 30 of the [Land Adjudication Act](#). In any event, the ground raises issues like whether the area where the suit property is situated has been declared a Land adjudication Area and whether or not the petitioners obtained the consent of the Land Adjudication Officer before filing the petitions which are issues of fact, requiring



evidence for determination or evidence that it has been admitted in the pleading filed by the parties. The issue, unless expressly admitted in the pleadings filed by the parties is, therefore, not a pure point of law, which the 1st respondent can hinge its preliminary objection on.

13. On whether the alleged misjoinder and non-joinder of parties renders the petition fatally defective, I will not re-invent the wheel on that issue but rely on the express provisions of Rule 5(b) of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013, cited in the case of *Juma & 2 others v Lihanda & another; Orera & 4 others (Interested Parties) (Constitutional Petition 6 & 8 of 2018) (Consolidated) (2022) KEHC 14969 (KLR)*(4 November 2022) (Ruling). The rule provides as follows: -

“A petition shall not be defeated by reason of the misjoinder or non-joinder of parties, and the court may in every proceeding deal with the matter in dispute.”

14. It is clear from the rule that misjoinder or non-joinder of parties does not defeat a suit hence cannot form the basis of striking out a constitutional petition.
15. The upshot of the foregoing is that none of the grounds taken up in support of the 1st respondent’s application can avail it the order sought. Consequently, I dismiss the notice of preliminary objection dated 18th June 2025 with costs to the petitioners.
16. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KABARNET THIS 2ND DAY OF OCTOBER, 2025.

L. N. WAITHAKA

JUDGE

Ruling read virtually in the presence of:-

Ms Kogo for the Petitioners.

No appearance for the 1st Respondent.

Mr. Matoke for the 2nd Respondent.

Mr Kimani for the 3rd Respondent.

Court Assistant; Christine.

