



Mbugua v Kerore & 4 others (Environment and Land Constitutional Petition E005 of 2024) [2025] KEELC 4454 (KLR) (12 June 2025) (Judgment)

Neutral citation: [2025] KEELC 4454 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT AND LAND CONSTITUTIONAL PETITION E005 OF 2024**

LN GACHERU, J

JUNE 12, 2025

**IN THE MATTER OF ARTICLES 1,2,3,10,20,22,23,27,35,40,47(1),48,50,60,165(3)
(B) AND 159(1)(B) OF THE CONSTITUTION OF KENYA 2010**

AND

**IN THE MATTER OF THE SUPREMACY OF THE
CONSTITUTION PURSUANT TO ARTICLE 1**

AND

**IN THE MATTER OF THE CONSTITUTION OF KENYA(SUPERVISORY
JURISDICTION) AND PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS
OF THE INDIVIDUAL, HIGH COURT PRACTICE AND PROCEDURE RULES**

**AND IN THE MATTER OF ALLEGED CONTRAVENTION OF
FUNDAMENTAL RIGHTS AND FREEDOMS UNDER ARTICLES
20,27,28,35,40,47,50 AND 159(1) OF THE CONSTITUTION OF KENYA, 2010**

AND

**IN THE MATTER AND UNFAIR, ILLEGAL, UNPROCEDURAL
& UNCONSTITUTIONAL ACQUISITION AND TRANSFER OF
PARCEL OF A PORTION OF LAND CIS/MARA/KOJONGA/13**

AND

**IN THE MATTER OF THE LEGAL ACQUISITION, TRANSFER AND OWNERSHIP
OF A PORTION OF THE PARCEL OF LAND KNOWN AS CIS/MARA/KOJONGA/13**

BETWEEN

NJOROGE MBUGUA PETITIONER

AND

MOISARE OLE KERORE 1ST RESPONDENT



**THE DISTRICT LAND REGISTRAR NAROK NORTH/
SOUTH 2ND RESPONDENT**
THE DISTRICT SURVEYOR NAROK 3RD RESPONDENT
**THE DISTRICT LAND ADJUDICATION & SETTLEMENT OFFICER,
NAROK 4TH RESPONDENT**
THE HON ATTORNEY GENERAL 5TH RESPONDENT

JUDGMENT

1. The Petitioner herein filed this Petition dated 21st May 2024, and sought for the following declarations;
 - a. A declaration that according to the sale agreement dated 24th February 1980, the Petitioner purchased the suit Land Cis Mara/ Kojonga/ 13 measuring 5 acres;
 - b. A declaration that the Petitioner is entitled to the entire 5 acres of the purchased land that excising the one and half acres thereof was illegal and without any legal foundation;
 - c. A declaration that like any other citizen, the Petitioner is and was entitled to legally own, occupy and use land in any part of the country and that the act of chasing him away and reallocating his land was in violation of the petitioners protected right under Article 40 of *the constitution*;
 - d. A declaration that being a purchaser for value, and not being a member of the Kojonga Group Ranch, the proceedings taken and the decision which was made by the Adjudication Committee to share the Petitioner's property into two portions was unnecessary, illegal, null and void ab initio;
 - e. A declaration that the Respondents action whether jointly and /or severally amount to land grabbing, illegal deprivation of property and is therefore illegal and unconstitutional)
 - f. An order directing the 1st Respondent to surrender to the 2nd Respondent any title deed or ownership document issued or registered in his name in relation to the suit land and any part thereof for purposes of revocation or cancellation;
 - g. An order directing the 2nd, 3rd and 4th Respondents to cause a survey and demarcation of 5 acres belonging to the Petitioner and have to issue to the Petitioner fresh title deed for the entire 5 acres of the land parcel known as Cis Mara/ Kojonga/ 13, in the name of the Petitioner within a period of 30 days from the date of the decision;
 - h. A permanent injunction do issue to permanently restrain the Respondents whether by themselves or acting through agents from claiming or causing to be claimed or occupying or remaining in occupation or use or causing to be occupied or used or be cultivated or selling or registering a transfer or charge or any conveyance or in any other manner interfering with the petitioner's peaceful possession, occupation and use of the subject parcel of land known as Cis Mara/ Kojonga/ 13, measuring 5 acres.
 - i. Costs of the petition with interest at court rates.
2. It was the Petitioner's claim that vide a sale agreement dated 24th February 1980, he purchased a parcel of land from one Njokoya Ole Magelo, being land parcel No Cis Mara/ Kojonga/13. Measuring 5



- acres. He also claimed that this parcel of land was the vendor's rightful share as a member of Kojonga Group Ranch, which Group Ranch was dissolved and the large portion of land subdivided among its members. Though the Petitioner was not a member of the said Group Ranch, vide the said sale agreement, he became a legitimate purchaser for value.
3. It was the Petitioner's further claim that due to 1992 post-election violence, he was forced to move out of the suit land, and the area in general, and he left behind his land. Further that when he returned after the clashes, he was shocked upon discovering that the subject land had irregularly been taken away and was re-allocated to a local member known as Letoyo Ole Kerore, who was a father to the 1st Respondent.
 4. It was his further averments that he lodged an objection before the Land Adjudication officer against that decision of allocating the land to another person, and the objection was allowed in part, and the said Letoyo Ole Kerore was given half of the Petitioner's parcel of land.
 5. He also claimed that the said proceedings before the Land Adjudication Committee were illegitimate, unlawful and were done with the sole intention of taking away his parcel of land, although he was a purchaser for value; and his dispute ought not to have been adjudicated by the Adjudication Committee and therefore the said proceedings were unnecessary, and without any legal foundation.
 6. The Petitioner lamented that although he purchased 5 acres from Njokoya Ole Magelo, as per the sale agreement, a portion of his property measuring one and half acres was irregularly, and illegally excised and given to Letoyo Ole Kerore, vide the Adjudication Officer's decision of 5th May 2009.
 7. It was his contention that he obtained his title deed on 12th November 2013, and the acreage was less than 5 acres, as his other half was irregularly and illegally curved out and given to Letoyo Ole Kerore, through the said decision of the Land Adjudication Officer of 5th May 2009.
 8. Further, the Petitioner averred that by virtue of the said illegal actions, he has been totally deprived of a huge portion of land on the basis of unnecessary proceedings, which were choreographed to deny him his proprietary right over the full 5 acres, which he had legitimately and procedurally purchased from Njokoya Ole Magelo in 1980.
 9. The Petitioner contended that his effort to regain control of his two and half acres from the said Letoyo Ole Kerore or his son, the 1st Respondent has been totally unsuccessful as his effort has been continuously frustrated by the Respondents herein. It was his further contention that he is still entitled to his full 5 acres, and the act of taking his land and allocating it to another person was discriminatory, and a direct violation of his right to property.
 10. The Petitioner particularized the alleged violations in para 38 of the Petition, and averred that he was not informed of the said excision of his land, wherein two and half acres were given to another person, and thus, he was condemned unheard, which is a violation of his Articles 35 and 50 of *the Constitution* of Kenya.
 11. It was the Petitioner's further claim that since the 2nd, 3rd and 4th Respondents worked together and processed the decision of the Land Adjudicating Officer of re-allocating the land to another person, then they acted and participated in the said violation, which is against the provisions of Article 10(2) (c) of *the Constitution*. He urged the court to allow his Petition.
 12. Though the Petition was served upon the Respondents as is evident from the various Returns of Service, none of them filed any response to the Petition.



13. The court directed the Petition herein to be canvassed by way of written submissions, and subsequently, the Petitioner filed his submissions dated 29th April 2025, through D. Langat & Co Advocates, and submitted as follows;
14. The Petitioner submitted that he is the registered owner of parcel Cis/Mara/Kojonga/13, a 5-acre piece of land acquired through a purchase agreement from Njokoya Ole Magelo on 24th February 1980. Further, that the seller was a member of the Kojonga Group Ranch, and he had received the said land as his rightful share upon the group's dissolution, while the Applicant was a purchaser for value and not a member of the group.
15. It was his further submissions that together with his family, he settled on the land until 1992, when they were forcefully evicted during politically instigated ethnic clashes. Upon return, the Applicant found the land had been illegally taken and allocated to Letoya Ole Kerore, a local community member, through ex-parte proceedings before the Land Adjudication Committee, without the Applicant's knowledge or participation.
16. The Petitioner also submitted that based on the provided documents, the following facts of the case directly related to infringements of specific constitutional provisions.
 - i. That the petitioner, purchased land parcel CIS/Mara/Kojonga/13 IN 1980 and was the registered owner. He was forcefully evicted in 1992, and a portion of his land was later illegally allocated to Letoya Ole Kerore and subsequently registered in the name of the 1st Respondents, Moisare Ole Kerore.

He submitted that this directly violated his right to property under Article 40, of *the Constitution*, which protects the right to acquire and own property of any description and prohibits arbitrary deprivation of property. The illegal allocation and transfer, without the Petitioner's consent, constitute a clear infringement of this right.
 - ii. That the Land Adjudication Committee's proceedings, which led to the purported allocation of the land, were conducted without proper notice of the Petitioner, and he was not given an opportunity to be heard or to present his case. This violates Article 47(1), which guarantees every person the right to fair administrative action, that is expeditious, efficient, lawful, reasonable, and procedurally fair. Therefore, failure to notify the Petitioner and allow him to participate in the proceedings constitutes a denial of this right.
 - iii. That the dispute over the land was not resolved through a fair and impartial process, as the Land Adjudication Committee's decision was made ex parte without the Petitioner's participation. This infringes Article 50(1), which guarantees every person the right to have any dispute resolved by the application of law decided in a fair and public hearing before a court or other impartial tribunal. The ex parte proceedings and the Committee's decisions without the Petitioner's input deny him this right.
 - iv. The Petitioner also submitted that he was deliberately targeted and discriminated against due to ethnic considerations when he was evicted from the land he legitimately purchased. The land was then purportedly allocated to a member of the local community and this violates Article 27, which guarantees equality before the law and freedom from discrimination.
 - v. That the Petitioner was not provided with information regarding the alteration of his title or the adjudication process, and the subsequent issuance of a title to the 1st Respondent and this violates Article 35(1), where citizens have the right to access information held by the state.



- vi. That the actions of the Respondents, including the alleged fraudulent acquisition and transfer of land, undermine the national values and principles of governance, including the rule of law, human rights, non-discrimination, good governance, transparency, and accountability. This action by Respondents and lack of due process also contravene the values outlined in Article 10.
 - vii. That the Petitioner’s eviction from the land, coupled with the alleged irregularities in the adjudication process, is a departure from the principles of justice and fairness, which principles outlined in Article 159 of *the Constitution* that mandate justice should be done to all.
17. The 2nd to 5th Respondents who are represented by the Attorney General filed their Grounds of Opposition dated 19th March 2025, and averred that the Petition herein was filed prematurely since the Petitioner has not exhausted the procedure set out under section 29 of the *Land Adjudication Act*, before instituting the suit herein.
18. The 2nd to 5th Respondents relied on Article 159(2)(c) of *the Constitution* which recognises the alternative forms of disputes resolutions as follows;
- “(2) In exercising judicial authority, the courts and tribunals shall be guided by the following principles—
 - (c) alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms shall be promoted, subject to clause (3).”
19. They also relied on various decided cases among them; Reuben Mwongela M’itelekwa vs Paul Kigea Nabea & 2 others[2019]eklr, where the learned judge made reference to the ELC Case No. 167 of 2011(Meru); Nicholas Mugambi & others vs Zachary Baariu & others, Abdallah Mangi Mohamed vs Lazarus & 5 others [2012]eklr., where the court held;
- “...where there is a dispute as to the applicant’s entitlement to property, and where there exists a statutory mechanism for resolution of the dispute, the statutory procedure should be utilized in the determination of the applicant’s claim to property”
- The 2nd to 5th Respondents urged the court to dismiss the instant Petition with costs.
20. The court has considered the instant Petition, and the written submissions by the Petitioner and the Grounds of Opposition herein, and finds the issues for determination as follows;
- i. whether the Petition herein is premature for failure to exhaust the alternative disputes resolution mechanism;
 - ii. whether the Petition herein meets the criteria of what constitute a proper Petition;
 - iii. whether the Petitioner is entitled to prayers sought;
 - iv. who should meet costs of this Petition.

whether the Petition herein is premature for failure to exhaust the alternative disputes resolution mechanism.

21. The court has considered the 2nd to 5th Respondents’ Grounds of Opposition, wherein they averred that the Petition herein as filed is premature, since the Petitioner has not exhausted the procedure set out in section 29 of the *Land Adjudication Act*, Chapter 284 Laws of Kenya before instituting



this suit. For this argument, the 2nd-5th Respondents relied on the holding in cases of Abdalla Maingi Mohammed vs Lazarus & 5 others (2012) eklr, where the court held that;

“.. where there is a dispute as to the applicant’s entitlement to property, and where there exists a statutory mechanism for resolution of the dispute, the statutory procedure should be utilized in determination of the Applicant’s claim to property.”

22. A look at section 29 of the *Land Adjudication Act* ,outlines the process for appealing a decision made by an adjudication officer or committee, regarding the adjudication register. Specifically, it covers the appeals process to the Cabinet Secretary regarding any objection to the adjudication register submitted in accordance with section 26 of the Act.

23. This section provides as follows:-

“ Any person who is aggrieved by determination of an objection under section 26 of this Act may, within sixty days after the date of the determination, appeal against the determination to the Minister by—

SUBPARA (a)

(b) delivering to the Minister an appeal in writing specifying the grounds of appeal; and sending a copy of the appeal to the Director of Land Adjudication, and the Minister shall determine the appeal and make such order thereon as he thinks just and the order shall be final.

(2) The Minister shall cause copies of the order to be sent to the Director of Land Adjudication and to the Chief Land Registrar.

(3)) When the appeals have been determined, the Director of Land Adjudication shall— (a) (b) alter the duplicate adjudication register to conform with the determinations; and certify on the duplicate adjudication register that it has become final in all respects, and send details of the alterations and a copy of the certificate to the Chief Land Registrar, who shall alter the adjudication register accordingly.

(4) Notwithstanding the provisions of section 38(2) of the *Interpretation and General Provisions Act* (Cap. 2) or any other written law, the Minister may delegate, by notice in the Gazette, his powers to hear appeals and his duties and functions under this section to any public officer by name, or to the person for the time being holding any public office specified in such notice, and the determination, order and acts of any such public officer shall be deemed for all purposes to be that of the Minister.”

24. The Petitioner’s claim is hinged on the fact that he purchased land parcel No. Cis Mara/Kojonga/13, from one Njokoya Ole Magelo, in 1980, which parcel of land was approximately 5 acres. He further claimed that when he moved out of the suit land due to post- election clashes in 1992, his parcel of Land was irregularly allocated to the father of 1st Respondent, Letoya Ole Kerore. He also claimed the he complained before the Land Adjudication officer, wherein his Objection was heard and allowed in part, and the 1st Respondent father was given half of the Petitioner’s land.

25. The 1st Respondent’s father Letoya Ole Kerore ,was allegedly given half of the Petitioner’s parcel of land as an outcome of the objection raised by the Petitioner to the Adjudication officer. Therefore,



since the decision of the Adjudication officer to allegedly give the 1st Respondent's father half of the Petitioner's allegedly parcel of land, aggrieved the Petitioner, then he ought to have appealed that decision as provided by the section 29 of the *Land Adjudication Act*, Cap 284 Laws of Kenya.

26. The provisions of section 29 of Cap 284, above is an alternative form of dispute resolution before moving to court. Indeed Article 159(2)(c) of *the Constitution* recognizes the alternative forms of disputes resolution as follows;

“(2)In exercising judicial authority, the courts and tribunals shall be guided by the following principles—

- (c) alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms shall be promoted, subject to clause.”

27. By resorting to the alternative form of disputes resolution mechanism as provided by the statute before moving to court, the Petitioner would have complied with the doctrine of exhaustion, which means that a party must exhaust all available non-judicial remedies before seeking relief from the courts.

28. Blacks Law Dictionary describes the doctrine of exhaustion as follow; -

“Exhaustion of remedies: The doctrine that, if an administrative remedy is provided by statute, a claimant must seek relief first from the administrative body before judicial relief is available. The Doctrine's purpose is to maintain comity between the courts and administrative agencies and to ensure that courts will not be burdened by cases in which juridical relief is unnecessary.”

29. The purposes of this doctrine of exhaustion serves to promote efficient use of judicial resources, encourage alternative disputes resolution, and respect the expertise of administrative bodies. It ensures that individuals seeking judicial intervention first utilize all available non-judicial remedies before resorting to court. See the case of William Odhiambo Ramogi & others vs A,G; Muslims for Human Right & 2 others(IP) [2020]eklr.

30. This principle aims to ensure that administrative bodies and other designated authorities have the opportunity to address and resolve issues before they escalate such disputes to Courts. It is rooted in the idea that courts should only intervene when all other avenues have been exhausted. This doctrine of exhaustion of administrative remedies provides that a person challenging an agency decision must first pursue the agency's available remedies before seeking judicial review. It was created by courts in order to promote an efficient justice system and autonomous administrative state. See the case of Muka & Another vs Malala & 12 others. Pet. No.E002 & E001 of 2022 consolidated [2022]KEHC 10131(KLR) 23RD June 2022) Ruling.

31. The doctrine of exhaustion has been dealt in various judicial determinations. In the case of Mombasa High Court Constitutional Petition No 159 of 2018 consolidated with Constitutional Petition No 201 of 2019 William Odhiambo Ramogi & 3 others v Attorney General & 4 others; Muslims for Human Rights & 2 others (Interested Parties) [2020] eKLR. the Court held as follows:

“The question of exhaustion of administrative remedies arises when a litigant, aggrieved by an agency's action, seeks redress from a Court of law on an action without pursuing available remedies before the agency itself. The exhaustion doctrine serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is, first of all, diligent in the protection of his own interest within the mechanisms in place for



resolution outside the Courts. This encourages alternative dispute resolution mechanisms in line with Article 159 of *the Constitution* and was aptly elucidated by the High Court in R v Independent Electoral and Boundaries Commission (I E B C) ex parte National Super Alliance (NASA) Kenya and 6 others [2017] eKLR.”

32. In the case of Speaker of National Assembly v Karume [1992] KLR 21, the Court stated as follows;

“where there is a clear procedure for redress of any particular grievance , prescribed by *the Constitution* or an Act of Parliament, that procedure should be strictly followed. Accordingly, the special procedure provided by any law must be strictly adhered to since there are good reasons for such special procedures.”

33. Again in the case of Geoffrey Muthiga Kabiru & 2 others v Samuel Munga Henry & 1756 others [2015] eKLR, the Court of Appeal held :

“It is imperative that where a dispute resolution mechanism exists outside Courts, the same be exhausted before the jurisdiction of the Courts is invoked. Courts ought to be fora of last resort and not the first port of call the moment a storm brews...The exhaustion doctrine is a sound one and serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is first of all diligent in the protection of his own interest within the mechanisms in place for resolution outside the Courts. The ex parte Applicants argue that this accords with Article 159 of *the Constitution* which commands Courts to encourage alternative means of dispute resolution.”

34. However, there are exceptions to the doctrine of exhaustion as stated in the case of R vs Independent Electoral and Boundaries Commission (I E B C) & Others ex parte The National Super Alliance Kenya (NASA) where the court exhaustively reviewed decisional law on the exhaustion doctrine and found exception to the doctrine as thus:

“What emerges from our jurisprudence in these cases are at least two principles: while, exceptions to the exhaustion requirement are not clearly delineated, Courts must undertake an extensive analysis of the facts, regulatory scheme involved, the nature of the interests involved – including level of public interest involved and the polycentricity of the issue (and hence the ability of a statutory forum to balance them) to determine whether an exception applies. As the Court of Appeal acknowledged in the Shikara Limited Case (supra), the High Court may, in exceptional circumstances, find that exhaustion requirement would not serve the values enshrined in *the Constitution* or law and permit the suit to proceed before it. This exception to the exhaustion requirement is particularly likely where a party pleads issues that verge on Constitutional interpretation especially in virgin areas or where an important constitutional value is at stake. See also Moffat Kamau and 9 Others v Aelous (K) Ltd and 9 Others.)”

35. For exceptional circumstances to apply, the court must consider and determine that the exhaustion requirement would not serve the values enshrined in *the Constitution* or law . Further, the court must consider the suitability of the appeal mechanism available in the context of the of the particular case and determine whether it is suitable to determine the issues raised.

36. In the instant case, the exceptional rule cannot apply because the issue raised before the Adjudication Officer was whether the 1st Respondent’s father , and later 1st Respondent was entitled to the suit land allegedly belonging to the Petitioner. Since the adjudication officer found in favour of the



1st Respondent's father Letoya Ole Kerore, then the Petitioner should have exhausted the appeal mechanism found in section 29 of the *Land Adjudication Act*.

37. The Petitioner herein did not do so, and thus the court finds that this Petition is premature before this court, as the Petitioner failed to exhaust the available mechanism for alternative disputes resolutions as provided by Article 159(2)(c) of *the Constitution*.

ii whether the Petition herein meets the criteria for what constitutes a proper Petition;

38. The principles to be considered on whether a Petition has met the criteria for a proper petition were enunciated in the case of Anarita Karimi Njeru versus Republic [1979] eKLR as follows:-

“We would, however, again stress 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.” With emphasis.

39. These principles in Anarita Karimi's Case prescribes that a party seeking a constitutional remedy is required to set out with reasonable precision that which is complained of, noting to stipulate which constitutional provisions have been infringed and how they have been infringed.
40. The court has considered the instant Petition, and finds that it meets the above principles, save that it was prematurely filed in court as the Petitioner ought to have exhausted all the available alternative disputes resolution mechanisms before coming to this court. The court should be the last port of call. See the case of Waity v Independent Electoral & Boundaries Commission & 3 others [2019] KESC 54 (KLR).The Supreme Court held as follows

“(59)... Where *the Constitution* or any other law establishes an organ, with a clear mandate for the resolution of a given genre of disputes, no other body can lawfully usurp such power, nor can it append such organ from the pedestal of execution of its mandate. To hold otherwise, would be to render the constitutional provision inoperable, a territory into which no judicial tribunal, however daring, would dare to fly.”

Whether the Petitioner is entitled to prayers sought

41. Having found that this Petition was prematurely filed, then the court finds and holds that it has no jurisdiction to deal with the Petition herein and it cannot issue the prayers sought, as court without jurisdiction cannot issue ant valid Orders. See the case of Kenya Hotel Properties Limited v Attorney General & 5 others [2020] eKLR, where the Court of Appeal stated:-

“Any declaration by a court that has no jurisdiction is itself a nullity and amounts to nothing. It matters not how strongly a court feels about a matter, or how impassioned it may feel or how motivated it may be to correct a perceived wrong; without jurisdiction it would be embarking on a hopeless adventure to nowhere.”

iv who should bear costs of this Petition.

42. The court has declined Jurisdiction, and therefore the Petitioner is the unsuccessful litigant and ordinarily, he should be condemned to pay costs. However, the court notes that the Respondents barely participated in these proceedings, and therefore they are not entitled to costs of the Petition. For the above reasons, the court directs that each party to bear its own costs.



43. In nutshell, the court finds and holds that the Petition herein is not merited, and the same is dismissed entirely with an order that each party to bear its own cost.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAROK THIS 12TH DAY OF JUNE 2025.

L. GACHERU

JUDGE

In the presence of:

Elijah Meyoki – Court Assistant

N/A for the Petitioner

N/A for the 1st Respondent

N/A for 2nd -5th Respondents

12/6/2025

