



Lelgatab & 7 others v Community Land Registrar Isiolo/Marsabit & 2 others; Lentilalu & 6 others (Interested Parties) (Environment and Land Petition E005 of 2024) [2025] KEELC 7435 (KLR) (9 October 2025) (Ruling)

Neutral citation: [2025] KEELC 7435 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ISIOLO
ENVIRONMENT AND LAND PETITION E005 OF 2024
JO MBOYA, J
OCTOBER 9, 2025**

BETWEEN

**LETANGIN LOKWARIS LELRGATAB 1ST PETITIONER
SINDILA LENASALON 2ND PETITIONER
ILKAWA LOKWARIS LEKEGATAB 3RD PETITIONER
LELATEN LEKUPE 4TH PETITIONER
TERERE LEKUPE 5TH PETITIONER
LTUPUKWA LENASALON 6TH PETITIONER
FREDRICK ELIAT LTEI 7TH PETITIONER
EDWARD LOBIKI LENASALON 8TH PETITIONER**

AND

**THE COMMUNITY LAND REGISTRAR ISIOLO/MARSABIT 1ST
RESPONDENT
COUNTY GOVERNMENT OF MARSABIT 2ND RESPONDENT
CABINET SECRETARY MINISTRY OF LANDS AND PUBLIC WORKS,
HOUSING AND URBAN PLANNING 3RD RESPONDENT**

AND

**LAWRENCE LENTILALU INTERESTED PARTY
ASUNTA GALGITELE INTERESTED PARTY
LASHA LOLKIPAYANG'I INTERESTED PARTY
LEMASEN MPAPAI LEYAMYAM INTERESTED PARTY**



ARILE OGOM ADISOMELLE INTERESTED PARTY
MARIA GORRETI LIMBA ARSEREU INTERESTED PARTY
UMURO JOSHUA BORANO INTERESTED PARTY

RULING

1. The Petitioners herein approached the court vide an amended petition dated 5th June 2025; and wherein same have sought various reliefs. The reliefs sought at the foot of the amended petition are as hereunder;
 - i. A declaration that the respondents have breached and/or infringed and violated the petitioner's fundamental right to fair administrative action and the freedom to protection of right to property.
 - ii. A declaration that the respondent's failure to recognize Loonjorin-Ntaletiani proposed community land have infringed on the petitioner's legitimate expectation that as a public authority the respondents would uphold the principles of fairness, equality, good governance, participation by the people, social justice, non-discrimination, natural justice and constitutionalism.
 - iii. A declaration that the petitioners fundamental rights and freedoms enshrined under articles 10 (1) (c) & 10 (2) (a) (b) (c) and (d), 36 (1), (2), (3), 40 (3), 47, 56, 61 and 63 of *the constitution* of Kenya 2010, have been contravened and infringed upon by the respondents jointly and severally herein.
 - iv. A declaration that proposed registration of community land on the basis of ward administration units or any other administrative boundaries is unconstitutional, illegal, null and void ab initio.
 - v. A declaration that the 3rd respondent's gazette notice NO. 10358 dated 3rd July 2024 a purporting to recognize Kargi/South Horr ward as a community land is unconstitutional, illegal, null and void ab initio.
 - vi. An order of certiorari do issue to remove into this honourable court and quash in its entirety respondents gazette notice No.10358 dated 3rd July 2024 purporting to recognize Kargi/South Horr ward as a community land issued by the 3rd respondent.
 - vii. An order of mandamus do issue against the respondents compelling them to recognize and gazette the proposed Loonjorin-Ntaletiani community land in development of adjudication programme of Marsabit County.
 - viii. The costs of this amended petition be provided for.
 - ix. Any further orders and/or directions as this honourable court shall deem fit and just to be granted.
2. The amended petition under reference is anchored on the numerous grounds that have been highlighted in the body thereof. Furthermore, the petition is supported by the affidavit of one Edward Lobiki Lenasalon [the 8th Petitioner] and to which the deponent has reiterated the contents of the grounds underpinning the petition.



3. Following the filing of the subject petition, the interested parties sought and obtained leave to be joined to the petition. Suffice it to state that the application by the interested parties was allowed and same were duly joined.
4. Subsequently, the interested parties herein filed a notice of preliminary objection dated 22nd July 2025 and wherein same have highlighted two key issues. The grounds underpinning the preliminary objection are namely; the petition beforehand is prohibited by the doctrine of constitutional avoidance and ripeness; and the petition does not accord with the rule of reasonable precision in line with the decision in Annarita Karimi Njeru vs Republic (1979) eKLR.
5. The preliminary objection under reference came up for directions on 28th July 2025; whereupon the parties covenanted to canvass and dispose of the preliminary objection by way of written submissions. To this end, the court proceeded to and issued directions pertaining to the healing and disposal of the preliminary objection. The court directed that the parties do file and exchange written submissions. In addition, the court also circumscribed the timelines for filing and exchange of the written submissions.
6. The interested parties filed written submissions dated 8th August 2025 and wherein same have canvassed and highlighted two key issues. Firstly, it has been submitted that the subject petition seeks to impugn and or challenge the gazette notice[s] number CXXV1-Number 131 of 23rd August 2024 and Number 10358, respectively which were published by the Cabinet Secretary for Lands, Public Works, Housing, and Urban Development.
7. Additionally, it has been submitted that the gazette notice under reference was published pursuant to and in line with the provisions of section 8(1) of the [Community Land Act](#), 2016. Moreover, it has been submitted that the said Gazette Notice merely published a comprehensive adjudication program for Kargi South Horr Community in an endeavor to facilitate the process of adjudication, survey, and ultimate registration of the community land. However, it has been submitted that the said gazette notice did not decree and or constitute Kargi South Horr community as a registration unit. On the contrary, it was posited that the said gazette notice is a precursor to the publication and issuance of the Kenya Gazette notice envisaged under section 8(2) and 8(4) of the [Community Land Act](#) 2016.
8. Moreover, it has been submitted that following the publication of the impugned gazette notice, the cabinet secretary sets in motion the process pertaining to survey, demarcation, and ultimate registration of community land. In any event, it has been submitted that the petitioners herein and the community which same purports to register would thereafter be afforded the opportunity to present their claims; interests; and thereafter pursue the registration of their land based on their community, albeit subject to Article 63 of [the Constitution](#).
9. Be that as it may, it has been submitted that the instant petition has been mounted and lodged prematurely before the process envisaged under section 8(2) and 8(5) of the [Community Land Act](#) have been activated and put in place. Furthermore, it has been submitted that the issues being raised before this court fall within the docket of demarcation; adjudication officers and the adjudication team in the manner prescribed under the community land. In the premises, it has been submitted that the issues before the court are not ripe and or justiciable for determination. To this end, learned counsel for the interested parties has invoked the doctrine of constitutional avoidance and ripeness.
10. In support of the foregoing submissions, learned counsel for the interested parties has cited and referenced the holding in the case of Brookside Dairy Limited vs Mohammed and Another (2022) KEHC 13627; Bamaftah & Another vs the Cabinet Secretary Ministry of Lands, Public Works, Housing, and Urban Development & 7 others (2023) KEELC 21412, respectively.



11. Secondly, learned counsel for the Interested Parties has submitted that the petition beforehand has not been pleaded with reasonable precision and thus same does not accord with the established principles vide *Annarita Karimi Njeru vs R (1979) eKLR*. In Particular, it has been submitted that other than reciting and reproducing a plethora of provisions of *the constitution*, the petitioners have failed to exhibit the rights [if any] that have been infringed upon, violated, or breached; or threatened.
12. Moreover, it has been submitted that the petitioners have also failed to demonstrated the causal link between the various recited provisions and the manner in which same have been breached and by whom. In this regard, it has been posited that the petition is lacking in terms of specificity and particularity and hence same is fatally defective.
13. In view of the foregoing, learned counsel for the interested parties has invited the court to find and hold that the entire petition is premature; misconceived and thus legally untenable. To this end, the court has been implored to strike out the petition.
14. The petitioners filed written submissions dated 10th September 2025 and wherein same have highlighted and canvassed two key issues. The issues highlighted by the petitioners are namely; whether the petition offends the doctrine of ripeness and constitutional avoidance in view of Section 8(4) of the *Community Land Act* and the regulations made thereunder; and whether the petition complies with the rule of reasonable precision as espoused in the case of *Anarita Karimi Njeru vs R (1979) eKLR* or otherwise.
15. Regarding the first issue, learned counsel for the petitioners has submitted that the issues raised at the foot of the petition are ripe and justiciable and thus this court is seized of the requisite jurisdiction to entertain same. In particular, it has been submitted that the petition seeks to impugn the gazette of the ward administrative units as the basis for registration of community land. It has been contended that the said gazette notice therefore offends or contravenes the provisions of Article 63 of *the Constitution* which stipulate that community land shall vest in and be held by the communities based on ethnicity, culture, or similar community interests.
16. Additionally, it has been submitted that the gazette of the ward administrative units as the basis for registration of community land is also contrary to the provisions of section 12 of the *Community Land Act* 2016.
17. Owing to the contention that the impugned gazette notice has gazetted the ward administrative unit[s] as the basis for registration of community land, it has been posited that the issues raised at the foot of the petition are germane; ripe, and justiciable.
18. Moreover, it has been submitted that the petition beforehand seeks a plethora of things including declaratory orders. In this regard, it has been submitted that the court is seized of the requisite jurisdiction. Furthermore, it has been contended that the interested parties have not demonstrated the existence of any remedy available to the petitioners that can be invoked and or deployed to facilitate the realization of the petitioners claim.
19. To buttress the submissions that the subject petition is ripe; justiciable; and germane for determination before this court, learned counsel for the petitioners has referenced various decisions inter alia *Anytime Limited vs Hussein & 2 others*; *Kenya Revenue Authority [Interested Party] [2025] KEHC*; *Gikenye B & 7 others vs Gachanja & 8 others*; *Ethics and Anticorruption Commission & 3 others (2024) KEELC*; *Katiba Institute vs President's Delivery Unit & 3 others (2017) KEHC*; and *Omwoyo vs Attorney General & 4 others (2024) KEHC*, respectively.



20. Turning to the second issue, learned counsel for the petitioners has submitted that the amended petition dated 5th June 2025 has captured the various provisions of *the constitution* that are said to have been breached/violated. In addition, it has also been submitted that the petitioners have also exhibited their rights which have equally been violated; breached or infringed upon and thereafter ventured forward to demonstrate the way the violations have been undertaken. Furthermore, it has also been submitted that the petitioners have also highlighted the persons culpable for the violations under reference.
21. The petitioners have thereafter ventured forward to reference the contents of paragraphs 46-48; and paragraph 59 [A-X] of the amended petition.
22. Flowing from the foregoing, learned counsel for the petitioners has contended that the amended petition under reference substantially complies with the rule of reasonable precision. To this end, it has been posited that the contention by the interested parties pertaining to lack of specificity is based on misapprehension of the entire petition.
23. In view of the foregoing, learned counsel for the petitioners has invited the court to find and hold that the preliminary objection does not suffice. Moreover, it has been contended that aspects of the preliminary objections do not raise pure points of the law.
24. Having reviewed the Notice of Preliminary Objection dated 22nd July 2025 and upon consideration of the written submissions filed on behalf of the parties, I come to the conclusion that the determination of the subject matter turns on two key issues, namely; whether the amended petition complies with the rule of reasonable precision as espoused in the case of Annarita Karimi Njeru vs R (1979) eKLR or otherwise; and whether the subject petition is barred by the doctrine of ripeness/ constitutional avoidance or otherwise.
25. I beg to address the issues sequentially. I shall start with the question as to whether the amended petition complies with the rule of reasonable precision or otherwise.
26. To start with, it is paramount that every petitioner who seeks to approach the jurisdiction of the court must couch/ craft the petition in such a manner as to capture the articles of *the constitution* which are contended to have been infringed/breached/violated or threatened. In addition, the petitioner must also supply the particulars of breach, namely; the manner in which the highlighted articles of *the constitution* have been breached or threatened. Finally, the petitioner must demonstrate the persons culpable for the breach and or violations complained of.
27. Simply put, it is incumbent upon every petitioner to show or espouse a causal link between the articles of *the constitution* being referenced; the right that is breached and manner in which it has been breached by the persons chargeable with the breach or violation. Such causal link is imperative and non-negotiable.
28. In the case of Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others [2013] KECA 445 (KLR), a five-judge bench of the Court of Appeal captured the rule of reasonable precision in the manner following;

“(41) We cannot but emphasize the importance of precise claims in due process, substantive justice, and the exercise of jurisdiction by a court. In essence, due process, substantive justice and the exercise of jurisdiction are a function of precise legal and factual claims. However, we also note that precision is not coterminous with exactitude. Restated, although precision must remain a requirement as it is important, it demands neither formulaic prescription of



the factual claims nor formalistic utterance of the constitutional provisions alleged to have been violated. We speak particularly knowing that the whole function of pleadings, hearings, submissions and the judicial decision is to define issues in litigation and adjudication, and to demand exactitude ex ante is to miss the point.

(42) However, our analysis cannot end at that level of generality. It was the High Court’s observation that the petition before it was not the “epitome of precise, comprehensive, or elegant drafting.” 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 and 3B 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.”

29. On its part, the Supreme Court in the case of *Communications Commission of Kenya & 5 others v Royal Media Services Limited & 5 others* (Petition 14, 14A, 14B & 14C of 2014 (Consolidated)) [2014] KESC 53 (KLR) (29 September 2014) (Judgment), stated at paragraph 349 as hereunder;

“Although Article 22(1) of *the Constitution* gives every person the right to initiate proceedings claiming that a fundamental right or freedom has been denied, violated or infringed or threatened, a party invoking this Article has to show the rights said to be infringed, as well as the basis of his or her grievance. This principle emerges clearly from the High Court decision in *Anarita Karimi Njeru v. Republic*, (1979) KLR 154: the necessity of a link between the aggrieved party, the provisions of *the Constitution* alleged to have been contravened, and the manifestation of contravention or infringement. Such a principle plays a positive role, as a foundation of conviction and good faith, in engaging the constitutional process of dispute settlement.”

30. Does the amended petition comply with the rule of reasonable precision? The petitioners herein have provided an elaborate set of facts which have been relied upon to propagate the contention that their rights and fundamental freedoms have been violated. In particular, paragraphs 30, 31, 36, 37, 38, and 41 highlight the complains being propagated by the petitioners. In addition, the petitioners have also



enumerated the provisions of *the constitution* that are contended to have been breached and or breached upon. Notably the petitioners have singled out Article 47 and 63 of *the Constitution* 2010.

31. Additionally, the petitioners have ventured forward and highlighted the endeavors made by and or on their behalf to seek audience with the respondents albeit to no success. A casual glance and perusal of the amended petition demonstrates that the petitioners have indeed supplied the requisite particulars and details underpinning the petition.
32. To my mind, the amended petition complies with the rule of reasonable precision. It alludes to the provisions of *the constitution*; the breaches adverted to and the persons chargeable with the breach. Suffice it to state that whether or not the averments contained in the body of the amended petition are provable or otherwise is a different issue.
33. Before concluding on this issue, I beg to reference the holding the Court of Appeal in the case of County Government of Bungoma & 2 others v JOO & 2 others (Civil Appeal 61 of 2018) [2024] KECA 1377 (KLR) (23 February 2024) (Judgment), where the court considered a similar situation.
34. For coherence, the court stated as hereunder;

“The appellants do not seem to question whether the petition presented complied with the principle requiring that constitutional petitions are pleaded with reasonable precision. They, instead, seem to make the argument that the material contradictions in the evidence presented by the petitioner definitionally violates the principle enunciated in AKN case. Whether the evidence was contradictory or not is an evidentiary question of fact not a question of law to be determined on the crucible of the principle requiring that constitutional petitions be pleaded with reasonable precision. In fact, a perusal of the petition and the supporting affidavit belie the complaint that it was not pleaded with reasonable precision. The petition is quite detailed both in terms of the factual claims and the constitutional provisions the petitioner alleged had been breached.”
35. Turning to the second issue, namely; whether the issues raised at the foot of the amended petition are ripe; germane and justiciable or otherwise. The petitioners’ complaints touch on and concern the legal import and tenor of gazette notices volume CXXV1-Number 131 of 23rd August 2024 and Gazette notice number 10358 respectively. The said gazette notices relate to and concern the publication of a comprehensive program relative to the intention to survey and demarcate for registration the community land situated within Marsabit County.
36. Moreover, it is imperative to outline that the impugned gazette notice has been published pursuant to the provision of section 8(1) of the *Community Land Act* which mandates the Cabinet Secretary for lands public works, housing, and urban development in consultation with the designated county government [in this case, the County Government of Marsabit] to develop the adjudication program for the communities resident in Marsabit County.
37. Arising from the provisions under reference, the Cabinet Secretary proceeded to publish the notice of intention to survey and demarcate the community land for registration. Suffice it to state that the publication of the impugned gazette notice is a precursor to the process pertaining to survey, demarcation, adjudication and ultimate registration of the community land in the names of the various communities. In addition, the process pertaining to the registration is well captured at the foot of sections 8(4) and 8(5) of the *Community Land Act* 2016.
38. To my mind, the issues that are being raised by the petitioners herein, including lack of public participation; failure to recognize the interests of the community represented by the petitioners; and



all the attendant issues are matters that are supposed to be addressed in accordance with sections 8(2), 8(4) and 8(5) of the *Community Land Act*.

39. Moreover, it is important to highlight that the impugned gazette notices have not gazetted kargi South Horr administrative units as the basis for registration of community land. On the contrary, my reading of the impugned gazette notices has highlighted the localities/ the areas which have been published for purposes of undertaking the program for survey; demarcation, adjudication and ultimate registration of the community land. I am afraid that the petitioners and their learned counsel have mis-apprehended and mis-read the import and tenor of the impugned gazette notice.
40. On my own account, I have examined the impugned gazette notices and the contents thereof and I am unable to discern the contention that same have gazetted the registration of community land on the basis of ward administrative units.
41. Moreover, I wish to point out that the issues being raised by the petitioners are premature. Simply put, the petitioners have put the cart before the horse. To this end, I agree with learned counsel for the interested parties that the subject petition is prohibited by the doctrine of ripeness; justiciability; and constitutional avoidance.
42. The principle of Constitutional avoidance has been the subject of various decision[s]. In the case of Communications Commission of Kenya & 5 others v Royal Media Services Limited & 5 others (Petition 14, 14A, 14B & 14C of 2014 (Consolidated)) [2014] KESC 53 (KLR) (29 September 2014) (Judgment), the Supreme Court stated thus;

“The principle of avoidance entails that a Court will not determine a constitutional issue, when a matter may properly be decided on another basis. In South Africa, in *S v. Mhlungu*, 1995 (3) SA 867 (CC) the Constitutional Court Ketridge AJ, articulated the principle of avoidance in his minority Judgment as follows [at paragraph 59]:I would lay it down as a general principle that where it is possible to decide any case, civil or criminal, without reaching a constitutional issue, that is the course which should be followed.”

(257) Similarly the U.S. Supreme Court has held that it would not decide a constitutional question which was properly before it, if there was also some other basis upon which the case could have been disposed of (*Ashwander v. Tennessee Valley Authority*, 297 U.S. 288, 347 (1936)).”

43. Similarly, the doctrine of ripeness was amplified in the case of *Faraj & 3 others v Police & 2 others* [2022] KEHC 287 (KLR); where the court stated as hereunder;

“...the doctrine of ripeness and the doctrine of avoidance. Like *res judicata* or the doctrine of exhaustion, these two doctrines can preclude a court from entertaining a case. Constitutional avoidance has been defined as a preference for deciding a case on any basis other than one which involves a constitutional issue being resolved. As a principle, constitutional avoidance has been linked to the doctrine of justiciability. In broad terms, justiciability governs the limitations on the constitutional arguments that the courts will entertain. It encompasses three main principles: standing, ripeness, and mootness. The avoidance doctrine was fortified in *Sports and Recreation Commission v Sagittarius Wrestling Club and Anor. ...*”

44. Moreover, the doctrine under reference which prohibits the lodgment of a matter before the court when same is too early and prior to completion of the statutory process was also highlighted in the case



of Wanjiru Gikonyo & 2 others v National Assembly of Kenya & 4 others [2016] KEHC 5536 (KLR), where the court stated thus;

“27 Effectively, the justiciability dogma prohibits the court from entertaining hypothetical or academic interest cases. The court is not expected to engage in abstract arguments. The court is prevented from determining an issue when it is too early or simply out of apprehension, hence the principle of ripeness. An issue before the court must be ripe, through a factual matrix, for determination.

28 Conversely, the court is also prevented from determining an issue when it is too late. When an issue no longer presents an existing or live controversy, then it is said to be moot and not worthy of taking the much-sought judicial time. The exception it must be noted exists where the court is allowed by law to offer advisory opinions. A good example is Article 163(6) of *the Constitution* on powers of the Supreme Court of Kenya to give advisory opinions at the request of the national government on matters concerning county governments.”

45. I must have said enough to demonstrate that the subject petition has been filed before the court without due regard to the provisions of sections 8(2), 8(4), and 8(5) of the *Community Land Act* 2016. The petition is ipso facto premature and misconceived.

46. In a nutshell, same is prohibited by the doctrine ripeness; justiciability; and constitutional avoidance.

Final Disposition.

47. Flowing from the analysis highlighted in the body of the ruling, it must have become apparent that the amended petition under reference was filed before the court on the basis of unwarranted apprehension by the petitioners.

48. Same is clearly pre-mature and thus still born.

49. In the premises, and for the reasons which have been alluded to; the final orders that commend themselves to the court are as hereunder;

- i. The Preliminary objection dated 22nd July 2025 be and is hereby allowed.
- ii. The Amended Petition dated 5th June 2025 be and is hereby struck out.
- iii. The cost of the preliminary objection; and cost of the petition be and are hereby awarded to the interested parties only.
- iv. The costs in terms of clause [iii] shall be agreed upon; and in default same shall be taxed in the conventional manner.

50. It is so ordered.

DATED, SIGNED AND DELIVERED AT ISIOLO THIS 9TH DAY OF OCTOBER 2025.

OGUTTU MBOYA, FCI Arb; CPM [MTI-EA].

JUDGE.

In the presence of:

C/A Hussein/Mukami



Mr. Lesikito for the Petitioners

Mrs. Ahomo for the 2nd Respondent

Ms. Nduta holding brief for Mr. Joseph Mwangi for the Interested Parties

No appearance for the 1st and 3rd Respondents

